

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

**ADMINISTRATOR, WAGE AND HOUR
DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

PROSECUTING PARTY,

v.

LUCERO POOL PLASTER, INC.,

RESPONDENT.

**ARB CASE NOS. 2023-0040
2023-0045**

**ALJ CASE NO. 2019-TNE-00011
ALJ THEODORE W. ANNOS**

DATE: March 26, 2025

Appearances:

For the Complainant:

**Jennifer S. Brand, Esq., Rachel Goldberg, Esq., Jennifer Stocker,
Esq., Jennifer Huggins, Esq.; *United States Department of Labor,
Office of the Solicitor; Washington, District of Columbia***

For the Respondent:

**R. Michael Northrup, Esq., Brian T. Farrington, Esq.; *Cowles &
Thompson, P.C.; Dallas, Texas***

**Before JOHNSON, Chief Administrative Appeals Judge, THOMPSON and
ROLFE, Administrative Appeals Judges**

NOTICE OF NON-REFERRAL TO THE SECRETARY

PER CURIAM:

This case arises under the H-2B provisions of the Immigration and Nationality Act (INA),¹ as amended, and its implementing regulations.² On June 20, 2023, an Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that Respondent Lucero Pool Plaster, Inc. violated provisions of the INA covering the period April 1, 2016, to September 30, 2017.³ Both Respondent and the Administrator for the Wage and Hour Division (WHD) of the U.S. Department of Labor appealed to the Administrative Review Board (Board). On February 27, 2025, the Board issued a Decision and Order (ARB D. & O.) affirming in part and vacating and modifying in part. On March 13, 2025, Respondent filed a Petition Seeking Further Review by the Secretary of Labor. On March 21, 2025, the Administrator filed a response in opposition.

A party to a case before the Board may, within 14 calendar days after the Board issues its decision, request that the Board refer the case for further review by the Secretary of Labor.⁴ However, the circumstances under which we may refer the case to the Secretary are extremely narrow. Per the Secretary's delegation of authority to the Board, we may only refer the case to the Secretary if a majority of the Board determines that the case involves: (1) a question of law, (2) that is of "exceptional importance," and (3) that warrants Secretary review.⁵ If the Board refers the matter to the Secretary, the Secretary retains the discretion to decline, accept, or take no action on the Board's referral, as the Secretary deems appropriate.⁶

None of the arguments that Respondent sets forth involve a question of law that is of exceptional importance and warrants review by the Secretary of Labor.

¹ 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b); 1184(c)(14).

² 20 C.F.R. Part 655, Subpart A; 29 C.F.R. Part 503.

³ D. & O. at 1, 3.

⁴ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186, 13,188, ¶6(b)(1) (Mar. 6, 2020)

⁵ *Id.*

⁶ *Id.*

Rather, Respondent takes issue with factual determinations and the application of well-settled law.⁷ Thus, we deny Respondent's petition.

Therefore, unless the Secretary directs the Board to refer this matter to her, the Board's decision will become the final action of the Department on April 10, 2025 (after the passage of 28 calendar days from the date on which the petition was filed).⁸

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ANGELA W. THOMPSON
Administrative Appeals Judge

JONATHAN ROLFE Administrative
Appeals Judge

⁷ Respondent faults the Board for not addressing *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988) in its analysis. Yet, as noted by the Administrator in its opposition to Respondent's request for review, the Board cited and repeatedly applied the regulatory definition of willfulness in its decision. ARB D. & O. at 7, 10, 21, 24, 26-27, 29, 30-31, 32. Importantly, the regulatory definition of willfulness is consistent with *Richland Shoe Co.* See 29 C.F.R. § 503.19(b) (a willful violation "occurs when the employer, attorney, or agent knows its statement is false or that its conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions"); *Richland Shoe Co.*, 486 U.S. at 133 (violations of the Fair Labor Standards Act are willful when "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by statute"); Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 80 Fed. Reg. 24,042, 24,086 (Apr. 29, 2015) (stating that section 503.19(b)'s definition of willfulness "is consistent with the longstanding definition of willfulness" in *Richland Shoe Co.*).

⁸ Secretary's Order No. 01-2020, 85 Fed. Reg. at 13,187, ¶6(a)(2) ("In the case of a decision for which a petition has been filed under subsection (b)(1), but that the Board has not referred to the Secretary for review, such decision shall become the final action of the Department after the passage of 28 calendar days from the date on which the petition was filed.").