

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 May 2021

CASE NO.: 2021-TAE-00001

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR
Prosecuting Party

v.

JOSE M. GRACIA HARVESTING, INC., DBA JOSE GRACIA HARVESTING
Respondent

DECISION AND ORDER APPROVING CONSENT FINDINGS

The above captioned matter arises under the H-2A provisions of the Immigration and Nationality Act, (“INA”), 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c), and 1188 and the applicable regulations issued thereunder at 20 C.F.R. Part 655 and 29 C.F.R. Part 501. This matter was assigned to the undersigned Administrative Law Judge on January 26, 2021 and a hearing was scheduled for March 2, 2021, which was rescheduled for June 11, 2021.

On April 30, 2021, the Administrator, U.S. Department of Labor, Wage and Hour Division (“Administrator”) and Jose M. Gracia Harvesting, Inc. dba Jose Gracia Harvesting (“Respondent”) filed Consent Findings resolving all issues in dispute in this case, relating to Respondent’s contest of the Administrator’s Determination Letter of June 11, 2018 (“Determination Letter”) regarding Respondent’s compliance with the H-2A provisions of the INA. Jose Gracia, on behalf of the Respondent, and the Attorney for the Prosecuting Party signed the Consent Findings.

As stated in the Consent Findings, the parties have agreed that the Consent Findings and Order disposing of this proceeding will have the same force and effect as an Order made after a full hearing. The parties also agree that the entire record upon which any final order may be based shall, pursuant to 29 C.F.R. § 18.71(b)(2) and 29 C.F.R. § 501.40(b)(2), consist solely of the June 11, 2018 Determination Letter and the Consent Findings. The parties waive all further procedural steps before the Administrative Law Judge, and any right to contest the validity of the Consent Findings or any Order entered in accordance herewith, as provided in 29 C.F.R. § 18.71(b)(3) and (4) and 29 C.F.R. § 501.40(b)(3) and (4). The Respondent has withdrawn its request for a hearing in this matter.

The Consent Findings are marked for Identification as ALJ Exhibit No. 1, and are attached hereto, and made a part hereof. The undersigned has examined the Consent Finding and concludes that all issues in contest between the Administrator and Respondent related to the June 11, 2018 Determination Letter have been resolved. The Consent Findings comply with the requirements of 29 C.F.R §501.40(b). Accordingly,

IT IS ORDERED that the Consent Findings (ALJ Exhibit No. 1) are **APPROVED** in full, and incorporated herein by reference. The Consent Findings shall constitute my findings of fact and conclusions of law, and shall constitute full, final, and complete adjudication of this proceeding, and shall have the same force and effect as an order made after full hearing. The hearing scheduled for **June 11, 2021** in this matter is hereby **CANCELLED**.

SO ORDERED.

DREW A. SWANK
Administrative Law Judge

SERVICE SHEET

Case Name: **WAGE AND HOUR DIVISION v. JOSE M GARCIA HARVESTING INC**

Case Number: **2021TAE00001**

Document Title: **Decision and Order Approving Consent Findings**

I hereby certify that a copy of the above-referenced document was sent to the following this 6th day of May, 2021:

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Paralegal Specialist

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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

ADMINISTRATOR,)	
WAGE AND HOUR DIVISION,)	
UNITED STATES DEPARTMENT OF LABOR,)	
)	
Prosecuting Party,)	
)	
v.)	Case No. 2021-TAE-00001
)	
JOSE M. GRACIA HARVESTING, INC.,)	
d/b/a Jose Gracia Harvesting,)	
)	
Respondent.)	

CONSENT FINDINGS

Pursuant to 29 C.F.R. § 18.71 and 29 C.F.R. § 501.40, the parties to this action, Administrator, U.S. Department of Labor, Wage and Hour Division (“Administrator”) and Jose M. Gracia Harvesting, Inc. (“Respondent”), have negotiated and executed these Consent Findings (“Findings”). These Findings constitute a full and final resolution of all issues raised by the Administrator's Determination Letter issued to Respondent on June 11, 2018 (“Determination Letter”).

1. This action arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (“INA” or “the Act”), and the regulations promulgated thereunder at 20 C.F.R. § 655, *et seq.* and 29 C.F.R. § 501, *et seq.* Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by § 218 of the Act, 8 U.S.C. § 1188, and the applicable regulations.

