

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

United States of America, Complainant v. A & B Carpet Steam Cleaning and General Services, Corp., Respondent; 8 U.S.C. 1324a Proceeding; Case No. 90100189.

DECISION AND ORDER STRIKING PARTIAL SUMMARY DECISION AND APPROVING
SETTLEMENT AGREEMENT BASED UPON CONSENT FINDINGS

E. MILTON FROSBURG, Administrative Law Judge

Appearances: DAYNA M. DIAS, Esquire, for Complainant, Immigration and Naturalization Service
LAWRENCE A. L. SCHEFTEL, Esquire, for Respondent, A & B Carpet Steam Cleaning and General Services, Corp.

Procedural History

On August 16, 1990, after considering Complainant's Motion, I issued an Order Granting Complainant's Motion for Partial Summary Decision on the issue of liability only, which contained a recitation of the relevant procedural history in this matter thus far.

On September 10, 1990, I received a Motion to Approve Consent Findings, filed jointly by counsel for Complainant and Respondent, along with a Settlement Agreement entered into by the parties. Both documents were dated August 13, 1990, three days before the issuance of my Order described above.

Upon receipt of the settlement papers, my office contacted counsel for Complainant, requesting her to discuss with Respondent's counsel which disposition of this case they favored_summary decision or consent findings based upon a settlement agreement. The Rules for Practice and Procedure which govern my decisions in these IRCA matters, found at 28 C.F.R. § 68, provide for a distinction between these two separate dispositions. I chose to allow the

parties to determine which disposition was most beneficial or desirable to them.

On October 1, 1990, I received a Motion to Strike Partial Summary Decision and Substitute Consent Findings/Settlement Agreement, signed by counsel for both parties on September 16, 1990, and accompanied by a copy of the Settlement Agreement dated August 13, 1990, described above.

Based upon the Motion before me at this time, which expresses the desire of the parties, and finding no reason to the contrary, I GRANT the joint Motion to Strike, striking my Order Granting Complainant's Motion for Partial Summary Decision of August 16, 1990, and returning the parties to the posture they were in prior to that Order. I must then DENY Complainant's Motion for Partial Summary Decision.

Turning to the issue of consent findings, I find that the Settlement Agreement of the parties satisfies the controlling regulation for disposition by the administrative law judge of ``[a]ny agreement containing consent findings...'' at 28 C.F.R. § 68.12.

Findings of Fact and Conclusions of Law

I conclude that the document entitled Settlement Agreement is fair and satisfactory, and there is no reason not to accept it within the contemplation of 28 C.F.R. § 68.12.

Respondent admits each and every allegation set forth in the Complaint, thereby conceding violations of Section 274A(a)(1)(B) of the Act.

I note, however, that the parties recite, at paragraph 8 of the Settlement Agreement, that the Immigration and Naturalization Service will issue a Final Order, which is final and unappealable, pursuant to Section 274A(e)(3) of the Act. The parties are reminded that the provision cited, Section 274A(e)(3)(B) of the Act, only authorizes a ``final and unappealable order'' if the person or entity against whom it is to be entered has not requested a hearing before an Administrative Law Judge.

While Respondent waives all rights to a hearing at paragraph 7 of the Settlement Agreement, this document does not enable imposition of a final and unappealable order by the Attorney General (authority for which is exercised by INS) until after entry by the Administrative Law Judge of the appropriate order, which is contrary to paragraph 14 of the Agreement.

On the basis of the Settlement Agreement, I find and conclude that Respondent has violated Section 274A(a)(1)(B) of the Act, 8 U.S.C. Section 1324a(a)(1)(B), with regard to the employment of the individuals identified in the Complaint.

Accordingly,

1. The Joint Motion to Approve Consent Findings is granted.
2. The Settlement Agreement referred to above, including the recitation of facts contained therein, is adopted and made a part of this Decision and Order according to its terms as if fully set forth herein, with the exception of paragraphs 8 and 14 for the reasons cited above.
3. Respondent shall pay a civil money penalty in the amount of \$1,100.00 (one thousand one hundred dollars), payment to be made in the manner specified in the Settlement Agreement.
4. Each party shall bear its own attorney fees, other expenses, and costs incurred in this proceeding.
5. This Decision and Order has the same force and effect as a Decision and Order made after a full administrative hearing.
6. The entire record on which this order is based consists solely of the Complaint, the Notice of Hearing, the Motion for Partial Summary Decision, the previous orders of the Court, the Motion to Approve Consent Findings, the Settlement Agreement, and this Order.
7. The Parties waive any further procedural steps before the Administrative Law Judge.
8. The parties waive any right to challenge or contest the validity of this Decision and Order.
9. As provided in 28 C.F.R. § 68.51, this Decision and Order shall become the final order of the Attorney General unless, within thirty (30) days from this date, the Office of the Chief Administrative Hearing Officer shall have vacated or modified it.
10. The hearing to be scheduled in or around Honolulu, Hawaii is cancelled.

IT IS SO ORDERED: This 2nd day of October, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge
Executive Office for Immigration Review
Office of the Administrative Law Judge
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