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U.S. Citizenship  
and Immigration  
Services



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FILE: EAC 08 062 51414 Office: VERMONT SERVICE CENTER Date: FEB 07 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [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:



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.

The petitioner operates three resort casinos located on the shores of Lake Tahoe. It desires to employ the beneficiaries as cooks pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(b) from April 1, 2008 to October 1, 2008. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the dates of need on the current and previous certification applications filed by the employer indicate that temporary workers have been needed continuously for the occupation of cook since July 2007. The DOL determined that the petitioner's dates of need (July 20, 2007 through February 29, 2008) on the previous temporary labor certification application and the dates of need (December 1, 2007 through October 1, 2008) on the current temporary labor certification application create an overlap and suggest a year-round, permanent need.

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 the services to be performed is temporary.

After review of the evidence contained in the record, the decision of the director is found to be correct. The petitioner explained that for the last three years its petitions for cooks have been approved for its peakload period of December 1<sup>st</sup> through October 1<sup>st</sup>. The petitioner states that this year, in addition to requesting approval for its peakload period (December 1, 2007 through October 1, 2008), it requested approval for an additional period of time (July 20, 2007 through February 29, 2008) due to the grand opening of its new Asian restaurant and Asian Gaming Section, which was a one-time event. The petitioner has provided sufficient evidence (monthly payroll reports for permanent and temporary employees in the occupation of cooks for the 2005, 2006 and 2007 calendar years; food revenue statistics; net revenue statistics) to establish that the need for the beneficiaries' services 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.