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

D4

FILE: EAC 07 122 50091 Office: VERMONT SERVICE CENTER

Date: OCT 29 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.

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 affirmed and the petition will be approved for the period of established need.

The petitioner is a restaurant, catering service, and motel located in St. Ignace, a town in the Upper Peninsula of Michigan that is the point of egress to and from the Lower Peninsula seasonal tourist area of Mackinac Island and Mackinaw City. The petitioner's business peaks during the tourist season, and it operates at only a minimal level during the remainder of the year. The petitioner filed this H-2B petition in order that the beneficiaries might supplement its permanent waitstaff personnel from April 1, 2007 to November 10, 2007, a period which the petitioner describes as coinciding with the tourist season in its area of the country and generating a peakload need as defined in the H-2B regulations at 8 C.F.R. § 214.2(h)(6).

The Department of Labor (DOL) determined that a temporary labor certification by the Secretary of Labor could not be made because the documentation submitted to DOL was insufficient to establish the temporary need asserted by the petitioner.

The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the DOL employment policies have been observed, and that the need for the services to be performed is temporary.

Upon review of the evidence contained in the record, the AAO finds that the decision of the director is correct, as the evidence establishes that the need for the proffered positions is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved.