



Issue Date: 26 October 2006

Case No.: 2006-LCA-00017

In the Matter of

**ADMINISTRATOR,
WAGE AND HOUR DIVISION**
Prosecuting Party

v.

**PIMINCO, INC.
d/b/a MENG LI'S ASIA PACIFIC GRILLE**
Respondent

CONSENT FINDINGS AND ORDER

Pursuant to 29 C.F.R. § 18. 9 (1992), the parties to this action, Prosecuting Party, Administrator, Wage and Hour Division ("Administrator") and Respondent, Piminco, Inc. d/b/a Meng Li's Asia Pacific Grille ("Piminco")¹ have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to Piminco on April 6, 2006.

JURISDICTION AND PROCEDURAL HISTORY

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82 - 414, 66 Stat. 163, codified as amended at 8 U.S.C. § 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. 102 - 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 Office of Administrative Law Judges by INA § 212(n)(2), 20 C.F.R. § 655.820-840.

2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by Wage - Hour from November 25, 2005, through February 28, 2006.

¹ Although Respondent's owner, Dr. Patrick T. Mangonon, is listed in the original case caption, Dr. Mangonon is not a party to this action and none of the provisions herein apply to him individually.

3. On April 6, 2006, Wage and Hour issued to Piminco a Determination Letter identifying alleged violations of the H-1B provisions of the INA.

4. On April 6, 2006, within the time period provided by 20 C.F.R. § 655.820, Piminco filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.

GENERAL PROVISIONS

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 the Order is entered shall consist of the Determination Letter 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 Letter issued by Wage and Hour are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the respondent and the prosecuting party.

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

SPECIFIC PROVISIONS

11. Piminco violated the INA, as amended, by willfully failing to pay wages at the prevailing annual wage rate, specified on the Labor Condition Application ("LCA") filed by Piminco to one H-1B Nonimmigrant Worker identified in Exhibit "A," incorporated herein, in violation of 20 C.F.R. §§ 655.731 and 655.805(a)(2).

12. Piminco violated the INA, as amended, by willfully misrepresenting material facts on the LCA application in violation of 20 C.F.R. §§ 655.730 and 655.805(a)(1).

A. Payment

13(a). Piminco will pay back wages in the total amount of \$53,014.33 to the employee identified in Exhibit A according to the following schedule:

October 15, 2006	\$17,671.33
November 15, 2006	\$17,671.50

December 15, 2006 \$17,671.50

13(b). Piminco will provide the Administrator with _____ copies of each check and a signed and dated receipt for same from the employee within ten days of making each payment by mailing these documents to Ann G. Paschall, 61 Forsyth Street, S.W., Room 7T10, Atlanta, Georgia 30303.

14. Any sum not distributed to the employee identified in Exhibit A, or to her personal representative because of inability to locate her or because of her refusal to accept such sum shall be remitted to the Wage and Hour Division by mailing to Ann Paschall at the address above, and shall be deposited with the Treasurer of the United States as miscellaneous receipts after three years.

15. Civil money penalties in the amount of \$15,000.00 were assessed against Piminco, Inc. for various violations of the INA, as amended.

16. As part of a negotiated settlement the civil money penalties are hereby reduced to a total amount of \$5,000.00.

17. The civil money penalties shall be paid upon execution of these Consent Findings.

18. Payments shall be in the form of a certified or bank check made payable to "Wage and Hour Division -- Labor".

19. In the event that Respondent fails to make any payment in the time periods specified herein, the entire amount of back wages shall become due and payable immediately without further notice or demand by the Administrator. Any defaulted balances shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104 -134) and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Administrator and/or Secretary of Labor intend to pursue enforcement of this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

B. Reporting and Enforcement

20. Upon receipt of the final Consent Findings and Order, the Administrator shall notify the Attorney General pursuant to 20 C.F.R. § 655.855 that Piminco shall be disqualified from approval of any LCA petitions filed by it or on its behalf for at least two years.

21. 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 Office of Administrative Law Judges.

22. 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.

23. 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.

24. Piminco, Inc. shall comply with 20 C.F.R. § 655.730 and 655.731 in the future.

25. These Consent Findings and Orders shall constitute the final Administrative Order in this case.

It is further ORDERED that the hearing scheduled for October 17, 2006 in West Palm Beach, Florida is hereby cancelled.

IT IS SO ORDERED, ADJUDGED AND DECREED.



RALPH ROMANO
Administrative Law Judge

Cherry Hill, New Jersey

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 administrative law judge's 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 correspondences 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 administrative law judge's 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).