

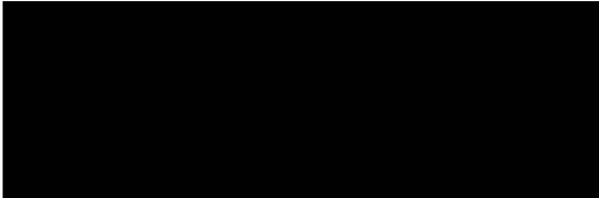
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: EAC 08 048 50900 Office: VERMONT SERVICE CENTER

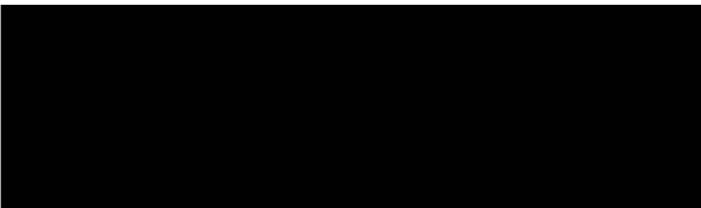
Date: MAY 06 2008

IN RE: Petitioner:
Beneficiary:



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.

Rn Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center (VSC), 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. The director has now issued a new decision and certified it to the AAO for review. The director's decision will be affirmed and the petition will be approved.

The petitioner is a Mississippi limited liability company supplying labor and industrial services for the marine and petroleum/chemical industries in the Mississippi Gulf Coast area. It desires to employ the beneficiary as a welder pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(b), from December 1, 2007 to September 1, 2008 (see the dates of intended employment specified at item 8 of Part 5 of the Form I-129 (Petition for a Nonimmigrant Worker)). The Department of Labor (DOL) 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 regulations state that if the petitioner receives a notice from the Secretary of Labor that certification cannot be made, a petition containing countervailing evidence may be filed with the director. 8 C.F.R. §214.2(h)(6)(iv)(D). On December 3, 2007, the petitioner filed a petition with the director, VSC, to classify three nonimmigrant beneficiaries under section 101(a)(15)(H)(ii)(b) of the Act. Upon review of the petition, the director issued a request for evidence (RFE) as the documentation submitted with the petition was insufficient. In response to the director's RFE, the petitioner submitted additional evidence and withdrew from consideration two of the beneficiaries [REDACTED] and [REDACTED] named in the petition. The petitioner's counsel stated in his letter dated January 14, 2008 that the petitioner only wishes to process the H-2B transfer of [REDACTED]

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 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 proceeding did not contain evidence that the area of the beneficiary's proposed work is located in the area covered by the temporary labor certification application, specifically, the Mississippi Gulf Coast area. The AAO remanded the case to the director for further action.

On February 29, 2008, the director requested that the petitioner submit documentary evidence to support its claim that the area of the beneficiary's proposed work, "the Montgomery Project in Alabama" is located in the area covered by the temporary labor certification, specifically, the Mississippi Gulf Coast area.

On March 31, 2008, the director received via facsimile the petitioner's response to its request for additional evidence. Counsel on behalf of the petitioner stated that the petitioner will be using the services of the beneficiary at their Pascagoula Mississippi facility for a project belonging to Tomar Construction, an organization that has offices in Montgomery, Alabama, and Metachun, New Jersey. This is substantiated by a letter dated March 14,

2008 from Tomar Construction, LLC that was signed by the vice-president of operations. The letter states that the beneficiary's services as a welder would be used in Pascagoula, Mississippi. The letter also states that all aspects of the contract pertaining to the services provided by the beneficiary, including the mailing of time sheets, invoices, etc., will be controlled out of its Alabama office located at [REDACTED] Montgomery, Alabama. Therefore, on April 14, 2008, the director approved the petition and certified his decision to the AAO for review.

Upon careful review of the entire record of proceeding, the AAO finds that the record of proceeding contains sufficient evidence to establish that the beneficiary's services as a welder will be performed in Pascagoula, Mississippi for a project belonging to Tomar Construction, LLC. The petitioner has established that the beneficiary will be working in the area of intended employment that the employer specified on the Application for Alien Employment Certification (Form ETA 750).

There will be no further extensions unless a temporary need is established under 8 C.F.R. § 214.2(h)(6).

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

ORDER: The director's decision of April 14, 2008 is affirmed. The petition is approved.