UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

GABRIEL PEREZ,

Plaintiff,

v. **CASE NO: 3:14cv682/MCR/EMT**

THOMAS E. PEREZ,
ERIC M. SELEZNOW, and
UNITED STATES DEPARTMENT OF LABOR,

Defendants.

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ORDER

Plaintiff Gabriel Perez filed this suit on December 19, 2014, seeking a permanent injunction prohibiting the United States Department of Labor ("DOL") from enforcing certain regulations governing the H-2B temporary foreign worker program.[1] Shortly after suit was filed, Perez filed a Motion for a Temporary Restraining Order and Preliminary Injunction, and DOL filed an Unopposed Motion to Consolidate the Preliminary Relief Hearing with a Determination on the Merits, which the Court granted. The parties requested an expedited ruling on Perez's motion and asked that it be treated as a motion for summary judgment on the merits. On March 4, 2015, the Court issued an Order vacating DOL's 2008 H-2B regulations and permanently enjoining enforcement of those rules ("Injunction Order"). DOL then requested a stay of the Injunction Order until April 15, 2015, which the Court granted and subsequently extended for 30 days due to a Motion to Intervene filed by the Small and Seasonal Business Legal Center ("SSBLC") on the day the stay was set to expire.

SSBLC seeks to intervene in this case to obtain a judicial declaration that DOL's refusal to process applications for temporary labor certifications in accordance with "non-legislative" rules violates its duty to "consult" with the Department of Homeland

[1] The Court refers to the Defendants collectively as "DOL."

Security ("DHS") under applicable H-2B requirements. *See* 8 U.S.C. §§ 1184(a)(1) & (c)(1); *see also* 8 C.F.R. § 214.2(h)(6)(iii)(C) & (D) (providing that a "petitioner may not file an H-2B petition unless the . . . petitioner has applied for a labor certification with the Secretary of Labor," and requiring DOL to "establish . . . procedures for administering [the] temporary labor program . . . ."). [2] Doc. 34-6, at 5-6. The parties each filed written responses to SSBLC's motion, and the Court heard oral argument on the matter on April 22, 2015.

At the hearing, SSBLC voiced its concern that because its members will no longer be able to submit H-2B applications when the stay expires on May 15th, they will not be able to operate their businesses and compete for contracts, thus suffering irreparable harm. [3] In response, DOL stated that it had recently completed drafting a joint interim rule with DHS ("Joint Rule") that would replace the H-2B regulations at issue in this case and, prior to the hearing, had transmitted the Joint Rule to the Office of the Federal Register for final review. Perez responded and asked the Court to lift the stay as soon as possible, but in any event no later than May 15, 2015. At the end of the hearing, the parties and SSBLC agreed that DOL should be given until May 15, 2015, to set new H-2B rules in place. After the hearing, DOL filed a Supplemental Statement (Doc. 46) indicating that it anticipates the Joint Rule will be published in the *Federal Register* no later than May 15, 2015. DOL requests the Court to enter an Order directing that the stay will terminate either at the end of May 15, 2015, or on the date on which the Joint Rule is published in the print edition of the *Federal Register*, whichever is earlier. According to DOL, this will avoid confusion regarding the effect of the stay

[2] A "substantive" or "legislative" rule is one that imposes a binding legal obligation on the regulated community, or one that "affect[s] individual rights and obligations." *See Chrysler Corp. v. Brown*, 441 U.S. 281, 295 & 302 (1979) ("substantive agency regulations have the 'force and effect of law.'"). "Non-legislative" rules include interpretive rules; general statements of policy; or rules of agency organization, procedure, or practice, and generally may be proscribed without complying with notice-and-comment rulemaking procedures. *See* 5 U.S.C. § 553(b)(A).

[3] The Outdoor Amusement Business Association, Inc. ("OABA"), Reithoffer Shows, Inc., and Strates Shows, Inc., which collectively have filed their own Motion to Intervene (Doc. 21), also attended the hearing and presented argument in regards to the procedures DOL should pursue in devising a replacement rule.

and will eliminate the potential of having more than one set of enforceable rules in place prior to expiration of the stay.

Having considered DOL's request, which is unopposed, the Court finds that it is due to be granted. Moreover, the Court notes that the docket now reflects a Notice indicating that the Joint Rule has been published. *See* 80 Fed. Reg. 24,042, 2015 WL 1908169 (DHS-DOL) (April 29, 2015).

Accordingly, it is ORDERED:

1. DOL's request to terminate the stay of the Injunction Order that was entered in this case either at the end of May 15, 2015, or on the date the Joint Rule is published in the print edition of the *Federal Register*, whichever is earlier, is GRANTED.
2. Because the docket now reflects the Joint Rule has been published (Doc. 48), the Clerk is directed to lift the stay (Doc. 35).

DONE AND ORDERED this 30th day of April 2015.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE