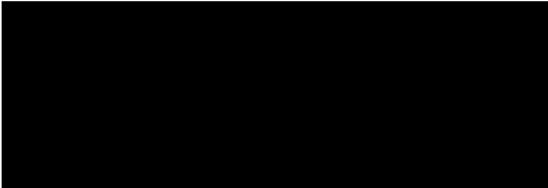




U.S. Citizenship
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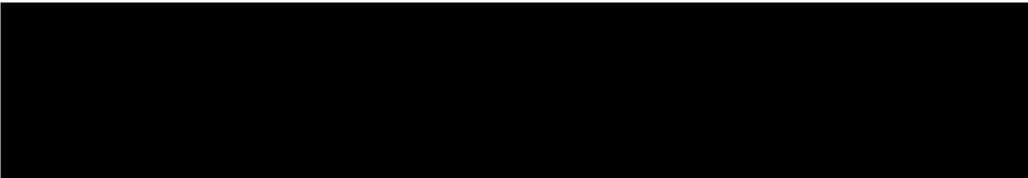
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FILE: EAC 08 045 52621 Office: VERMONT SERVICE CENTER Date: FEB 13 2008

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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 AAO withdrew the director's decision and denied the petition on February 6, 2008. The AAO now reopens the proceeding on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(i). The February 6, 2008 decision of the AAO will be withdrawn, the director's decision of January 24, 2008 will be affirmed and the petition will be approved.

The petitioner is a shipbuilding company located in Louisiana. It desires to continue to employ the beneficiaries as shipfitters pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(b) from December 1, 2007 to September 1, 2008 (see the dates of intended employment specified at item 8 of Part 5 of the Form I-129 (Petition for a Nonimmigrant Worker)). The Department of Labor (DOL) determined that unique, complex, and persistent circumstances generated in the Gulf Region by Hurricanes Katrina and Rita made it impossible to determine whether a temporary labor certification should be issued in the present case. The director determined that the petitioner had submitted sufficient countervailing evidence to overcome the objections of the DOL and approved the petition.

On February 6, 2008, the AAO withdrew the director's decision to approve the petition. Upon reconsideration, the AAO determines that the petition is approvable.

Upon review of the evidence contained in the record, the decision of the director is found to be correct. The totality of evidence establishes that the petitioner's need for the workers is a one-time occurrence as defined at 8 C.F.R. § 214.2(h)(6)(ii)(B)(1) and that extraordinary circumstances justify the beneficiaries' H-2B employment in accordance with 8 C.F.R. § 214.2(h)(6)(ii)(B). The Vermont Service Center will issue the appropriate approval notice.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The AAO's decision of February 6, 2008 is withdrawn. The director's decision of January 24, 2008 is affirmed. The petition is approved.