U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 January 2021

Case No.: 2020-TAE-00012

In the Matter of:

MANUEL H. SANCHEZ,
Respondent.

DECISION AND ORDER GRANTING ADMINISTRATOR'S MOTION FOR SUMMARY DECISION AS FACTS DEEMED ADMITTED

This case arises under the H-2A visa program, Temporary Agricultural Employment (TAE) of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101, et seq, as amended, and its implementing regulations found at 20 C.F.R. Part 655, Subpart B.

On December 14, 2020, Administrator, Wage and Hour Division, U.S. Department of Labor, ("the Administrator"), filed its Motion for Summary Decision. Pursuant to 29 C.F.R. § 18.72 (a) and Rule 56 of the Federal Rules of Civil Procedure, the Administrator moved that it is entitled to the entry of summary decision as a matter of law. There is no genuine dispute as to any material fact showing that Respondent Manuel H. Sanchez (hereinafter, "Respondent") violated the provisions of the Immigration and Nationality Act (INA), 8 U.S. C. § 1101 *et seq.,* and its implementing regulations found at 29 C.F.R Part 501 (hereinafter "H-2A program").

Administrator stated that:

(1) Respondent failed to comply with recruitment requirements, in violation of 20 C.F.R. § 655.12l(a)(3);
(2) Respondent failed to comply with the requirement that a copy of the work contract be provided, in violation of 20 C.F.R. § 655.122(q);
(3) Respondent failed to pay the offered/required wage rate in violation of H-2A regulation 20 C.F.R. § 655.122(l) ;
(4) Respondent (or agent(s)) sought or received payment from the employees for an activity related to obtaining labor certification, in violation of 20 C.F.R. § 655.135(j);
(5) Respondent failed to keep accurate and adequate records with respect to the workers' earnings in violation of H-2A regulation 20 C.F.R. § 655.122(j)(1);
(6) Respondent failed to comply with the pay statement requirements, in violation of 20 C.F.R. § 655.122(k);
(7) Respondent failed to provide or secure housing for those workers who were not reasonably able to return to their permanent residence at the end of the work day, without charge to the worker, that complies with the applicable housing safety and health standards, in

violation of 20 C.F.R. § 655.122(d)(1);

(8) Respondent failed to provide transportation in compliance with all applicable Federal, State, or local laws and recalculations between the workers' living quarters and the employer's worksite without cost to the worker, in violation of H-2A regulation 20 C.F.R. § 655.122(h)(4).

Administrator argued that Respondent violated the regulations under the INA's H-2A program and moved the court to order Respondent to pay $28,094.54 in H-2A back wages and $57,081.50 in H-2A civil money penalties as assessed by the Administrator. Administrator submitted Exhibits 1 through 5.

In the Motion for Summary Decision, Administrator relied upon (1) Administrator's Determination Letter, Exhibit 1; (2) Respondent's Request for Hearing, Exhibit 2; (3) Secretary's First Request for Admissions and UPS Overnight Delivery Confirmation, Exhibit 3; (4) U.S. Department of Labor ETA Form 9142A, Exhibit 4; and (5) U.S. Department of Labor ETA Letter of Certification, Exhibit 5.

Respondent did not respond to the Administrator's Motion for Summary Decision. Respondent did not respond to the Administrator's Request for Admissions.

On November 5, 2020 the Administrator and Secretary issued his First Request for Admissions to Respondent, pursuant to 29 C.F.R. 18.63. Exhibit 3. Based upon a review of the file, Respondent did not respond to Administrator's Request for Admissions. Therefore, the undisputed material facts are stated below:

1. The H-2A matter arises under the Immigration and Nationality Act (INA), 8 U.S. C. § 1101 *et seq.,* and its implementing regulations found at 29 C.F.R Part 501 (hereinafter "H-2A program"). Exhibit 1.

2. The Administrator conducted an investigation of Respondent regarding his compliance with the H-2A program. The investigation covered the period of February 10, 2018 through March 21, 2018, (referred to hereafter as the "subject period"). Exhibit 1.

3. Manuel H. Sanchez is an H-2A Farm Labor Contractor ("H-2ALC") operating in the area around Hazelhurst, GA. Exhibits 1 and 3.

4. Respondent contracts with several agricultural employers ("AGERs") to secure the certification of agricultural nonimmigrant workers under the H-2A visa program. During the investigation time period, Respondent received ETA certification for thirty (30) non-immigrant workers for the packing of pine straw. Exhibits 4 and 5.

