

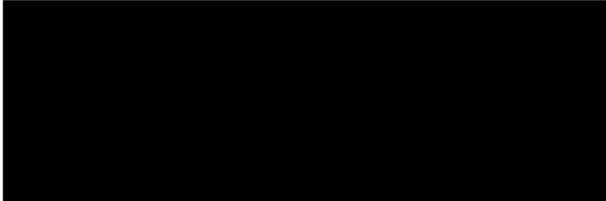
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FILE: EAC 08 146 53650 Office: VERMONT SERVICE CENTER D t **JUL 15 2008**

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

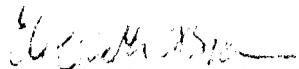
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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 recommended to be 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 the period of established need.

The petitioner operates a crab processing facility located in Chauvin, Louisiana. It desires to continue to employ the beneficiaries as crab processors pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), from May 1, 2008 to January 1, 2009. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be issued at this time as circumstances generated by Hurricanes Katrina and Rita made it impossible for DOL to determine whether the employer's need is temporary as defined for the H-2B classification.

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 DOL have been observed and that the need for the services to be performed is seasonal and temporary. The director's recommendation to approve the instant petition is now before the AAO for review.

The regulations at 8 C.F.R. § 214.2(h)(9)(iii)(B)(2) states in pertinent part that :

(ii) Approval. In any case where the director decides that approval of the H-2B petition is warranted despite the issuance of a notice by the Secretary of Labor . . . that certification cannot be made, the approval shall be certified by the director to the Commissioner pursuant to 8 C.F.R. § 103.4. . . If approved, the petition is valid for the period of established need not to exceed one year. . . .

The petitioner initially sought certification for 32 crab processors from May 1, 2008 through January 1, 2009. In a letter dated June 18, 2008, the petitioner requested the United States Citizenship and Immigration Services (USCIS) to withdraw 16 of the 32 individuals named in the current petition. Thus, the current petition is for the continuation of previously approved employment of the 16 H-2B temporary workers named in the petitioner's letter for whom pay statements were submitted.

The petition indicates at item 8 that the dates of intended employment are from May 1, 2008 until January 1, 2009. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll records for the calendar years 2005 through 2007 for permanent and temporary workers. The petitioner's 2007 payroll report reveals that the petitioner employed temporary workers all year-round with an increase in the amount of monies paid out to temporary workers from August through November of 2007. The petitioner's 2006 monthly payroll record shows that earnings were received by temporary workers from January through February and June through December of 2006. There were no temporary workers employed by the petitioner for the period March through May of 2006. The petitioner also submits charts of the blue crab landings by pound indicating the season for crab landings is from March through November.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The evidence establishes that the crab season is approximately eight months (March through November) and directly related to the blue crab landings from the months of May through December. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from June 1,

2008 through November 30, 2008 and that the need is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from June 1, 2008 until November 30, 2008.