



Issue Date: 06 October 2004

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR
DIVISION,

Prosecuting Party,

CASE NO: 2004 LCA 35

v.

APPALACHIA HEALTH SERVICES, LLC,
Respondent

DECISION AND ORDER - FINAL JUDGMENT

The Administrator, Wage and Hour Division, United States Department of Labor (the Administrator) issued Determination Letters in the above-referenced matters pursuant to 20 C.F.R. Part I—Enforcement of H-1B Labor Condition Applications, § 655.815, pertaining to H-1B Specialty Occupations under the Immigration and Nationality Act (INA), finding that Respondent, Appalachia Health Services, LLC, failed to pay wages as required in violation of 20 C.F.R. § 655.805 (a)(2), 20 C.F.R. § 655.731, 20 C.F.R. § 655.805(a)(2) (1995), 20 C.F.R. § 655.731(1995) and 8 U.S.C. § 1182 (n)(2)(C)(vii); failed to maintain documentation in violation of 20 C.F.R. § 655.805 (a)(6); and failed to make available for public examination the application and necessary document(s) in violation of 20 C.F.R. § 655.805(a)(14) and 20 C.F.R. § 655.760(a).

Respondent, admitting the allegations of the Administrator, now wishes to resolve this matter by entry of this Final Judgment. The Court enters this Final Judgment based upon the terms and conditions agreed to by the parties in the Joint Settlement Agreement executed and filed with the Court on October 4, 2004, as a final adjudication of all claims asserted by the Administrator in this action.

Wherefore, the Court hereby enters this Final Judgment pursuant to Rules 54 and 58 of the Federal Rules of Civil procedure, and 29 C.F.R. §18.29, and hereby ORDERS, ADJUDGES AND DECREES as follows:

I.

Respondent shall pay a total of \$19,008.86 representing gross back wages, to the former H-1B employee Wilfred Victorina. Respondent shall deliver a cashier's or certified check payable to Wilfred Victorina for the net amount of the back wages due. This check shall be

delivered to the attorneys for the Department of Labor for receipt at the time of signing of the Settlement Agreement. Respondent shall make all legal deductions required for back wage disbursement, and shall forward a statement of the deductions taken at the time of delivery of the check. The attorneys for the Department of Labor shall then distribute the check to Wilfred Victorina.

II.

The notice of violation shall be amended as follows:

Violation 2, which formerly stated that “Appalachia Health Services, LLC misrepresented a material fact on the labor condition application (LCA) in violation of 20 C.F.R. § 655.730, See 20 C.F.R. § 655.805(a)(1),” shall be amended to state as follows:

Appalachia Health Services LLC failed to specify accurately on the LCA the occupational classification in which the H-1B nonimmigrant was employed and the wage rate and conditions under which the H-1B nonimmigrant was employed in violation of 20 C.F.R. § 655.805 (a) (6)

Section 655.805(a)(6) does not require notice of this violation to the Department of Labor Employment and Training Administration or the Attorney General. The Department of Labor shall not seek debarment of Respondent based on this violation. There shall be no civil money penalty assessment as a result of this event.

III.

Respondent failed to make available for public examination the LCA and necessary documents at the employer’s principal place of business or worksite in violation of 20 C.F.R. § 655.760(a). There shall be no penalty attached to this violation. Respondent has stated that the documents which support the LCA were located in counsel’s office in the World Trade Center, that this office was destroyed on September 11, 2001, and that the documents were not available for posting after the office was destroyed.

IV.

The parties shall bear their own costs (including, but not limited to, attorney’s fees) incurred in connection with the investigation, prosecution and defense of this action.

V.

This Final Judgment shall have the same force and effect as an Order made after full hearing. The parties have waived any further procedural steps before the Administrative Law Judge, and have waived the right to challenge or contest the validity of this Final Judgment.

It appearing to the Court that all parties have reached agreement on the terms set forth above, the Court hereby

ORDERS that Final Judgment be entered in accordance with the terms herein and that the parties give immediate effect thereto.

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Edward Terhune Miller
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 655.845, any party dissatisfied with this Decision and Order may appeal it to the Administrative Review Board, United States Department of Labor, Room S-4309, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.