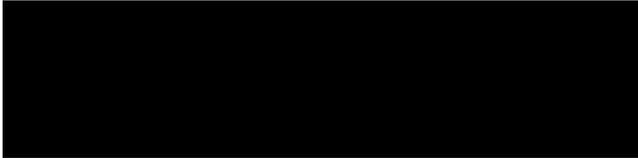


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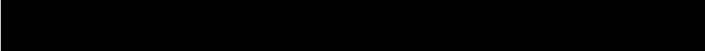
**U.S. Citizenship
and Immigration
Services**

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prevent clearly unwarranted
invasion of personal privacy

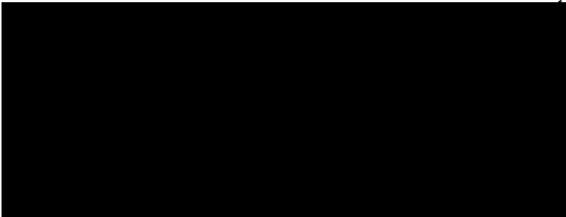


D4

FILE: EAC 07 205 52299 Office: VERMONT SERVICE CENTER Date: **DEC 14 2007**

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.

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

DISCUSSION: The nonimmigrant visa petition was 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 The decision of the director will be withdrawn and the petition will be denied, although the matter is moot due to the passage of time.

The petitioner operates and manages all-inclusive vacation resorts in over 30 countries. It desires to extend its authorization to employ the beneficiaries as cooks 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) from May 1, 2007 to November 1, 2007. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner did not establish that its need for the beneficiaries' services is temporary.

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 petitioner's need for temporary workers, based on the petitioner's occupancy chart, appears to be from May through September and not through November, as requested by the petitioner. The director's decision is now before the AAO for review.

On notice of certification, the petitioner did not present additional evidence for consideration. Therefore, the record is considered complete.

Upon careful review of the entire record of proceeding, the AAO finds that the evidence of record does not support the director's decision to approve the petition. The record of proceeding does not contain evidence that the beneficiaries possess the minimum amount of experience to perform satisfactorily the job duties described in the proffered position.

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

Upon review, the record, as it is presently constituted, does not contain evidence of the beneficiaries' work experience, such as, letters from the beneficiaries' previous employers. The record of proceeding contains copies

of the following documents: some of the pages of all of the beneficiaries' passports; the nonimmigrant visas of two of the beneficiaries; and the Forms I-94 (Arrival/Departure Record) of two of the six beneficiaries. However, such evidence cannot determine the period of time, if any, that the beneficiaries actually worked as cooks, or as cooks for the petitioner pursuant to the prior approved petition (EAC-07-017-52122). The beneficiaries have not been shown to have the requisite one year of experience in the job being offered. Absent documentary evidence of the beneficiaries' work experience, the petition may not be approved.

The petition would have been remanded to the director to give the petitioner time to submit evidence of the beneficiaries' experience. However, to remand this petition now would have no practical effect because the period of requested employment (May 1, 2007 to November 1, 2007) has passed. Therefore, the petition must be denied.

ORDER: The petition is denied because the matter is moot due to the passage of time.