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FILE: LIN 06 095 52508 Office: NEBRASKA SERVICE CENTER Date: MAR 18 2006

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:

SELF-REPRESENTED

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Acting Director, Nebraska 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 The decision of the acting director will be withdrawn and the matter remanded for further action and consideration.

The petitioner operates a hotel. It seeks to employ the beneficiaries as bellhops for nine months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made. The acting director determined that sufficient countervailing evidence has been submitted to overcome the objections of the DOL, and approved the petition. The acting director's decision has now been certified to the AAO for review.

Upon review, the AAO does not concur with the acting director's decision, as it was certified before the director completed action necessary before certification.

The record of proceeding contains an interagency border inspection systems (IBIS) records check dated March 9, 2006. The IBIS query indicates that information was found on one of the beneficiaries named in this petition that may make him ineligible for the classification sought. Since this issue was not resolved prior to certification, this case will be remanded for the acting director to do so.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The acting director's decision of March 10, 2006 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion. Upon completion, the director shall certify the decision to the AAO for review.