

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 August 2005

**CASE NOS.: 2005-LCA-00029
2005-LCA-00030**

In the matter of

**ADMINISTRATOR, WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR**
Prosecuting Party

v.

**EXCELERATE TECHNOLOGIES, LLC
a/k/a SANTIK COMPUTERS PVT LTD**
Respondent

Appearances:

Constance B. Franklin, Attorney (Frank V. McDermott, Jr.,
Regional Solicitor and Howard M. Radzely, Solicitor of Labor)
Boston, Massachusetts
For the Prosecuting Party

Baljit Singh, President, Framingham, Massachusetts,
For the Respondents

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER APPROVING CONSENT FINDINGS

In these matters which arise from the Prosecuting Party's enforcement of H-1B Labor Condition Applications under section 212(n) of the Immigration and Nationality Act, 8 U.S.C. § 1182(n), and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart 1, the parties have executed and filed a CONSENT FINDINGS AND ORDER which constitute a full and final resolution of all issues raised by the Prosecuting Party's enforcement actions in these matters. Pursuant to 20 C.F.R. § 655.840(b), I hereby adopt the parties' consent findings, which are set forth below in paragraphs 1–23, as my findings and conclusions.

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 USC § 1101 *et seq.* ("the INA"), as amended by the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978, the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 101-232, 105 Stat. 1733 and the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA"), P. L. 105-277, 112 Stat. 2861-641. Jurisdiction over the hearing in this matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by INA § 212(n)(2), 20 CFR §§ 655.820-840.

2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by the Wage and Hour Division, Employment Standards Administration from February, 2004 to April, 2005.

3. On April 19, 2005, the Wage and Hour Division issued to both Excelerate and Santok Determination Letters identifying alleged violations of the H-IB provisions of the INA.

4. On May 3, 2005, within the time allotted by 20 CFR § 655.820, Excelerate and Santok filed Requests for Hearings with respect to the allegations of violations set forth in the Determination Letters.

5. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an order made after a full hearing.

6. The entire record forming the basis on which this Order is entered shall consist of the Determination Letters and attachments thereto, and these agreements and consents.

7. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.

8. The parties to these Consent Findings and Order hereby waive any right to contest the validity of these Findings or of any Order entered in accordance herewith.

9. All violations alleged in the Determination Letters issued by the Wage and Hour Division are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the Respondents and the Prosecuting Party.

10. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

11. These Consent Findings and Order shall fully and finally resolve all issues and claims that were raised, or which reasonably could have been raised, in the April 19, 2005 Determination Letters.

12. Excelerate and Santok violated the INA by failing to pay wages at the required wage rate to their H-IB workers listed on the attached Exhibits A and B, in violation of 20 CFR §§ 655.731(c) and 655.805(a)(2).

13. Excelerate's H-IB workers are due back wages in the amount of \$688,176, as shown on the attached Exhibit A; Santok's H-IB workers are due back wages in the amount \$147,397, as shown on the attached Exhibit B, which Exhibits are incorporated in and made a part hereof; and Excelerate and Santok are obligated by this Order to pay those back wages.

14. Excelerate and Santok represent that they are no longer in business and are winding down their affairs, *i.e.*, preparing final tax returns (including W-2 forms) and preparing to distribute all their remaining assets in accord with the priorities set forth in chapter 7 of the Bankruptcy Code, without however filing chapter 7 bankruptcy petitions. Such a distribution is expected to permit partial payments only to those Santok employees who would qualify for priority wage claim treatment in a chapter 7 proceeding.

15. On or before September 1, 2005, Excelerate and Santok will forward to the Wage and Hour Division, Boston District Office, Kennedy Federal Building - Rm. 525, Boston, MA 02203 copies of their 2003 and 2004 tax returns, accompanying schedules, and W-2 forms issued to the H-IB workers listed on the attached Exhibits A and B.

16. On or before September 1, 2005, Excelerate and Santok will transmit to the Wage and Hour Division, Boston District Office, net back wage checks distributed as provided in paragraph 13, *supra*. Such checks shall be in the form of certified or bank checks made payable to the named employee or Wage and Hour Division — Labor (*e.g.*, "Bill Smith or Wage and Hour Division — Labor"). The Administrator will distribute the checks to the named H-IB workers forthwith. Any sum not distributed to the H-IB worker or to his personal representative after three years, because of inability to locate the H-IB worker or because of his refusal to accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

17. On or before September 1, 2005, Excelerate will transmit on its letterhead to the Wage and Hour Division, Boston District Office, a letter detailing for each of the H-IB workers listed on Exhibit A the full calendar period/dates during which each H-IB worker was employed

18. On or before September 1, 2005, Santok will transmit on its letterhead to the Wage and Hour Division, Boston District Office, a letter detailing for each of the H-IB workers listed on Exhibit B the full calendar period/dates during which each H-IB worker was employed.

19. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the U. S. Department of Labor Office of Administrative Law Judges.

20. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon filing with the Administrative Law Judge a motion for an order of enforcement and sanctions.

21. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.¹

22. Excelerate and Santok shall comply with 20 C.F.R. 655.731 and 655.805(a)(2) in the future.

23. These Consent Findings and Order shall constitute the Final Administrative Order in this case.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts

Attachments: Exhibits A and B

¹ This paragraph is identified as 20 in the original Consent Findings and Order executed by the parties. To correct this inadvertent error of two paragraphs bearing the same number, the paragraph has been renumbered herein as 21, and the succeeding paragraphs in the Consent Findings and Order (21 and 22) have been renumbered herein as paragraphs 22 and 23.

EXHIBIT A - EXCELERATE TECHNOLOGIES

NAME	BACK WAGES DUE
Babu Gutta, Srinivase	\$76,814
Chavan, Manali	\$25,144
Desbmukh, Ajay	\$7,264
Karde, Manoj	\$22,594
Karnani, Suresh	\$30,873
Kaur, Pardeep	\$3,579
Manjeri, Sunil	\$75,999
Mohammed, Igbal	\$22,447
Mulpuru, Harini	\$17,493
Narkhede, Shriram	\$50,090
Shetye, Kedar	\$81,422
Sohal, Bikram	\$135,756
Takale, Suresh	\$33,648
Tekkedil, Dilip	\$62,299
Vemula, Mahesh	\$42,756
TOTAL	\$688,176

EXHIBIT B - SANTOK SOFTWARE SOLUTIONS

NAME	BACK WAGES DUE
Babu Gutta, Srinivase	\$3,619
Chavan, Manali	\$1,795
Desbmukh, Ajay	\$38,872
Govindaraj, Prabhakar	\$19,099
Karcie, Manoj	\$3,833
Karnam, Suresh	\$11,624
Manjeri, Sunil	\$3,255
Mohammed, Igbal	\$19,135
Mulpuru, Harini	\$11,823
Narkhede, Shriram	\$4,409
Shetye, Kedar	\$4,979
Singh, Gurvinder	\$18,419
Takale, Suresh	\$4,979
Tekkedil, Dilip	\$814
Vemula, Mahesh	\$741
TOTAL	\$147,397