

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

Identifying information deleted to
prevent disclosure of unwarranted
invasion of personal privacy



D4

FILE: EAC 07 264 53082 Office: VERMONT SERVICE CENTER

Date: DEC 05 2007

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be affirmed and the petition will be approved for 18 of the 19 workers initially named in the petition, that is, for all of the named workers except

[REDACTED]

The petitioner is a shipbuilding company located on Florida's Gulf Coast, and its principal business is building commercial vessels for the offshore oil industry in the Gulf of Mexico. It seeks to employ 19 named aliens as machinists from October 1, 2007 to September 30, 2008. The petitioner asserts that it has an H-2B temporary peakload need as defined at 8 C.F.R. § 214.2(h)(6)(ii)(B)(3). The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made because the employer had not established a temporary need for the beneficiaries' services.

The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed, and that the need for the services is temporary. Subsequent to the director's decision and at the AAO's request, the petitioner withdrew [REDACTED] from consideration for the benefits of the petition.

The evidence in this record of proceeding establishes that the petitioner's shipbuilding commitments for vessels to be delivered by the end of 2008 have reached a temporary level that exceeds the working capacity of its permanent staff, and that this situation is partly a function of the fact that, in contrast to other shipbuilding concerns in the Gulf, the petitioner's facilities were not seriously damaged by the hurricanes of 2004 and 2005.

The AAO finds that the director's decision accords with the evidence of record, which is sufficient to establish a temporary and peakload need in accordance with the regulations at 8 C.F.R. § 214.2(h)(6). The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed and the nonimmigrant visa petition is approved for all of the workers originally named in the petition except [REDACTED] [REDACTED], who was withdrawn from the petition.