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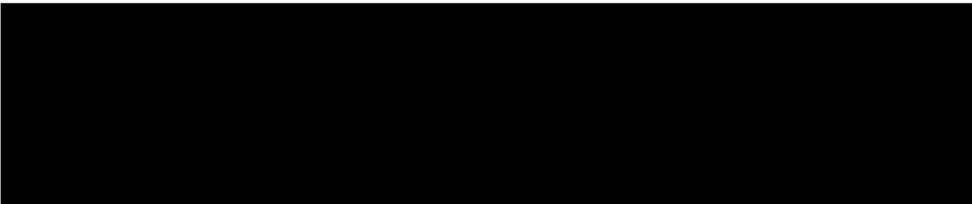


FILE: EAC 08 027 50083 Office: VERMONT SERVICE CENTER Date: FEB 27 2008

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, issued a decision recommending approval of the H-2B petition and he certified it 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.

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 continue the employment of two (2) named aliens as shipfitters 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 an H-2B temporary peakload need.

The evidence in this record of proceeding is sufficient to establish that the level of the petitioner's commitments for shipbuilding work for the petitioned period exceeds the working capacity of its permanent staff; that this spike in workload 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; and that extraordinary circumstances caused by those hurricanes have extended the petitioner's need for the two H-2B temporary shipfitters beyond the period of employment approved for the prior petition filed in their behalf.

The petitioner has not established an H-2B peakload need, as the evidence indicates that the nature of the petitioner's need is continuous and ongoing. However, the record does establish that the impact of the 2005 hurricane season in the Gulf Region resulted in a one-time occurrence within the second definition at 8 C.F.R. § 214.2(h)(6)(ii)(B)(1), that is, "an employment situation that is otherwise permanent" but "a temporary event of short duration" has created the need for temporary workers. The evidence also establishes that the petitioner's particular situation continued the one-time-occurrence need through the finite period of employment sought in the petition, in accord with the recognition at 8 C.F.R. § 214.2(h)(6)(ii)(B) that special cases may arise where extraordinary circumstances prolong an H-2B temporary need beyond the normal limit of one year or less.

The director's recommendation to approve the petition is correct. The totality of the evidence establishes that, for the period specified in the petition, the petitioner was experiencing the continuation of a one-time-occurrence temporary need in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(6)(ii)(B) and (h)(6)(ii)(B)(1). The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved.