U.S. Department of Labor

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Issue date: 25Jan2002

CASE NO: 2002-LCA-5

In The Matter of:

EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR

Prosecuting Party/Complainant

v.

FRONTIER CONSULTING, INC.

Respondent

ORDER DENYING MOTION TO AMEND

On January 16, 2002, Complainant filed a "Motion To Amend Determination Letter" wherein Complainant seeks to amend Violation No. 1 pursuant to Federal Rules of Civil Procedure 15(a) to allege that Respondent failed to comply with provisions of Subpart H and I in violation of 20 C.F.R. § 655.805(a)(i) as follows:

> **Violation #1:** Frontier Consulting, Inc. failed to comply with the provisions of subpart H and I in violation of 20 C.F.R. § 655.805(a)(1) as follows:
>
> Frontier Consulting, Inc. filed labor condition applications with ETA that misrepresent the material fact of the location where H-1B nonimmigrants would work. Although Frontier Consulting, Inc. represented to ETA and INS that employees would be working in Houston, Texas, Frontier Consulting, Inc. was placing employees in San Antonio, Texas.
>
> **Remedy:** A civil money penalty is assessed. Frontier Consulting is ordered to pay $500.00 per H-1B nonimmigrant who was working in San Antonio, Texas who was represented to be working in Houston,

Texas and to comply with 20 C.F.R. 655.805(a)(1) in the future. The total civil money penalty is $23,000.

Complainant argues that the amended violation arises out of the same facts that are the basis of the original Violation No. 1; does not prejudice Respondent; and reduces the amount that Respondent would have to pay should the Complainant prove his case from $318,899.88 to $23,000.

On January 22, 2002, by facsimile, Respondent filed an Opposition to Complainant's motion. Respondent argues that the Administrator's Determination Letter of November 8, 2001, did not state or imply that Respondent had made misrepresentations in filing the Labor Condition Application and that the only allegation was Respondent's failure to pay wages, per diem expenses and transportation as required to employees who worked outside the intended area of employment. Respondent contends that the amended violation is a new allegation and insufficient time exists to conduct discovery in preparation of the formal hearing scheduled for February 5, 2002. In view of the foregoing, Respondent argues it would be unduly prejudiced by the amendment.

On January 25, 2002, Complainant filed a Reply to Respondent's opposition contending that the amended violation is not a new allegation, but arises from the same facts detailed in the Administrator's Determination Letter.

I agree with Respondent. An amendment to the violations, without adequate notice to Respondent or any apparent investigation of a misrepresentation issue being conducted, deprives Respondent of due process. The pleadings have been joined for the formal hearing scheduled for February 5, 2002. Any amendment at this time would be prejudicial to Respondent. Accordingly, Complainant's Motion To Amend is hereby **DENIED.**

ORDERED this 25th day of January, 2002, at Metairie, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge