

**Texas Building and
Construction Trades Council**

AFL-CIO

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Sept. 21, 2009

The Hon. Rick Perry
Governor of Texas
Capitol Building, Room 2S.1
1100 Congress
Austin, TX 78701

Dear Gov. Perry:

I am writing to discuss an issue of great concern to Texas workers – the construction of the Margaret Hunt Hill Bridge, a taxpayer-funded structure in Dallas that is using Italian welders rather than Texas ones. The contract went to Williams Brothers Construction Co. and is being paid for with federal, state and local funds.

Williams Brothers subcontracted the welding of the bridge components to Cimolai USA, LLC. The components were manufactured by the Cimolai Factory in Italy and shipped to Texas for assembly here.

From what we have gathered so far, we understand that these welders have been brought to the U.S. under a Business B-1 Visa. This type of work should be covered under the H-2B Guest Worker Program and not the B-1 Visa process. In checking with the Texas Workforce Commission's Alien Labor Certification Department, we learned that Cimolai USA did not complete an H-2B application or job posting for these welding jobs this year.

We have also learned that a local contractor in the Dallas area was asked to bid just the assembly of the bridge and not the welding. That company reviewed drawings and specification, saying that the project would take at least 72,000 man-hours just for the welding. This equates to 36 welders working for a full year. At this time, we don't know how many welders have been brought in from Italy.

One of the Italian workers was asked what type of visa he is working under. He believed it to be the B-1. A union representative approached the Cimolai representative and asked if the company would be interested in hiring union welders and apprentices. The representative of Cimolai asked what he would have to do to hire and pay union workers. He was provided a collective bargaining agreement that included competitive wages and benefits. The Cimolai

representative then told the union representative that his company doesn't have to pay any payroll taxes, Unemployment Insurance taxes, Social Security or Medicare to the Italian workers. He states that all his welders were getting their paychecks issued in Italy. The welders are not eligible for local hire while working in the U.S., as detailed in the Immigration and Nationality Act Section 101(a)(15)(B) and the Department of State Chapter 1, Subchapter E, Part 41, subpart d-41.31 (a) & (b) and 8CFR214(b)5. I have included a copy of each provision with this letter for your reference.

We believe the law clearly states that Aliens seeking to enter the U.S. to perform building or construction work are not eligible for classification or admission as B-1 non-immigrants under section 101(a)(15)(B) of the Act. Such alien non-immigrants may enter for the purpose of supervising or training others engaged in building or construction work, but not for the purpose of performing the work themselves.

Because of high unemployment in the construction industry in Texas and the U.S. recession, a large number of highly skilled American welders are currently available for employment and do not need training to perform the work required on the Margaret Hunt Hill Bridge. There is no need to bring in foreign welders.

We believe the use of foreign welders for this project violates state and federal laws, including the Davis-Bacon Prevailing Wage Act, Fair Labor Standards Act, Occupational Safety & Health Act, Immigration & Nationality Act, federal tax laws, the Texas Prevailing Wage Law (Chapter 2258) and the laws governing Unemployment Insurance and Workers' Compensation in Texas.

We know the Italian workers are not being protected properly by their employer or Williams Brothers. The workers have been observed working on improperly erected and dangerous scaffolds. They are working at heights that require the use of fall protection, including safety harnesses and perimeter devices, but no such protections have been observed. Since many of the workers speak Italian but not English, we do not believe they have received the Subpart R Training that OSHA requires of all Iron Workers. It is the employer's ultimate responsibility to see that these safety requirements are met.

We have been reliably informed that two of the bridge components were recently welded together improperly and the weld had to be cut out. Workers then turned the pieces around and re-welded them, a process that already raises serious questions about the overall structural integrity of the bridge. This is an urgent matter of public safety, not just a matter of who gets to work the project, and it raises extremely serious questions about the oversight and qualifications of those running the project.

The taxpayers in Texas and the U.S. are being cheated by this set of circumstances. Had we known that the bridge would be built with plans to use foreign workers, we would have fought the entire project and certainly opposed the local bond issue and state and federal funding to build it. We do not believe that elected officials would have been as supportive of the project if all the facts had been known when the bridge won approval. It is bad enough that the

structure is going up with foreign steel. The use of foreign workers in apparent violation of the law is even more outrageous.

We are asking you to launch an immediate state investigation and make appropriate inquiries of federal authorities to examine Williams Brothers and Cimolai's actions in using Italian welders and in failing to observe proper safety procedures in the welding of parts for the Margaret Hunt Hill Bridge. We demand that these welders be sent home immediately, pending further investigation, and we ask for the employment of qualified Texas welders to complete this project – and do it right so that the public is protected.

We would be glad to discuss our concerns with you or others in the governor's office at your convenience. Thank you for hearing us out.

Sincerely,



Michael W. Cunningham
Executive Director
Texas Building & Construction Trades Council, AFL-CIO

cc: Honorable Texas U.S. Congressional Representatives
Honorable Texas U.S. Senators
Honorable David Dewhurst - Texas Lt. Governor
Honorable Joe Straus, III – Texas Speaker of the House
Honorable Greg Abbott – Texas Attorney General
Honorable Susan Combs – Texas Comptroller
Honorable Texas State Senators
Honorable Texas House Representatives
Honorable Dallas County Judge Jim Foster
Honorable Dallas Mayor Tom Leppert
Texas Department of Transportation Commissioners
Texas Workforce Commissioners
Texas Workers Compensation Commissioner
Hillary Clinton, U.S. Secretary of State
Janet Napolitano – U.S. Secretary of Homeland Security
Erik Holder – U.S. Attorney General
Mark Ayers – President, Building & Construction Trades Department
Joe Hall – President, Dallas Building Trades Council
Ron Smitherman – Business Manager Iron Workers Local Union #263
Richard Trumka – President, AFL-CIO
Becky Moeller – President, Texas AFL-CIO
Rick Levy – Director, Texas AFL-CIO

B-1 Visas for Business Applications

8CFR Part 214

§ Sec. 214.2(b)(5) Visitors --

(1) General. Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of do nations. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at § [212.1\(e\)](#) of this chapter may be admitted to and stay on Guam for a period not to exceed fifteen days and are not eligible for extensions of stay. (Paragraph (b)(1) revised 1/1/94; 58 FR 69210)

(5) Construction workers not admissible. Aliens seeking to enter the country to perform building or construction work, whether on-site or in-plant, are not eligible for classification or admission as B - 1 nonimmigrants under section 101(a)(15)(B) of the Act. However, alien nonimmigrants otherwise qualified as B - 1 nonimmigrants may be issued visas and may enter for the purpose of supervision or training of others engaged in building or construction work, but not for the purpose of actually performing any such building or construction work themselves.

Immigration & Nationality Act

INA: ACT 101 - DEFINITIONS Sec.101(a)(15)(b)

Sec. 101. [8 U.S.C. 1101] (a) As used in this Act-

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

TITLE 22 - FOREIGN RELATIONS
CHAPTER I - DEPARTMENT OF STATE
SUBCHAPTER E - VISAS

PART 41 - VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

subpart d - TEMPORARY VISITORS 41.31(b)

41.31 - Temporary visitors for business or pleasure.

(a) Classification. An alien is classifiable as a nonimmigrant visitor for business (B1) or pleasure (B2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that: (1) The alien intends to leave the United States at the end of the temporary stay (consular officers are authorized, if departure of the alien as required by law does not seem fully assured, to require the posting of a bond with the Attorney General in a sufficient sum to ensure that at the end of the temporary visit, or upon failure to maintain temporary visitor status, or any status subsequently acquired under INA 248, the alien will depart from the United States); (2) The alien has permission to enter a foreign country at the end of the temporary stay; and (3) Adequate financial arrangements have been made to enable the alien to carry out the purpose of the visit to and departure from the United States.

(b) Definitions. (1) The term business, as used in INA 101(a)(15)(B), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B1 nonimmigrant. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement is required to qualify under the provisions of 41.53. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.