

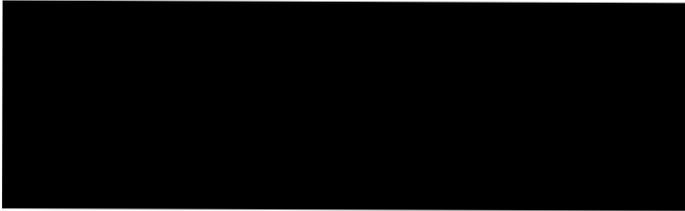
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent or stop unwarranted
invasion of personal privacy

D4



FILE: EAC 08 108 52967 Office: VERMONT SERVICE CENTER Date: JUL 01 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: The nonimmigrant visa petition was recommended to be 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). The decision of the director will be affirmed in part. The petition will be approved in part, that is, only for the period of established need from April 1, 2008 to November 30, 2008.

The petitioner engages in marine construction. It desires 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 April 1, 2008 to December 4, 2008. 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 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's recommendation to approve the instant petition is now before the AAO for review.

Upon careful review of the entire record of proceeding, the AAO finds that the petition will be approved for only part of the period of intended employment specified in the Form I-129 (Petition for Nonimmigrant Worker). The petitioner has not established that it has a temporary need for the entire period of intended employment specified in the present petition. Accordingly, the director's decision will be affirmed in part and the petition will be approved for the period of established need.

The regulation at 8 C.F.R. § 214.2(h)(9)(iii)(B)(2) states in pertinent part :

(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 Form I-129, at item 8, specifies the dates of intended employment as April 1, 2008 until December 4, 2008. To substantiate its need for the intended dates of service, the petitioner provides a copy of its monthly payroll reports for the calendar years 2005 through November 2007. The reports show that permanent workers were employed from January 2005 through November 2007. The reports also show an increase in the total number of temporary workers and hours worked from April through November of 2007. The report shows that no temporary workers were employed in December of 2007. The petitioner has also submitted evidence of its contractual obligations.

After review of the documentary evidence contained in the record, the petition will be approved for the period for which the evidence of record establishes an H-2B temporary need in accordance with the regulation at 8 C.F.R. § 214.2(h)(6). The petitioner has established a temporary need for welders to complete construction of the new vessels described in the contracts submitted with the petition. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from April 1, 2008 until November 30, 2008 and that the need is peakload and temporary as defined at 8 C.F.R. § 214.2(h)(6). The evidence of record does not establish that the period of need includes the month of December 2008. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed in part. The nonimmigrant visa petition is approved only for the period for which the temporary need is established, that is, April 1, 2008 to November 30, 2008.