

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:	
MOHAMMAD ALDEEN AND ISLAND FARM	:	
MEAT CORP.	:	
(T/A AL-NOOR LIVE POULTRY),	:	
Petitioner,	:	
	:	DOCKET NO. PR 07-093
To review under Section 101 of the New York State	:	
Labor Law: An Order to Comply with Article 19 of the	:	
Labor Law issued October 19, 2007 and An Order to	:	
Comply with Article 6 of the Labor Law issued	:	
October 19, 2007	:	
	:	
-against-	:	
	:	
THE COMMISSIONER OF LABOR,	:	
	:	
Respondent.	:	

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INTERIM RESOLUTION OF DECISION

WHEREAS:

The Petition for review in the above-captioned case, seeking review of certain orders issued by the Respondent Commissioner of Labor (Commissioner), was filed with the Industrial Board of Appeals (Board) on December 14, 2007.

The Commissioner by her attorney, Maria Colavito, Counsel to the Department of Labor, Jeffrey G. Shapiro of counsel, moved the Board for an order striking paragraphs "5(VI)" and "5(VII)" of the Petition pursuant to the Board's Rules of Procedure and Practice 65.13 (a) (*see* 12 NYCRR 65.13 [a]). The motion was granted at a pre-hearing conference held on February 20, 2008 before Devin A. Rice, Associate Counsel to the Board.

Paragraph “5(VI)” of the Petition states that:

“The Commissioner of Labor erred in ordering payment of time and half for hours worked (though Petitioner actually paid same) when under controlling Supreme Court case law, employees such as the Petitioners’, who could not show their legal entitlement to work in the United States are not entitled to a payment of time and half, and are at most entitled to minimum wages for every hour worked, irrespective of the number of hours worked each week.”

Paragraph “5(VII)” of the petition states that:

“The Commissioner of Labor erred in ordering the payment of damages for alleged underpayment of wages, when, under controlling United States Supreme Court decisions, employees such as those involved herein who could not show their legal entitlement to work in the United States are not entitled to damages.”

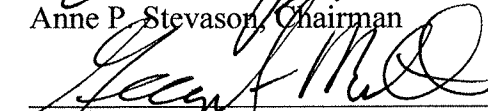
The Board grants the Commissioner’s motion and strikes these two paragraphs from the Petition because they do not set forth grounds on which relief can be granted. In *Balbuena v. IDR Realty LLC*, 6 NY3d 338 (2006), the Court of Appeals explicitly held that federal immigration law does not bar an alien from recovering wages under the New York Labor Law (*see also Flores v. Amignon*, 223 F.Supp.2d 462 [E.D.N.Y. 2002] [immigration status not relevant to wage claim]; *Pineda v. Kal-Tech Constr.*, 15 Misc.3d 176 [N.Y. Cty. Sup. 2007] [immigration status does not bar right to recovery of prevailing wages for public work]). The alleged unlawful presence in the United States of the Petitioners’ employees does not bar the Commissioner from recovering overtime wages on their behalf.

Furthermore, although we believe that legal presence in the United States is not a prerequisite to the recovery of liquidated damages for unpaid or underpaid wages, we note that this issue is not before the Board in this matter because civil penalties, and not liquidated damages as alleged by paragraph “5(VII)” of the petition, are being sought by the Commissioner.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

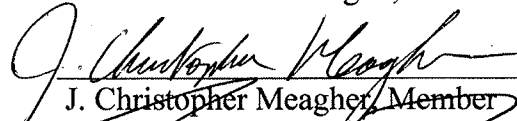
1. Paragraphs "5(VI)" and "5(VII)" are stricken from the Petition.

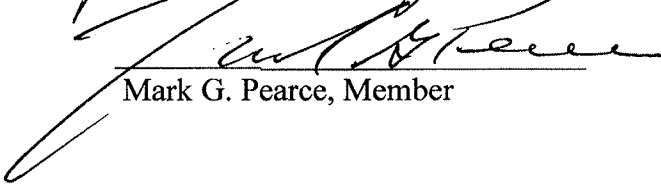
  
\_\_\_\_\_  
Anne P. Stevason, Chairman

  
\_\_\_\_\_  
Gregory A. Monteleone, Member

ABSENT

\_\_\_\_\_  
Susan Sullivam-Bisceglia, Member

  
\_\_\_\_\_  
J. Christopher Meagher, Member

  
\_\_\_\_\_  
Mark G. Pearce, Member

Dated and signed in the Office of the Industrial Board of Appeals, at New York, New York, on March 26, 2008.

Filed in the Office of the Industrial Board of Appeals, at Albany, New York, on March 28, 2008.

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