5. Respondent is covered by the H-2A regulations because he applied for non-immigrant farm workers under the H-2A program. The current H-2A regulations became effective March 15, 2010. Exhibits 4 and 5. *See also*, 75 Fed. Reg. 6884 (Feb. 12, 2010)(codified at 20 C.F.R. § 655.)

6. Under the authority of the INA, 8 U.S.C. §1101 *et seq.,* as amended by the Immigration Reform and Control Act of 1986 ("IRCA"), the U.S. Department of Labor ("DOL") regulates the use of foreign agriculture workers to harvest crops through the H-2A program. Exhibits 4 and 5. The Secretary of Labor has delegated responsibility for the H-2A program to two DOL agencies, the Employment and Training Agency ("ETA") and the Wage and Hour Division ("WHD"). *See,* 29 C.F.R. §501.1(b)-(c).

7. The ETA is responsible for regulating the issuance and denial of certification for temporary employment under §218 of the INA, 8 U.S.C. 1188. The regulations in 20 C.F.R. § 655.102 are promulgated by the ETA. *See*, 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

8. The WHD is responsible for investigation, inspection, and enforcement of the provisions of § 218 of the INA. *See*, 29 C.F.R. § 501(b)-(c).

9. As a result of investigating the Respondent, the Administrator determined Respondent violated various provisions of the H-2A program as regulated by the INA, 8 U.S.C. §1101 *et seq*., as amended by the Immigration Reform and Control Act of 1986 ("IRCA"). Exhibit 1.

10. The Administrator determined the Respondent owes $28,094.54 in H-2A back wages and $57,081.50 in H-2A civil money penalties based on these violations. Exhibit 1.

11. The Administrator issued a determination letter to Respondent dated May 20, 2019 stating that Respondent had violated provisions of the H-2A program, that the Administrator computed back wages owed as a result of Respondent's violations ($28,094.54), and assessed a CMP of $57,081.50. Exhibit 1.

12. Respondent filed a request for hearing, dated June 4, 2019, and to date has not paid any amount of H-2A back wages or CMPs to the Administrator. Exhibit 2.

13. The Administrator issued the *Secretary's First Request for Admissions* to Respondent, pursuant to 29 C.F.R. §18.63, on November 5, 2020. Respondent was required to submit responses to the Administrator via e-mail no later than Monday, December 7, 2020. Exhibit 3.

14. To date, Respondent failed to submit responses as required or communicate with the Department of Labor in any other manner. Therefore, the Secretary's requested admissions are deemed admitted pursuant to 29 C.F.R. §18.63(a)(3).

15. As a result of Respondent's admissions, no genuine issues of material fact exist for litigation.

STANDARD FOR SUMMARY DECISION

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges establish that summary decision shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72 (a). Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); See also, Celotex Corp. v. Catrett, 477 U.S. 317,322 (1986). A genuine issue of material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,248 (1986). See also, Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997). Summary judgment is particularly appropriate when "the only genuinely disputed issue is [a] legal question." Central Oil & Supply Corp. v. United States, 557 F.2d 511, 515 (5th Cir. 1977).

A "material fact" is a fact that affects the outcome of the case. A "genuine issue" exists "if the evidence is such that a reasonable [fact finder] could return a verdict for the non-moving party," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), after "drawing all reasonable

inferences in favor of that [non-moving] party." Williams v. Utica College of Syracuse University, 453 F.3d 112, 116 (2nd Cir. 2006); Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590 (11th Cir. 1995) (per curium) citing Anderson v. Liberty Lobby, Inc., supra. While the burden is on the moving party for the summary judgment "to demonstrate the absence of any material factual issue genuinely in dispute," American Intern Group, Inc. v. London American Intern Corp. Ltd., 64 F.3d 77, 79 (2nd Cir. 1981), when the party seeking the summary judgment does not bear the ultimate burden of proof at the formal hearing, the moving party need not prove a negative on an issue the non-moving party must prove at the hearing. In such a case the moving party need only point to the absence of proof by the non-moving party to a material fact. The non-moving party may not rest upon mere allegations or denials but must present proof for the material fact so noted. Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co., 479 F.3d 799, 802 (11th Cir. 2007), quoting Johnson v. Board of Regents, 263 F.3d 1234, 1243 (11th Cir. 2001), quoting Celotex Corp. v. Catrett, supra at 322. "If the non-moving party fails to make a sufficient showing on an essential element of [the non-moving party's] case with respect to which [the non-moving party] has the burden of proof, then the court must enter summary judgment for the moving party." Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co., supra at 802, quoting Gonzalez v. Lee County Housing Auth., 161 F.3d 1290, 1294 (11th Cir. 1998), quoting Celotex Corp. v. Catrett, supra at 323.

