

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 December 2005

In the Matter of:

**In the Matter of
ADMINISTRATOR, WAGE AND HOUR
DIVISION,
UNITED STATES DEPARTMENT OF LABOR
Complainant/ Prosecuting Party**

v.

2006 LCA 00001

**INTEGRATED MANAGEMENT
SYSTEMS INC.,
Respondent**

**DECISION AND ORDER
APPROVING STIPULATION**

This case was brought pursuant to 20 C.F.R. § 655.820 et seq., as amended by the interim final regulations published by the Department of Labor on December 20, 2000, 65 Fed. Reg. 80110 et seq. (2000) to implement the H-1B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(i)(B) and 1182(n), and in accordance with 29 C.F.R. Part 18 of the Rules of Practice and Procedure of the Office of Administrative Law Judges. A hearing was scheduled for March 7, 2006.

On December 1, 2005 I received a Settlement Agreement and Consent findings from the parties. The parties stipulate, to an entry of findings, as follows:

1. These proceedings arise under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, as Amended by the immigration Act of 1990, P.L. 101-649, 104 Stat. 4978, and the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 102-232, 105 Stat. 1733, and the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA")(Title IV of Pub. L. 105-277, Oct. 21, 1998; 112 Stat. 2681) found at 8 U.S.C. § 1101, et seq. ("INA"), and 8 U.S.C. § 1101(a)(15)(H)(i)(b). Jurisdiction over these proceedings is vested in the Office of Administrative Law Judges by the INA § 212(n), 8 U.S.C. § 1182(n), and 20 C.F.R. Part 655.800 et seq. with respect to IMS's request for a hearing involving alleged violations of the provisions of section 1182(n) of the Act.
2. The issues resolved by this Settlement Agreement were identified initially during an investigation conducted by Wage and Hour covering the period from March 6, 2004 to March 5, 2005, with respect to IMS's petitioning for and employing H-1B nonimmigrants.
3. On September 21, 2005, the Deputy Administrator's representative issued a Determination to IMS detailing the findings of said investigation. The Determination

alleged violations of section 1182(n) of the Act related to seven (7) H-1B nonimmigrant workers and determined that \$ 109,332.55 was due in back wages to the nonimmigrants.

4. On October 6, 2005, within the time period provided by 20 C.F.R. § 655.820, IMS filed a Request for Hearing contesting the findings contained in the Determination. Respondent limited its request to one H-1B nonimmigrant worker, Balvinder Hayer, and identified a single issue in dispute related to the per diem allowance for Mr. Hayer's 60-day placement at a non-LCA worksite. Of the \$ 10,378.45 in back wages sought for Balvinder Hayer, the total amount of \$3,538.45 is related to unlawful practices other than the per diem issue. IMS did not dispute the \$3,538.45 attributable to the uncontested issues for Hayer.

5. IMS does not and has not contested any of the other allegations asserted or back wages sought in the Determination related to Hayer or the other six (6) nonimmigrant workers. IMS agrees to the entry of an Order confirming the uncontested violations and ordering payment of \$3,538.45 in back wages for Hayer, as well as the \$ 98,954.10 due to the other six (6) H-1B nonimmigrants, by operation of law, when IMS excluded them from its Request for Hearing.

6. Further, IMS hereby agrees to pay to the Deputy Administrator, in full and complete settlement of the contested issue raised in the Determination addressing IMS's payment of short-term expenses relating to Balvinder Hayer, the agreed upon amount of \$2,500 in gross back wages to Balvinder Hayer.

7. Respondent denies any wrongdoing and the allegations in the Determination relating to the payment of wages to Balvinder Hayer but hereby withdraws its Request for Hearing in order to avoid costly and timely litigation. The entire record on which the Order entered herein is based shall consist solely of the Determination issued by the Deputy Administrator, which constitutes the complaint herein, and this Settlement Agreement, pursuant to 29 C.F.R. § 18.9.

8. Payment of the aforementioned amounts by IMS to the Deputy Administrator shall be made as follows:

a. The provisions of this Settlement Agreement relative to the payment of back wages shall be deemed satisfied when IMS delivers to the Deputy Administrator a certified check or money order payable to "Balvinder Hayer or Wage-Hour Div./U.S. Department of Labor" in an amount equal to the gross back wage payment of \$ 2,500, less legally required deductions such as federal, state and local taxes and FICA.

b. IMS shall provide the Deputy Administrator with the last-known address and social security number of the employee for whom back wages are due, and a schedule reflecting the gross amount of back wage payment and the legal deductions taken from his gross wage amount. Furthermore, IMS will provide a W-2 form for compensation paid to Balvinder Hayer under this Agreement. IMS shall forward the aforesaid check, last-known address and social security number of the employee, schedule, and W-2 form to the Wage and Hour Division, United States Department of Labor, 211 W. Fort Street, Detroit, Michigan 48226, no later than December 30, 2005.

c. Any sums not distributed by the Deputy Administrator to the employee named herein or to his personal representatives after three (3) years because of an inability to locate the proper person or because of such person's refusal to accept

such sums shall be deposited with the Treasurer of the United States as miscellaneous receipts.

9. IMS, including any of its officials, agents, servants, employees, and all persons in active concert or participation with them, shall not request, solicit, suggest, or coerce, directly, or indirectly, any employee to return or to offer to return to INS or to someone else for INS, any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of the Agreement or the INA; nor shall ITMS accept or receive from any employee, either directly or indirectly, any money in the form of cash, check, or other form, for wages heretofore or hereafter paid to said employee under the provisions of this Agreement or the ITNA. Further, INS shall not discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him from INS under the provisions of this Agreement or the NA.

10. This Settlement Agreement resolves all issues raised by the Deputy Administrator's Determination of September 21, 2005, with respect to INS. INS further agrees to comply with the provisions of the NA and the applicable regulations in the future with respect to INS's petitioning for and employing H-1B nonimmigrants.

11. Each party agrees to bear its own costs, attorney's fees, and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs, including, but not limited to, any and all costs referenced under the Equal Access to Justice Act, as amended.

After having been fully advised in these premises, I accept these stipulations as findings. In accordance with such Consent Findings, it is hereby:

ORDERED

1. That the terms and conditions set forth in the Consent Findings are **AFFIRMED**.
2. The hearing in this matter is **CANCELLED**.

A

DANIEL F. SOLOMON
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the decision. *See* 20 C.F.R. § 655.845(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).