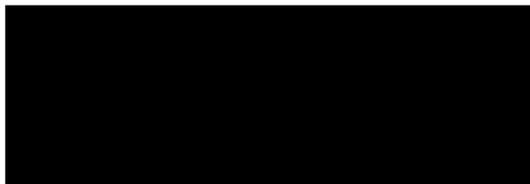


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and Immigration
Services**

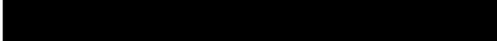
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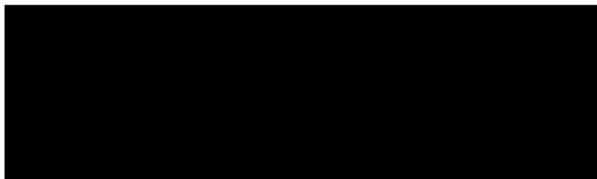
FILE: EAC 07 148 56055 Office: VERMONT SERVICE CENTER

Date: **SEP 06 2007**

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.

Robert P. Wiemann
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). 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 The director's decision will be withdrawn and the petition will be approved.

The petitioner operates a resort and casino. It desires to employ the beneficiary as an intermediate cook for nine and one-half months. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made because the petitioner had not established a temporary need for the beneficiary's services.

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 need for the services to be performed is temporary. The director approved the petition and certified the case to the AAO for review.

Upon review, the AAO withdrew the director's decision because the record of proceeding did not contain evidence that the beneficiary possessed the minimum amount of experience and the other special requirements to perform satisfactorily the job duties described in the proffered position. The AAO remanded the case to the director for further action.

On June 27, 2007, the director requested that the petitioner submit documentary evidence to support its claim that the beneficiary possessed the requisite experience and the other special requirements, as specified on the Form ETA 750.

On July 20, 2007, the director received the petitioner's response to its request for additional evidence. The petitioner submitted a copy of the first page of the beneficiary's passport that includes her photo, name, nationality, date of birth and other personal identifying data; a letter signed by the beneficiary that states she will be a participant in the petitioner's cook internship program; and the beneficiary's resume. Therefore, on August 1, 2007, the director denied the petition and certified its decision to the AAO for review.

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 indicates that the minimum amount of experience needed to perform satisfactorily the job duties is one year of experience in a related occupation, specifically, a high volume hospitality related food and beverage operation, and other special requirements. The other special requirements are:

Must have full knowledge of basic food preparation handling. Must possess basic knife skills and the knowledge of safe and efficient operation of kitchen equipment. Must be able to effectively communicate with guests and co-workers in English. Must be able to stand during entire shift and have the ability to lift up forty pounds. Must be able to work various shifts and flexible hours.

Upon careful review of the entire record of proceeding, the AAO finds that the record of proceeding now contains sufficient evidence to establish that the beneficiary possesses the minimum amount of experience and other special requirements to perform satisfactorily the job duties described in the proffered position. The petitioner's letter dated August 15, 2007 states that the beneficiary worked as an intermediate cook at the Mohegan Sun from August 2, 2004 through June 25, 2005, under the J-1 program, and from December 21, 2005 to September 10, 2006, under the H-2B program. The letter also states that the Mohegan Sun Chefs observed the beneficiary while she prepared her meal and rated her based on her knife skills, food sanitation and handling, recipe creativity, cooking techniques as well as the taste of the final product. Accordingly, the petition will be approved.

ORDER: The director's decision of August 1, 2007 is withdrawn. The petition is approved.