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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: EAC 08 214 50464 Office: VERMONT SERVICE CENTER Date:

JAN 06 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner filed a motion to reopen or reconsider with the director which was dismissed. The matter is now before the AAO on appeal. The appeal will be dismissed, although the matter is moot due to the passage of time.

The petitioner is engaged in shipbuilding and it seeks to continue to employ the beneficiaries as pipefitters pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from October 1, 2008 until April 1, 2009. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification. The director determined that the countervailing evidence submitted by the petitioner was insufficient to overcome the DOL's decision.

On appeal, the petitioner argues that its need for welders is temporary because of hurricanes Katrina and Rita, which occurred in 2005, and hurricanes Gustav and Ike, which occurred in September 2008. The petitioner submits a list of petitions for temporary workers that were approved by USCIS in 2008. The petitioner states that a "drive through parts of South Louisiana will show entire neighborhoods still vacant, buildings torn and abandoned, and heaps of debris remained [*sic*] untouched. This is extraordinary." The petitioner makes no connection between its shipbuilding business and damage to buildings and neighborhoods caused by hurricanes in 2005 and 2008. Even if such a connection were established, the petitioner requested the beneficiaries' services from October 1, 2008 until April 1, 2009. Therefore, the period of requested employment has now passed.

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

ORDER: The appeal is dismissed, although the matter is now moot due to the passage of time.