

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of:
ADMINISTRATOR, WAGE AND HOUR
DIVISION,
        Prosecuting Party,
V.
RABBIT SUN, INCORPORATED d/b/a
LA CHAMPAGNE RESTAURANT,
        Respondent.
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* CASE NO.
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* 2001-LCA-27
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CONSENT FINDINGS AND ORDER

Pursuant to 29 C.F.R. § 18.9, the parties to this action, prosecuting party, Administrator, Wage and Hour Division ("Administrator"), respondent Rabbit Sun Incorporated d/b/a La Champagne Restaurant ("Rabbit Sun"), and complainant Jean-Jacques Barilleau 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 Rabbit Sun May 22, 2001, with respect to complainant Jean-Jacques Barilleau.

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 August, 2000 through May, 2001.

3. On May 22, 2001, the Wage and Hour Division issued to Rabbit Sun a Determination Letter identifying alleged violations of the H-1B provisions of the INA.

4. On June 4, 2001, within the time period provided by 20 C.F.R. § 655.820, Rabbit Sun 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 these agreements and consents.

7. The parties to these Consent Findings and Order, including complainant Jean-Jacques Barilleau, hereby waive all further procedural steps between themselves before the Administrative Law Judge.

8. The parties to these Consent Findings and Order, including complainant Jean-Jacques Barilleau, 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 the Wage and Hour Division are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the complainant Jean-Jacques Barilleau and the prosecuting party United States Department of Labor.

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 May 22, 2001, Determination Letter and all claims and issues of law and/or fact of which the Administrator had knowledge prior to the effective date of these Consent Findings and Order.

DEFINITIONS

12. The term "Rabbit Sun" refers to Rabbit Sun, Incorporated d/b/a La Champagne Restaurant, its successors and assigns, any individuals with a "substantial interest" in Rabbit Sun, and officers and directors thereof. The provisions of paragraphs 13 through 21 apply to Rabbit Sun, as defined above, and to any firm, corporation, partnership association or other entity in which Rabbit Sun has a "substantial interest". "Substantial interest" as used in these Consent Findings and Order is defined at 29 C.F.R. § 4.188(c).

SPECIFIC PROVISIONS

13. Rabbit Sun violated the INA, as amended, by failing to pay wages at the prevailing annual wage rate of \$32,385.60, as specified on the Labor Condition Application ("LCA") filed by Rabbit Sun, to one H-1B Nonimmigrant Worker (Jean-Jacques Barilleau) in violation of 20 C.F.R. §§ 655.731 and 655.805 (a) (2).

14. Rabbit Sun violated the INA, as amended, by failing to provide notice of the filing of the LCA, in violation of 20 C.F.R. §§ 655.734 (a) (1) (ii) and 655.805 (a) (5).

A. Payment

15 (a). Rabbit Sun shall pay backwages in the total amount of \$8,400 to complainant Jean-Jacques Barilleau pursuant to the

following arrangement:

<u>AMOUNT</u>	<u>ON OR BEFORE</u>
\$3,000	August 1, 2001
\$2,000	September 1, 2001
\$2,000	October 1, 2001
\$1,400	November 1, 2001

15 (b). Rabbit Sun shall forward to the Wage and Hour Division by delivery to the undersigned attorney for the Administrator each installment of backwages specified in the preceding paragraph less deductions for federal income tax and the employee*s share of F.I.C.A. Each installment payment shall be a certified or bank check drafted payable to "Jean-Jacques Barilleau or the Wage and Hour Division--Labor." Rabbit Sun shall include with the payment a schedule or other evidence reflecting the gross amount of the backwage payment and the legal deductions taken from the gross amount.

16. Each backwage payment shall be made free and clear, within the meaning of 20 C.F.R. § 655.731(c) (2) (I).

17. Any sum not distributed to the employee named herein, or to his personal representative after three years, because of inability to locate him or because of his refusal to accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

B. Reporting and Enforcement

18. 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 for a period of one year.

19. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time during the one year period provided in paragraph 18 upon filing with the Administrative Law Judge of a motion for an order of enforcement and sanctions.

20. 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.

21. Rabbit Sun shall comply with 20 C.F.R. §§ 655.731(c) and 655.734 (a) (1) (ii) in the future.

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: ____Aug. 24, 2001

RICHARD A. MORGAN
Administrative Law Judge

AGREED AND CONSENTED TO:

On behalf of the Administrator:

ADDRESS:

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

Telephone:

(404) 562-2057
(404) 562-2073 (FAX)

HOWARD M. RADZELY
Acting Solicitor of Labor

JAYLYNN K. FORTNEY
Regional Solicitor

ROBERT L. WALTER
Counsel

By:

THOMAS SHANAHAN
Attorney

Office of the Solicitor
U.S. Department of Labor
Attorneys for Plaintiff.

On behalf of Respondent Rabbit Sun Incorporated d/b/a La
Champagne Restaurant:

CHRISTINE R. SENSENIG
Kunkel Miller & Hament
South Trust Bank Bldg.
Suite 970
1800 Second St.
Sarasota, FL 34236
Telephone: (941) 365-6006
Facsimile: (941) 365-6209
Attorney for Rabbit Sun

On behalf of Complainant

Jean-Jacques Barilleau:
JEAN-JACQUES BAILLLEAU