U.S. Department of Labor

Office of Administrative Law Judges
Seven Parkway Center - Room 290
Pittsburgh, PA 15220

(412) 644-5754
(412) 644-5005 (FAX)

Issue date: 08Oct2002

CASE NO.: 2002-LCA-19

In the Matter of:

ADMINISTRATOR, WAGE & HOUR DIVISION
Prosecuting Party

v.

LITTLE AMERICA HOTEL & TOWERS
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT
AND CONSENT FINDINGS

This proceeding arises under the Immigration and Nationality Act of 1952, (hereinafter the "Act"). (8 U.S.C. §§ 1101, et seq., as amended by the Immigration and Nationality 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. 2861-2864.)

The U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division (hereinafter the "Prosecuting Party") sent Little America (hereinafter the "Respondent"), a letter dated, June 14, 2002, alleging that Respondent violated the H-1B provisions of the Act (8 U.S.C. 1182 (n)(1)) by failing to pay wages and (2) willfully misrepresenting material facts on the labor condition application and other documents.

The Prosecuting Party sought $23,654.13 in back wages to be paid to the H-1B non-immigrant, $8,000.00 as a civil money penalty, requested that the Respondent be denied the opportunity to sponsor aliens for employment for a period of at least two years and any current Labor Condition Application(s) (hereinafter "LCA") be invalidated pursuant to sections 204 (8 U.S.C. §1154) and 214 (c) (8 U.S.C. §1184 (c)) of the Act.

A summary of the alleged violations and remedies requested is as follows:

(1) Violation of 8 U.S.C. §1182 (n)(2)(viii) & 20 C.F.R. §655.731 by "failing to pay the required wage for productive and nonproductive time." The remedy requested for this violation was the back pay of these wages to the H-1B non-immigrant.

(No civil money penalty was requested for the violation of this section.)

(2) Two Violations of 20 C.F.R. §655.730 (1995) by

(a) willfully misrepresenting the "H-1B non-immigrant's occupation" on the LCA. The remedy requested was a $4,000 civil money penalty and the re-submission of a new and corrected LCA pursuant to 20 C.F.R. §655.730.

(b) wilfully misrepresenting "the rate of pay" on the LCA. The remedy requested was an additional $4,000 civil money penalty and the re-submission of a new and corrected LCA pursuant to 20 C.F.R. §655.730.

(3) Violation of 20 C.F.R. §655.760(a) for failing to make the LCA and other required documents available for public examination at the employer's workaday. The remedy requested was an order to comply with this regulation and in the future to establish a public access file. (No civil money penalty was requested for violation of this section)

The Administrator found that Respondent had violated 8 U.S.C. §1182(n) (2)(C) (vii) and 20 C.F.R. §655.731 by failing to pay wages required for "productive and nonproductive time". He also determined that Respondent had violated 20 C.F.R. § 655.730 by willfully misrepresenting an employee's occupation and amount of pay on the LCA. Furthermore, it was found that Respondent had violated 20 C.F.R. §655.760(a) by failing to "make available for public examination the LCA and the necessary documents at the employer's principal place of business or work cite" and by failing to "maintain required documentation for public examination." Due to the said violations, the Administrator imposed a civil money penalty in the amount of $8,000.00. In addition, he requested that back wages in the amount of $23,654.13 be paid to the H-1B non-immigrant employee. The Administrator further ordered that Respondent pay this sum in (15) fifteen days unless he exercised his right to appeal to this Court.

On June 28, 2002, Respondent made a request for a formal hearing, challenging the Administrator's determination. The parties subsequently entered into negotiations designed to solve this matter amicably. Thereafter, this Court received a Settlement Agreement on September 23, 2002.

By way of this Settlement Agreement, the parties stated that they desire to avoid further litigation or controversy and wish to fully resolve any and all claims that may exist as a result of the Prosecuting Party's investigation. Respondent acknowledges that he is an employer under the Act who has certain responsibilities because of the usage of non-immigrants on H-1B visas in speciality occupations. Respondent agrees to pay the gross amount of ($6,231.00) six thousand two-hundred and thirty-one dollars (less the legally required deductions) no later than (10) ten days after the issuance of this order, by delivering a check to the Wage-Hour District Office in Salt Lake City, Utah, or payable to Respondent's former employee, "Gerald Glasser or the U.S.

Department of Labor, Wage Hour." Respondent further agrees to pay a civil money penalty in the amount of ($2,000.00) two thousand dollars no later than (10) ten days after the issuance of this order by delivering a check made payable to the "U.S. Department of Labor - Wage-Hour, Attn: Susana Rendon." However, Respondent denies that the violations for which civil money penalties were assessed were willful. In addition, the parties agree that the Administrator will disburse this sum to the abovementioned employee and any monies which have not been disbursed shall be deposited into the treasury of the United States.

Furthermore, the parties agree that the Administrator will no longer seek that Respondent be denied the opportunity to sponsor aliens for employment and any current Labor Condition Application(s) be invalidated pursuant to sections 204 (8 U.S.C. §1154) and §214 (c) (8 U.S.C. §1184 (c)) of the Act. Also, Respondent now asserts that it is in full compliance and will continually remain in compliance, with the provisions of the Act and its implementing regulations found at 20 C.F.R. Part 655.

Finally, the parties agree to the following: (1) their Settlement Agreement and Order shall have the same force and effect as an order made at a full hearing; (2) the entire record upon which any order entered into in conformance with this agreement shall consist of the Administrator's determination, Respondent's request for a hearing and this determination; (3) any further procedural steps before this office and any right to contest the validity of the Settlement Agreement and this Order of Approval shall be waived by the parties; (4) the Settlement and terms herein this Order of Approval, shall become immediately effective upon issuance of this Order; and (5) the fees, costs and expenses incurred in connection with all stages of this proceeding (including but not limited to attorney's fees which may be available under the Equal Access to Justice Act, as amended) shall be borne by each individual attorney.

The Rules of Practice and Procedure for Administrative Hearings for the Office of Administrative Law Judges found at 29 C.F.R. Part 18 are applicable to this proceeding. 20 C.F.R. §§655.825(a) which requires that the ALJ review factors including the nature of this proceeding, the requirements of the public interest, the representations of the parties in order to determine whether the settlement is in the best interests of the parties.

The undersigned, having reviewed the Settlement Agreement and Consent Findings, concludes that this settlement is in the best interests of all the parties; and it is therefore ORDERED that the terms and conditions of the abovementioned Settlement Agreement and Consent Findings are hereby APPROVED pursuant to the provisions of 29 C.F.R. §§507.840.

IT IS FURTHER ORDERED that this matter is hereby dismissed with prejudice.

GERALD M. TIERNEY
Administrative Law Judge