Respondent failed to respond to the November 5, 2020 Request for Admissions to Respondent, pursuant to 29 C.F.R. 18.63. Exhibit 3. Per the Rules of Practice and Procedure, those facts are deemed admitted as true if the Party does not respond.

Pursuant to 29 C.F.R. 18.63 Admissions-

> (a) "A party may serve upon another party a written request for the admissions, for purposes of the pending action only, of the genuineness and authenticity of any relevant document ….or for the admission of the truth of any specified relevant matter of fact."
>
> (b) "Each matter of which an admission is requested is admitted unless within thirty (30) days after service of the request or such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves on the requesting party" a written statement denying, a written statement setting for reasons why can neither truthfully, admit nor deny or written objections.

Respondent has, therefore, admitted each of following legal issues:

(1) Respondent failed to comply with recruitment requirements, in violation of 20 C.F.R. § 655.12l(a)(3);
(2) Respondent failed to comply with the requirement that a copy of the work contract be provided, in violation of 20 C.F.R. § 655.122(q);
(3) Respondent failed to pay the offered/required wage rate in violation of H-2A regulation 20 C.F.R. § 655.122(l) ;

(4) Respondent (or agent(s)) sought or received payment from the employees for an activity related to obtaining labor certification, in violation of 20 C.F.R. § 655.135(j)
(5) Respondent failed to keep accurate and adequate records with respect to the workers' earnings in violation of H-2A regulation 20 C.F.R. § 655.122(j)(1);
(6) Respondent failed to comply with the pay statement requirements, in violation of 20 C.F.R. § 655.122(k);
(7) Respondent failed to provide or secure housing for those workers who were not reasonably able to return to their permanent residence at the end of the work day, without charge to the worker, that complies with the applicable housing safety and health standards, in violation of 20 C.F.R. § 655.122(d)(1);
(8) Respondent failed to provide transportation in compliance with all applicable Federal, State, or local laws and recalculations between the workers' living quarters and the employer's worksite without cost to the worker, in violation of H-2A regulation 20 C.F.R. § 655.122(h)(4).

In addition to admitting to the cited violations, Respondent admitted that he owes the back wages and CMPs in this H-2A matter. Exhibit 3, *Request for Admissions Nos. 4 through 13.*

After consideration of the facts, the arguments, the Act, and the well-established law, there are no genuine issues of material fact regarding the Administrator's findings and Respondent's failures. The undisputed facts are those listed above in the Request for Admissions that were deemed admitted as true by the Respondent. Accordingly, there are no genuine issues of material fact before the court. There is no issue to resolve at hearing. A summary decision in the Administrator's favor is appropriate. "If the pleadings and proof of either of the parties disclose that no real cause of action or defense exists, the court may determine that there is no issue to be tried by jury and may grant a summary judgment." Miller v. Board of Ed. of Jefferson County, Ky., W.D.Ky.1971, 54 F.R.D. 393, affirmed 452 F.2d 894.

Accordingly, the court finds as a matter of law 1) Respondent is an H-2A Labor Contractor as defined by 20 C.F.R. § 655.103(b); 2) Respondent's conduct during the subject period is covered under the H-2A program; 3) Respondent violated the H-2A provisions cited to above; and 4) Respondent owes the H-2A back wages computed and civil money penalties assessed by the Administrator in the May 20, 2019 H-2A Determination Letter.

Based on the arguments presented and the evidence submitted, the Administrator's Motion for Summary Decision is **GRANTED** and finds as a matter of law that Respondent, Manuel H. Sanchez (hereinafter "Respondent"), violated the provisions of Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 *et seq*., as amended by the Immigration Reform and Control Act of 1986 ("IRCA") and its implementing regulations found at 29 C.F.R. Part 501 (hereinafter "H-2A program"). The court upholds the Administrator's determination of H-2A back wages and

assessment of H-2A CMPs, as outlined in the H-2A determination letters the Administrator issued dated May 20, 2019. Respondent is **ORDERED** to pay the back wages totaling $28,094.54 in H-2A back wages and $57,081.50 in H-2A CMPs as assessed by the Administrator.

ORDER

It is hereby ORDERED that:

1. Administrator's Motion for Summary Decision is **GRANTED**.

2. Respondent is **ORDERED** to pay $28,094.54 in H-2A back wages and $57,081.50 in H-2A civil money penalties as assessed by the Administrator.

SO ORDERED.

Dana Rosen
Administrative Law Judge