

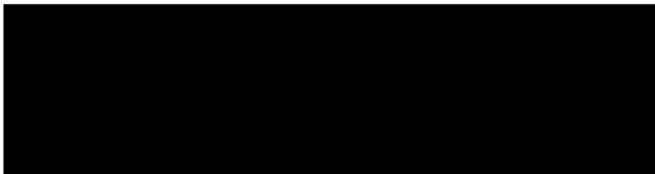
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent unwarranted
invasion of personal privacy



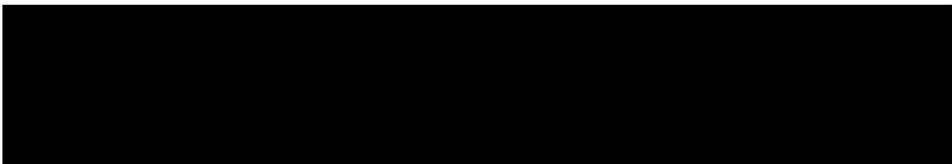
D4

FILE: EAC 07 232 50272 Office: VERMONT SERVICE CENTER Date: MAR 06 2008

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

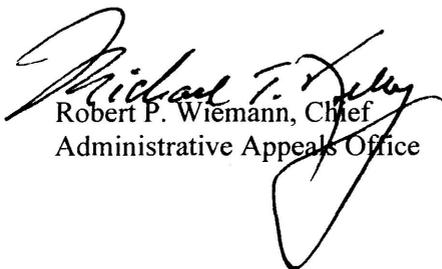
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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). Upon review, the AAO withdrew the director's decision and remanded it to the director for further action and consideration. On March 3, 2008, the director issued a new decision and certified it to the AAO for review. The decision of the director will be affirmed in part and the petition will be approved for 12 of the 13 workers initially named in the petition, that is, for all the named workers except

The petitioner is a fully integrated service company offering oil field construction services in pipeline, diving, fabrication and construction, both inland and offshore. The petitioner filed the present petition in order to continue to employ the beneficiaries' as welders pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b) from August 1, 2007 until June 1, 2008. The Department of Labor 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 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 to be performed is temporary. The director approved the petition and certified the case to the AAO for review.

Upon review, the AAO withdrew the director's decision because the record of proceedings did not contain evidence that the beneficiaries possessed the minimum amount of experience to perform satisfactorily the job duties described in the proffered position. The AAO remanded the case to the director for further action.

On October 10, 2007, counsel stated in a letter to the VSC that although he had not received a request for evidence (RFE) from the VSC, in response to the remand by the AAO, he has enclosed documentary evidence to establish that the beneficiaries possess the requisite experience specified on the Form ETA 750. The petitioner also submitted an English translation of the work experience letter provided for each beneficiary named in the petition. Therefore, on March 3, 2008, the director approved the petition and certified his decision to the AAO for review.

Section 101(a)(15)(H)(ii)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), defines an H-2B temporary worker as:

an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country

The regulation at 8 C.F.R. § 214.2(h)(6)(vi) requires the petitioner to submit:

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary.

The regulation at 8 C.F.R. § 103.2(b) states:

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Application for Alien Employment Certification (Form ETA 750) at Part A, item 14 indicates that the minimum amount of experience needed to perform satisfactorily the job duties is two years of experience in the job being offered.

In response to the AAO's decision, the petitioner provided evidence of the beneficiaries' experience. The record of proceeding contains letters attesting to the beneficiaries' experience along with an English translation and the beneficiaries' identification cards which identify the beneficiaries, the position held/occupation and the start date or date of issuance. Upon careful review of the entire record of proceeding, the AAO finds that the record contains sufficient evidence to establish that 12 of the beneficiaries possess the minimum amount of experience, specifically, two years of experience in the proffered position to perform satisfactorily the job duties described on Form ETA 750. However, the record, as it is presently constituted, does not contain any evidence to establish that [REDACTED] has two years of experience in the proffered position. Absent evidence to establish that [REDACTED] possesses two years of experience in the proffered position, he is ineligible to continue the previous approved H-2B employment.

The petitioner provided copies of its monthly payroll reports for its permanent and temporary workers in the designated occupation for 2005 and 2006. The reports show that welders were permanently employed by the petitioner from January through December of 2005 and 2006. The 2005 report shows that no fitters were temporarily employed by the petitioner in 2005. However, from November through December of 2006, the 2006 report shows that workers were continuously employed by the petitioner as fitters.

In a letter dated July 26, 2007, the petitioner states that the rigs, platforms, vessels, ports and other related facilities were damaged or destroyed during Hurricanes Katrina and Rita. The petitioner explains that the company is behind in its committed schedules for oil field construction service and repair and that the hurricane has caused a tremendous shortage of laborers. The petitioner states further that the company has to take on more of a workload, thereby requiring more internal labor, which is not available in southeast Louisiana. In summation, the petitioner contends that its current need is a peakload need.

These documents establish that the nature of the petitioner's need is continuous and ongoing. The record establishes that these workers have become a part of the petitioner's operation and its need for them cannot, therefore, be considered a peakload need. However, the record does establish that the petitioner's need for these workers is a temporary event of short duration, caused by the extraordinary circumstances of the 2005 hurricane season.

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 for all of the workers except [REDACTED]

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 for all the workers except [REDACTED]

ORDER: The decision of the director is affirmed in part and the nonimmigrant visa petition is approved for all the workers originally named in the petition except [REDACTED]