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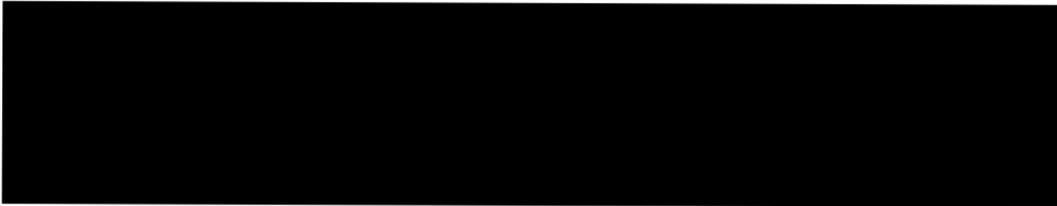
FILE: EAC 07 243 53247 Office: VERMONT SERVICE CENTER Date: FEB 13 2008

IN RE: Petitioner:
Beneficiaries:



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: On August 20, 2007, the petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker) and allied documents. This petition seeks Citizenship and Immigration Services (CIS) classification of 69 named workers as H-2B temporary nonagricultural workers. The petition was filed after the Department of Labor (DOL) decided to not issue a temporary labor certification, having determined that unique, complex, and persistent circumstances generated in the Gulf Region by Hurricanes Katrina and Rita made it impossible for DOL to determine whether the employer's need is temporary within the meaning of the CIS regulations on the H-2B program. The Director, Vermont Service Center (VSC) determined that the petitioner had submitted sufficient countervailing evidence to overcome the objections of the DOL, approved the nonimmigrant visa petition, and certified it to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The AAO withdrew the director's decision and issued a request for evidence (RFE) in order to provide the petitioner an opportunity to submit additional evidence to resolve evidentiary issues that the AAO had identified during its review of the record of proceeding. In its response to the RFE, the petitioner has now submitted additional evidence for the AAO to review. The petition will be approved although the matter is now moot due to the passage of time for 68 of the 69 workers initially named in the petition, that is, for all the named workers except [REDACTED] who is removed from the petition for administrative reasons.

The petitioner is a commercial construction and structural field services company that provides labor to a variety of industrial and commercial companies. The petitioner desires to continue to employ 69 named welders and fitters (hereinafter referred to as welder/fitters) from March 29, 2007 to January 25, 2008. The petitioner states that it is currently involved in reconstructing the seaports in New Orleans, Louisiana and Gulfport, Mississippi.

Upon review, the AAO finds that the petitioner's need for the beneficiaries' services is supported by the totality of evidence, including the evidence presented with the petition and in response the AAO's RFE about the petitioner's need to employ the beneficiaries in order to fulfill its contractual obligations. The totality of evidence establishes a one-time occurrence as defined in the H-2B regulations and extraordinary circumstances that 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.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that, if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

It is noted that the petitioner requested the beneficiaries' services from March 29, 2007 to January 25, 2008. Therefore, the matter is moot as the period of requested employment has passed.

Further, the AAO removes [REDACTED] from the petition due to administrative reasons. The record, as it is presently constituted, does not establish his eligibility for H-2B classification.

ORDER: The petition is approved although the matter is moot due to passage of time for all the workers originally named in the petition except [REDACTED] who is removed from the petition for administrative reasons.