

PUBLIC COPY

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



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

D4



FILE: EAC 08 084 51929 Office: VERMONT SERVICE CENTER Date: SEP 05 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 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 denied although the matter is moot due to the passage of time.

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 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 November 1, 2007 to September 1, 2008 (dates of intended employment as specified in the September 10, 2007 letter to the Plumbers & Steamfitters Local Number 436). 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 had been submitted to show that qualified persons in the United States are not available, that the employment policies of the DOL had been observed and that the need for the services to be performed was temporary. The director approved the petition on April 7, 2008 and certified the case to the AAO for review. The petition was initially filed for the employment of four (4) H-2B workers. The director stated in his decision that one of the workers, [REDACTED] was ineligible for new employment and an extension of stay. Therefore, the director's decision recommending approval of the petition was for the remaining three (3) H-2B workers named in the petition.

Upon review, on April 11, 2008, the AAO withdrew the director's decision because the record of proceeding did not contain evidence that the beneficiaries possessed the minimum amount of experience to perform satisfactorily the job duties described in the proffered position. The AAO remanded the case to the director for further action.

On April 30, 2008, the director requested that the petitioner submit documentary evidence to support its claim that the beneficiaries possessed the requisite experience, as specified on the Form ETA 750. The request was sent in care of the petitioner's attorney and the petitioner was given until June 14, 2008 to respond to the director's request. The petitioner did not respond to the request for evidence. Therefore, on August 13, 2008, the director determined that the petitioner did not establish that the beneficiaries were qualified to perform the job offered, denied the petition and certified his decision to the AAO for review.

On notice of certification, neither counsel nor the petitioner presents additional evidence for consideration. Therefore, the record is considered complete.

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), defines an H-2B temporary worker as:

an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if

unemployed persons capable of performing such service or labor cannot be found in this country

....

The regulation at 8 C.F.R. § 214.2(h)(6)(vi) requires the petitioner to submit:

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary.

The regulation at 8 C.F.R. § 103.2(b) states:

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Application for Alien Employment Certification (Form ETA 750) at Part A, item 14 indicates that the minimum amount of experience needed to perform satisfactorily the job duties is two years of experience in the job being offered.

Upon review, the record, as it is presently constituted, does not contain evidence of the beneficiaries' experience. Therefore, the AAO cannot ascertain whether the beneficiaries have the two years of experience in the job being offered. Absent documentary evidence of the beneficiaries' two years of experience in the job being offered, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The director's decision of August 13, 2008 is affirmed. The petition is denied although the matter is moot due to the passage of time.