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FILE: WAC 07 151 51162 Office: CALIFORNIA SERVICE CENTER Date: **AUG 30 2007**

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a gaming resort. It desires to employ the beneficiaries as housekeepers 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 May 1, 2007 to October 31, 2007. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor. The acting director determined that the petitioner had not overcome the objections addressed in the Department of Labor's (DOL) decision and denied the petition. The director found in her decision that the DOL denied the ETA 750 requesting an extension of stay for the named beneficiaries because the employer failed to demonstrate a peak in activity between the months of May and October.

On appeal, the petitioner states that it has complied with all of the procedural filing requirements mandated by the United States DOL and the United States Citizenship and Immigration Services (CIS). The petitioner states that the DOL found that the petitioner had established a peak in activity from May until October. The record reflects that the DOL denied the petition, finding that the employer demonstrated a peak in activity from May through October, but also found that a staff of temporary workers is present all year round.

On appeal, the petitioner submitted evidence that it has a peakload demand for temporary workers from May until October. The petitioner has overcome the concerns addressed in the director's and the DOL's decisions. Moreover, sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the petitioner's need for the beneficiaries' services is seasonal and temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.