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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



84

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 06 2010**

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)

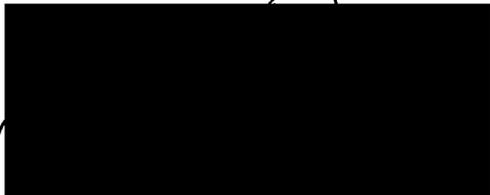
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



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 resort and marina and it seeks 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 April 1, 2010 until October 31, 2010.¹ The Department of Labor (DOL) determined that the petitioner submitted sufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor.

On April 22, 2010, the director denied the petition concluding that the petitioner failed to evidence a peakload or temporary need for the beneficiaries' services.

On appeal, the petitioner has overcome the concerns addressed in the director's decision. In reviewing the record, the petitioner clarified that it does indeed employ a permanent staff all year-round and requires temporary workers to supplement the permanent staff during the peakload need from April until October. Moreover, sufficient 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 peakload 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.

¹ The Form I-129 requested thirteen H-2B workers but in the petitioner's letter in response to the director's request for evidence, dated March 18, 2010, the petitioner withdrew [REDACTED] from the petition. Thus, the current petition is for twelve H-2B named workers.