



Issue Date: 11 April 2005

Case No.: 2004-LCA-00027

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR  
DIVISION,

Prosecuting Party,

V.

ARCHT DESIGN CORPORATION,  
Respondent.

### **ORDER APPROVING CONSENT FINDINGS**

Pursuant to 29 CFR § 18.9 (1992), the parties to this action, Complainant, Administrator, Wage and Hour Division ("Administrator") and Respondent Archt Design Corporation ("Archt Design") have negotiated and executed these Consent Findings.<sup>1</sup> These Consent Findings constitute a full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to Archt Design on March 23, 2004,

This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101, *et seq.* ("the INA"), as amended by the Immigration 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. 2861-641.

### **CONSENT FINDINGS AND ORDER**

1. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

2. The entire record forming the basis on which the Order is entered shall consist of the Determination Letter and attachments thereto, and these agreements and consents.

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<sup>1</sup> In a letter dated January 26, 2005, Counsel for the Administrator stated that she was unable to obtain the signature of the Complainant, Alejandro Rodriguez, as he was out of the country and she was unsure as to when he would return. Mr. Rodriguez was made aware of the amount of back wages being sought and was in agreement with the amount.

3. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.

4. The parties to these Consent Findings and Order hereby waive any right to contest the validity of these findings or of an Order entered in accordance herewith.

5. All violations alleged in the Determination Letter issued by Wage and Hour are and shall be deemed fully resolved by these Consent Findings with regard to both the respondent and the prosecuting party.

6. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings shall be the date of approval by the Administrative Law Judges.

7. These Consent Findings and Order shall fully and finally resolve all issues and claims that were raised, or which reasonably could have been raised, in the March 23, 2004, Determination Letter and all claims and issues of law and/or fact of which the Administrator had knowledge prior to the effective date of these Consent Findings.

8. Archt Design violated the INA, as amended, by failing to pay wages at the required wage rate to one H-1B nonimmigrant worker, Alejandro Rodriguez, in violation of 20 CFR §§ 655.731© and 655.805(a)(2).

9. Archt Design violated the INA, as amended, by failing to make available for public examination the labor condition application and necessary supporting documents at the employer's principal place of business or worksite in violation of 20 CFR §§ 655.760(a) and 655.805(a)(14).

10. Archt Design is obligated to pay back wages in the total amount of \$21,740.48, to Alejandro Rodriguez.

11. The back wages shall be paid in four equal installments of \$5,435.12. The first payment shall be made within 30 days of the date the Administrative Law Judge signs and approves the Consent Findings. The remaining three payments will be due every 30 days thereafter until paid in full.

12. Payment shall be in the form of a certified or bank check made payable to the "Wage and Hour Division—Labor", and sent to the following address:

U.S. Department of Labor  
Wage and Hour Division  
Room 7M40  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

The back wages will then be distributed to the H-1B worker, for the net amount due after appropriate deductions for income tax and the employee's share of F.I.C.A. Archt Design shall remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages hereunder.

13. The back wage payment shall be made free and clear, within the meaning of 20 CFR § 655.731(c)(2)(i).

14. Any sum not distributed to the H-1B nonimmigrant worker or to his personal representative after three years, because of inability to locate the H-1B worker or because of refusal to accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

15. In the event that Archt Design fails to make any payment in the time periods specified herein, the entire amount of unpaid monies shall become due and payable immediately without further notice or demand by the Administrator. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the United States Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Administrator and/or Secretary of Labor intends to pursue enforcement of this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

16. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

17. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon filing with the Administrative Law Judge a motion for an order of enforcement and sanctions.

18. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

19. Archt Design shall comply with 20 CFR §§ 655.731 and 655.760 in the future.

20. These Consent Findings and Order shall constitute the final Administrative Order in this case.

**A**

Larry W. Price  
Administrative Law Judge

LWP/JBM

**NOTICE OF APPEAL RIGHTS:** Pursuant to 20 CFR § 655.845, any party dissatisfied with this Decision and Order may appeal it to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.