2. The issues resolved by these Consent Findings were initially identified during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor

(“Wage and Hour”) regarding Respondent’s compliance with the H-2A provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the applicable regulations.

3. Respondent filed an H-2A Application for Temporary Employment Certification (“TEC”), H-300-16160-064302, that covered the period of July 26, 2016 through September 30, 2016.

4. On June 11, 2018, the Administrator issued a Determination Letter to Respondent which detailed the findings from its investigation. A Summary of Violations was attached to the Determination Letter. The Summary of Violations stated that the investigation by Wage and Hour determined that the following violations of the H-2A provisions of the INA occurred:

- A. The employer failed to comply with the recruitment requirements in violation of 20 C.F.R. § 655.121(a)(3).
- B. The employer failed to comply with meals requirements in violation of 20 C.F.R. § 655.122(g).
- C. The employer failed to pay the offered/required wage rate in violation of 20 C.F.R. § 655.122(l).
- D. The employer failed to keep accurate and adequate records with respect to workers’ earnings in violation of 20 C.F.R. § 655.122(j)(1).
- E. The employer failed to provide or secure housing for workers that complies with applicable housing in violation of 20 C.F.R. § 655.122(d)(1).

5. As a result of the violations addressed in the Determination Letter, the Administrator determined Respondent owed \$13,996.45 in back wages to 47 workers. The Administrator also assessed a total of \$4,906.80 in civil money penalties. As of the date of these

Consent Findings, Respondent has not paid any of the back wages or civil money penalties assessed by the Administrator.

6. On July 9, 2018, pursuant to 20 C.F.R. § 501.33, Respondent timely requested a hearing before an administrative law judge with regard to the findings set forth in the Determination Letter.

7. Subsequently, counsel for the Administrator and Respondent conducted settlement discussions and have reached an agreement to resolve this matter.

8. The parties have reached a settlement and agree to the following: Respondent agrees to pay \$13,996.45 in back wages and \$4,906.80 in civil money penalties to the Administrator within 30 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings. Respondent agrees that this back wage amount reflects the gross amount of back wages due to the workers identified on the attached Schedule A (attached hereto and made a part hereof). Respondent also consents and authorizes the Administrator to disburse the \$13,996.45 in back wages, less any appropriate deductions from the amounts indicated for social security, federal income tax, and state income tax, to the workers identified on the attached Schedule A, and Respondent will not contest such payment. Respondent shall remain responsible for all tax payments considered to be the “employer’s share,” including, but not limited to, FICA. In addition, Respondent agrees to withdraw the July 9, 2018 request for a hearing. Respondent acknowledges that it has a right to a hearing as to the Administrator’s investigative findings, and it hereby agrees to waive such rights from this date forward, upon approval of an Order by the Administrative Law Judge, based upon the full and final settlement of this matter.

9. In exchange for Respondent's agreement to the provisions discussed in Paragraph 8 of these Findings and Respondent's full and timely payment of the amounts set forth in Paragraph 8, the Administrator hereby releases Respondent, its officers, directors, shareholders, insurers, sureties, and its successors and assigns, from any and all claims of any nature or amount, arising from or relating to the violations described in Paragraph 4 of these Consent Findings.

10. Respondent agrees to pay the total amount of \$13,996.45 in back wages and \$4,906.80 in civil money penalties (within 30 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings) via online payment as follows: (a) back wages in the amount of \$13,996.45 online by ACH transfer, credit card, debit card, or digital wallet by going to <https://www.pay.gov/public/form/start/77689032> or www.pay.gov and searching "WHD Back Wage Payment – NE Region"; and, (b) civil money penalties in the amount of \$4,906.80 online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734139> or www.pay.gov and searching "WHD CMP Payment - NE Region". Alternatively, payment may be in the form of a certified check, cashier's check, or money order made payable to the order of "Wage and Hour Division – U.S. Department of Labor," and mailed to:

U.S. Department of Labor, Wage & Hour Division
Northeast Regional Office
1835 Market Street, Mailstop WHD/19
Philadelphia, PA 19103-2968

The certified check, cashier's check, or money order shall bear the following reference: Case ID# 1799475. Should Respondent fail to make the full agreed payments within ten (10) days of the date scheduled, the entire amount shall immediately become due and payable, together with such

additional collection and court costs as may be incurred by the Administrator in pursuing collection.

