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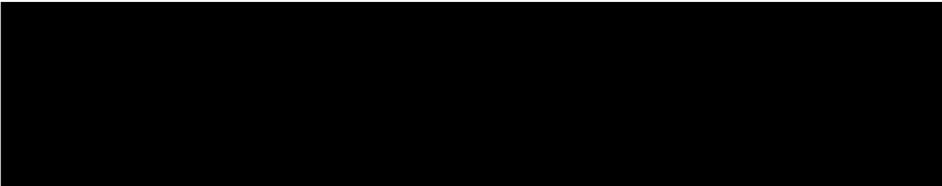
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 08 014 52555 Office: VERMONT SERVICE CENTER Date: FEB 29 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:
[Redacted]

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 Director, Vermont Service Center, issued a decision recommending approval of the H-2B nonimmigrant petition, and he certified the decision to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The director's decision will be affirmed, although the petition is now moot due to the passage of time.

The petitioner is a staffing company that employs and assigns workers to perform labor and services for client firms. It filed the present petition in order to continue to employ 17 named aliens as welders, cutters, and welder fitters at one of its client shipbuilding firms, in accordance with the provisions for H-2B temporary nonagricultural workers at Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), and its implementing regulations at 8 C.F.R. § 214.2(h)(6). The period of intended employment – September 15, 2007 to November 30, 2007 – has passed.

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 petitioner asserts that its need for the beneficiaries' services qualifies as an H-2B peakload need as defined at 8 C.F.R. § 214.2(h)(6)(ii)(B)(3).

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 AAO first notes that this petition is moot, in that the period for which the continued employment of the H-2B workers was sought (September 15, 2007 to November 30, 2007) has passed. This precludes the AAO from approving the petition although it establishes an H-2B temporary need.

The AAO also notes that the record of proceedings indicates that the beneficiaries may have been out of status at the time the petition was filed. That issue will not be addressed, as it is a matter for the director's determination and is not before the AAO.

The record of proceedings does not establish 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" where "a temporary event of short duration" has created the need for temporary workers. The evidence also establishes that the petitioner's employment situation continued the one-time-occurrence need through the finite period of employment sought in the petition, in accordance 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 period 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). However, the petition may not be approved at this time because it is moot due to the passage of time.

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For the reasons discussed above, the director's decision will be affirmed. However, the petition cannot be approved, because it is moot due to the passage of time.

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

ORDER: The nonimmigrant visa petition is denied because it is moot due to the passage of time.