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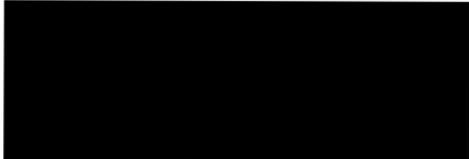
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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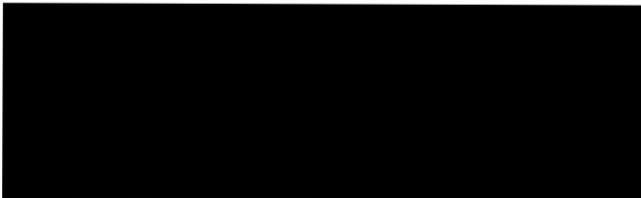


FILE: EAC 08 204 50519 Office: VERMONT SERVICE CENTER Date: **SEP 30 2008**

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

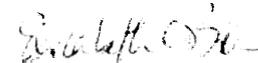
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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 Acting 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 acting director will be affirmed and the petition will be approved for the period of established need.

The petitioner operates a seafood processing facility and oyster boat fleet located in Houma, Louisiana. It desires to employ the beneficiaries as oyster shuckers 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 October 1, 2008 through June 15, 2009. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the documentation was not acceptable to justify a temporary need. The petitioner then filed the current petition containing countervailing evidence to overcome the DOL's decision.

The acting 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 temporary. The acting director's decision recommending the approval of the petition is now before the AAO for review.

The regulation 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 petition indicates at item 8 that the dates of intended employment are from October 1, 2008 to June 15, 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 2007 and January through May of 2008 for permanent and temporary workers. The petitioner's 2007 monthly payroll record shows that earnings were received by temporary workers all year round. The fourth quarter (October through December of 2007) and the first (January through March) and second quarters (April through June) of the petitioner's 2008 Employer's Quarterly Tax Returns show that the petitioner employed 10 workers and paid out a total of \$50,624 from October through December of 2007 which increased to 18 workers and a total of \$62,477 paid out in the first quarter of 2008. The petitioner's second quarter of 2008 shows a decrease to 14 workers and a total of \$47,282 paid out in wages. The petitioner also submits information provided by the Louisiana Department of Wildlife & Fisheries that states that the 2008-09 Oyster Season is from October 13, 2008 to April 30, 2009.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from October 1, 2008 through April 30, 2009, and that the need is peakload and temporary. The petitioner can not establish a seasonal need when it employed temporary workers for the entire calendar year and did not specify a period of time it did not need the services of the beneficiaries. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the acting director is affirmed. The nonimmigrant visa petition is approved for the period of established need from October 1, 2008 until April 30, 2009.