11. The parties agree that all matters addressed in the June 11, 2018 Determination Letter have been fully and finally resolved by these Consent Findings. The parties further agree that Respondent's timely payment of \$13,996.45 in back wages and \$4,906.80 in civil money penalties constitutes full satisfaction of all back wages owed and all civil monetary penalties assessed in this matter.

12. Nothing in these Consent Findings shall be deemed an admission by Respondent to any of the allegations contained in the June 11, 2018 Determination Letter.

13. Respondent affirms that, as of the date of its execution of these Findings, it is complying with all provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations and federal wage standards. Respondent further stipulates and agrees to remain in full compliance with all applicable provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations and federal wage standards and will continue to comply therewith in the future.

14. The parties agree that these Consent Findings are deemed to cover the relevant investigative period from July 25, 2016 through September 1, 2016 solely for the investigation conducted at Respondent's Bridgeville, Delaware location as set forth in the Determination Letter. The parties agree that these Consent Findings shall not, in any way, affect, determine, or prejudice any and all rights of any persons, be they current or former employees. Further, the parties agree that these Consent Findings do not affect the rights of any of Respondent's employees and H-2A workers receiving payment of back wages outside the scope of the INA

and the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations.

15. The Administrator does not waive its right to conduct future investigations under the INA, or any other federal statute it has authority to enforce, and to take appropriate action with respect to any violations disclosed by such future investigation or any violations by Respondent for failure to comply with an order approving these Findings, including seeking debarment as a relief. Furthermore, the Administrator does not waive its right to initiate or maintain enforcement actions with respect to past or ongoing investigations that are not covered by the June 11, 2018 Determination Letter.

16. The Administrator affirms that it did not seek debarment of Respondent as a part of the June 11, 2018 Determination letter and will not seek debarment of Respondent as a result of the violations set forth in the June 11, 2018 Determination Letter, so long as Respondent fully and timely complies with paragraph 8 of these Findings. Moreover, Administrator reserves its right to pursue debarment of Respondent in connection with any past, future, or ongoing enforcement actions arising out of other investigations of Respondent.

17. The Administrator and Respondent hereby consent that the above Consent Findings and the Order disposing of this proceeding shall have the following effect:

- A. That the Consent Findings and Order entered into in accordance with this agreement shall have the same force and effect as an Order made after full hearing;
- B. That the entire record on which any Order may be based shall consist solely of the Administrator's Determination Letter and the Consent Findings;

- C. That the Administrator and Respondent waive any right to challenge or contest the validity of the Consent Findings, Determination Letter, and the Order entered into in accordance with this agreement;
- D. All violations set forth in the Administrator's Determination Letter shall be deemed fully resolved by these Consent Findings;
- E. That the Administrator and Respondent waive of any further procedural steps before the Administrative Law Judge;
- F. This Decree shall become final immediately upon approval of the Administrative Law Judge; and

NOW, therefore, agreement having been reached by the Administrator and Respondent as to all contested charges set forth in the Determination Letter, the parties further stipulate and agree that each party shall bear its own costs as to this proceeding. Specifically, each party agrees to bear its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorneys' fees and costs which may be available under the Equal Access to Justice Act, as amended.

Respectfully Submitted,

For the Respondent:

JOSE M. GRACIA HARVESTING, INC.



Jose Gracia, President

For the Administrator:

U. S. DEPARTMENT OF LABOR

Elena S. Goldstein
Deputy Solicitor of Labor

Oscar L. Hampton III

Jose M. Gracia Harvesting, Inc.

Date: April 28, 2021

Regional Solicitor

Samantha N. Thomas
Associate Regional Solicitor

/s/ Karina Wegman
Karina Wegman
Trial Attorney

U.S. Department of Labor
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Attorneys for Prosecuting Party
Administrator, Wage and Hour Division

Date: 4/30/2021

SCHEDULE A

Back Wage Calculations	
Alejandro Martinez de Jesus	\$ 273.15
Andres Carrichi Godines	\$ 271.58
Angel Eleazar Martinez	\$ 273.15
Cain Hernandez Hernandez	\$ 273.15
Carlos Perez Galvan	\$ 271.58
Daniel Vargas Garcia	\$ 271.92
Donovan Cano Hernandez	\$ 271.58
Edgar Arturo Mendoza Cortez	\$ 271.92
Edgar Omar Jimenez Mendoza	\$ 271.58
Eduardo San Agustin Hernandez	\$ 273.15
Fidel Mendoza Rivera	\$ 271.58
Filiberto Vargas Torres	\$ 271.92
Francisco Isidro Bautista	\$ 271.58
Freddy Hernandez Cortez	\$ 438.97
Genaro Hernandez Cortes	\$ 438.97
Gilmar Calderon Baltazar	\$ 438.97
Hevaristo Jaquez Pena	\$ 271.58
Javier A Mendoza Cortez	\$ 271.58
Jesus Alberto Landeros Madrigales	\$ 271.58
Jesus Amado Quintero Tapia	\$ 411.50
Jorge Carrichi Godines	\$ 271.58
Jose Luis Esquivel Quintero	\$ 271.92
Jorge Luis Hinojosa Almaraz	\$ 271.58
Jose Mangato	\$ 271.58
Juan Carlos Hernandez Cortez	\$ 438.97
Juan Contreras Abonce	\$ 271.92
Juan de Dios Hernandez Ruiz	\$ 273.15
Juan Sixto Castillo Perez	\$ 271.58
Leobardo Castillo Soto	\$ 271.92

Luis Enrique Landeros Quintero	\$ 271.58
Marcelino Lopez Benitez	\$ 271.92
Marciano Santiago Hernandez	\$ 273.15
Martin Godinez Acosta	\$ 271.92
Martin Vasquez Reyes	\$ 273.15
Maximo Lopez Benitez	\$ 271.92
Meregildo Cervantes Imperial	\$ 471.58
Miguel Carrichi Godinez	\$ 271.92
Nazario Del Angel del Angel	\$ 273.15
Porfiro Castillo Perez	\$ 271.58
Rafael Rangel Cervantes	\$ 273.15
Ramiro Bautista Gonzalez	\$ 271.58
Raul Pascual Reyes	\$ 438.97
Reynaldo Torrecillas Pena	\$ 271.58
Rigoberto Perez Alcantar	\$ 271.58
Rolando Ramirez Hernandez	\$ 271.58
Sabino Cortes Cruz	\$ 307.80
Silvano Hernandez Benitez	\$ 273.15
TOTAL	\$13,996.45

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

ADMINISTRATOR,)	
WAGE AND HOUR DIVISION,)	
UNITED STATES DEPARTMENT OF LABOR,)	
)	
Prosecuting Party,)	
)	
v.)	Case No. 2021-TAE-00001
)	
JOSE M. GRACIA HARVESTING, INC.,)	
d/b/a Jose Gracia Harvesting,)	
)	
Respondent.)	

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises from the H-2A provisions of the Immigration and Nationality Act, (“INA”), 8 U.S.C. § 1101(a)(15)(H)(ii)(a), 1184(c), and 1188 and the applicable regulations issued there under at 20 C.F.R. Part 655, *et seq.* The Administrator, Wage and Hour Division, United States Department of Labor (“Administrator”), and Respondent, Jose M. Gracia Harvesting, Inc., have filed Consent Findings resolving all issues in dispute in this case relating to Respondent’s contest of Administrator’s June 11, 2018, Determination Letter (“Determination Letter”) regarding its compliance with the H-2A provisions of the INA. The Consent Findings are marked for identification as ALJ Exhibit 1, are attached hereto, and made a part hereof. The Court has examined the stipulations of fact and conclusions of law contained therein and concludes that all issues in contest between Administrator and Respondent are resolved.

Respondent has withdrawn its requests for hearings; agreed that the entire record upon which any final order may be based shall, pursuant to 29 C.F.R. § 18.71(b)(2) and 29 C.F.R. §

501.40(b)(2), consist solely of the Determination Letter and Consent Findings; and waived all further procedural rights as provided in 29 C.F.R. § 18.71(b)(3),(4) and 29 C.F.R. § 501.40(b)(3), (4).

Accordingly, IT IS ORDERED that the Consent Findings (ALJ Exhibit I) are approved in full and incorporated herein by reference. The Consent Findings shall constitute my findings of fact and conclusions of law, shall constitute full, final, and complete adjudication of this proceeding, and shall have the same force and effect as an order made after full hearing.

SIGNED and ENTERED this _____ day of _____, 2021.

Drew Swank
Administrative Law Judge