

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 November 2010

Case No.: 2010-LCA-00010

In the Matter of

ADMINISTRATOR , WAGE AND HOUR DIVISION,
Prosecuting Party,

v.

**PERI SOFTWARE SOLUTIONS INC.,
& SARAVANAN PERIASAMY¹, Individually and as President,**
Respondents.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This matter arises under the Immigration and Nationality Act H-1B visa program (“the Act” or “INA”), 8 U.S.C. § 1101 (a)(15)(H)(I)(b) and § 1182(n), and the implementing regulations found at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. § 655.700 et seq.

The U.S. Department of Labor, Wage and Hour Division issued a Determination Letter on January 6, 2010 alleging violations of the H-1B provisions of the INA to Peri Software Solutions Inc., and its president, Saravanan Periasamy (“Respondents”). On January 20, 2010, Respondents filed a timely request for hearing with respect to the allegations of violations set forth in the Determination Letter. The matter was assigned to me, and by notice issued January 28, 2010, I scheduled a hearing to commence on April 15, 2010. The parties subsequently requested continuances to negotiate a settlement, and on October 5, 2010, the parties advised me that they reached an agreement on the issues in controversy in this matter. I granted the parties request for time to submit settlement documents by Order issued October 6, 2010.

On November 17, 2010, the parties submitted consent findings in which Respondents as an entity and individually admitted that they violated the Act by failing to pay sixty-seven (67) non-immigrants the required prevailing wage. As a result, \$635,416.59 is due to those individuals.

In addition, Respondents admitted that they substantially failed to provide notice of the filing of Labor Condition Applications at each place of employment where H-1B non-immigrant workers were expected to be employed in violation of 20 C.F.R. § 655.734 and § 655.805(a)(5). As a result, civil money penalties in the amount of \$121,850.00 were assessed.

¹ The caption has been amended to reflect the correct spelling of the corporate officer’s name.

Respondents further admitted that they violated 20 C.F.R. § 655.731(c)(10)(i) and §655.805(a)(12) by attempting to require an H-1B non-immigrant employee to pay a penalty for terminating employment. As a result, civil money penalties in the amount of \$3,150.00 were assessed.

To resolve the dispute, Respondents agree as follows:

1. Respondents shall pay back wages in the amount of \$635,416.59 plus \$3,033.84 in accrued interest, in accordance with the Attachment to the Consent Findings identified as Schedule A and in compliance with the payment plan set forth in the agreement signed by the parties, found at the Attachment identified as Schedule B. All payments shall be identified by “Case No. 1513420” and be made by delivering a lump-sum certified check to:

U.S. Department of Labor
Wage and Hour Division
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317
Attn: James Kolpack

2. The Deputy Administrator shall deliver the proceeds of each check less any legal deductions to the non-immigrants identified on Schedule A. Any payment that remains undistributed for three years because of the parties’ inability to locate an individual or a representative shall be deposited with the Treasurer of the United States of America.

3. If any installment payment is not made within ten (10) days of the due date set forth at Schedule B, then the entire balance of outstanding installment payments shall become due immediately.

4. Respondents agree to pay a total of \$125,000.00 in civil money penalties plus \$1,778.82 in accrued interest, in accordance with the installment plan set forth at the Attachment to the agreement signed by the parties, identified as Schedule C. All payments shall be identified by “Case No. 1513420(CMP)” and be made by delivering a lump-sum certified check to:

U.S. Department of Labor
Wage and Hour Division
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317
Attn: Rita Gahagan

5. If any installment payment for civil money penalties is not made within ten (10) days of the due date set forth at Schedule C, then the entire balance of outstanding installment payments shall become due immediately.

6. Respondents admit that the violations warrant disqualification from approval of any H-1B petitions pursuant to 20 C.F.R. § 655.810(d)(1) and further consent to disqualification from approval of any petitions filed by or filed on behalf of Respondents pursuant to section 204 or section 214(c) of the INA (8 U.S.C. § 1182(n)) for a period of two years. Respondents agree that the disqualification applies absolutely and conclusively to them in a broad manner.

7. The Administrator shall notify the Attorney General of the United States of the consent findings and Order pursuant to 20 C.F.R. § 655.855.

8. The disqualification of Respondents shall not affect any H-1B non-immigrant employees of Respondents currently working under approved petitions.

9. Respondents agree to comply in all respects with the Act and applicable regulations in connection with any future H-1B application.

10. Respondents shall take no action to retaliate against any individual identified in the consent findings as entitled to an award of back wages.

11. Respondents shall not attempt to recoup any back wages or civil money penalties from H-1B non-immigrant workers.

12. Respondents agree that they shall not require any H-1B non-immigrant employee to pay a penalty for ceasing employment, but Respondents shall not be prohibited from seeking or receiving bona fide liquidated damages from an H-1B non-immigrant employee who ceases employment prior to an agreed date where Respondents comply with 20 C.F.R. § 655.731(c)(10)(i).

13. In the event that Respondents default on the installment payment provisions of this agreement, the Deputy Administrator may enforce these Consent Findings and Order by filing for a Judgment in an action under the Federal Debt Collection Procedures Act (28 U.S.C. §3001 et seq.), or an action in contract; for debt or to enforce a civil fine, penalty or pecuniary forfeiture under 28 U.S.C. §2461; or an action under any other applicable statute or remedy.

14. Respondents agree to fully comply with the requirements of 20 C.F.R. Part 655, Subparts H and I.

15. 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 hearing, the consent findings and this Order.

16. The parties waive any further procedural steps before the Administrative Law Judge and waive any right to challenge or contest the validity of the Settlement Agreement and Consent Findings and Order entered into in accordance with this agreement and 29 C.F.R. § 18.9(b)(4).

17. This agreement shall have the same force and effect as an Order issued after a full hearing pursuant to 20 C.F.R. §655.840 in accordance with 29 C.F.R. §18.9(b)(2).

18. Each party shall bear its own costs, attorney's fees, and expenses.

ORDER

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 Settlement Agreement and Consent Findings are hereby APPROVED pursuant to the provisions of 29 C.F.R. § 507.840.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey