U.S. Department of Labor **Employment and Training Administration**
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604

March 2, 2015

THE MAR-A-LAGO CLUB
1100 S Ocean Blvd
Palm Beach, FL 33480

Case Reference Number:	H-400-13213-110248
Date of Filing:	August 1, 2013
Date Certified:	August 16, 2013
Dates of Need:	October 1, 2013 to May 31, 2014
Occupation:	Laundry and Dry-Cleaning Workers
Foreign Workers:	28

Notice of Audit Findings

Dear Sir/Madam:

On November 18, 2014, the Department of Labor (Department) issued a Notice of Audit Examination letter informing the employer that the H-2B temporary labor certification referenced above was selected for Audit. After reviewing the employer's response to the Notice of Audit Examination, the Chicago National Processing Center (Chicago NPC) issued a Request for Supplemental Information letter on February 9, 2015. Pursuant to its authority under Department regulations at 20 CFR § 655.24, the Department has reviewed the employer's response(s) and has found the following violations with respect to the temporary non-agricultural labor certification.

Please be advised that at this time, the Department has decided it will not take further action against the employer with respect to this audit examination. However, the employer's future H-2B applications must fully comply with all requirements of the H-2B program enumerated in Department regulations at 20 CFR § 655, Subpart A. All audit violations are noted below.

1. Employer obligations – number of workers, reason for need, and dates of need shown on application **20 CFR § 655.22(n)**

The employer must attest that the dates of temporary need, reason for temporary need, and number of positions being requested for labor certification have been truly and accurately stated on the application. *See* 20 CFR § 655.22(n).

In item 1.b of the NOAE, the employer was instructed that if it did not employ the number of temporary workers for which it was certified and/or those workers it employed did not perform the services or labor for the entire period of certified employment, the employer must provide an explanation demonstrating how it fulfilled its work obligations in light of these shortages. The documentation submitted by the employer in its response contains the following deficiencies which required additional inquiry.

The employer indicated in its response that it hired 13 H-2B workers. The recruitment documentation submitted with the original application indicated that one domestic worker had been hired or offered employment during the certified period of need. The employer stated "the remaining 15 temporary positions left open were filled with domestic workers hired subsequent to the start date of the period of certified employment."

Even though the employer provided some documentation that indicated how it was able to fulfill its work obligations, its response was insufficient to show that the dates of temporary need and number of positions requested for labor certification had been truly and accurately stated on the application.

Therefore, an RSI letter was issued on February 9, 2015 and it requested the following:

- An explanation, with supporting documentation, demonstrating how the employer was able to locate sufficient domestic workers to meet its temporary need. Documentation should include, but is not limited to, copies of any advertisements, job orders, employment fairs, etc. used to recruit U.S. workers; and
- An explanation of how the employer accurately stated its start date of need and the number of workers requested on its *Application for Temporary Employment Certification*.

In response the employer stated, "Because suitable replacements could not be identified in time and in line with the limitations imposed on us by the regulations, we were forced to alter our business level and practices to accommodate such unforeseen circumstances." The employer further indicated that it reduced the number of room bookings, reduced non-member contracted services and allowed overtime hours. It is noted that overtime hours were worked. However, the employer did not submit any documentation to support its statements regarding its reduced operations.

The employer failed to demonstrate that its dates of temporary need, reason for temporary need, and number of positions requested for labor certification had been truly and accurately stated on the application. As such, the employer failed to show that it complied with the Department's regulations at 20 CFR § 655.22(n).

2. **Employer obligations - Reporting of separated H-2B workers** **20 CFR § 655.22(f)**

Upon an H-2B worker's separation from employment, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department of Labor and the Department of Homeland Security, in writing, of the separation from employment not later than two work days after such separation is discovered. *See* 20 CFR § 655.22(f).

Based on the documentation submitted in the employer's response to the Notice of Audit Examination, all H-2B workers separated from employment with the employer prior to the end date specified on its application. The employer's file contained no written notification of this early separation.

Therefore, an RSI letter was issued on February 9, 2015 and it requested that the employer submit evidence that it contacted the Department to notify it of the early separation of the H-2B workers from employment.

In response the employer stated, "based on the fact that USCIS approved the change of employer petitions for those H-2B workers, we believed the separation notice requirement in the H-2B context was met and that no subsequent action was required." However, the employer must notify the Department of Labor of an H-2B worker's separation from employment if the separation occurs prior to the certified end date of the employment.

The employer failed to demonstrate that it notified the Department of the early separation of the H-2B workers from employment. As such, the employer failed to show that it complied with the Department's regulations at 20 CFR § 655.22(f).

Important Notice: Failure to comply with the H-2B regulations may result in a finding by the Certifying Officer (CO) to require the employer to conduct supervised recruitment in future filings of H-2B temporary labor certification applications as provided under Department regulations at 20 CFR § 655.30 or a finding by the OFLC Administrator to debar the employer from receiving future H-2B temporary labor certifications as provided in Department regulations at 20 CFR § 655.31.

The Department has closed the audit and will take no further action at this time. However, the Department reserves the right to provide the audit findings and underlying documentation to the Department of Homeland Security, the Department's Wage and Hour Division, or another appropriate enforcement agency. The CO may also refer any findings that an employer has discouraged any eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice's Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

Questions concerning this audit can be directed by e-mail to TLC.Chicago@dol.gov, phone at (312) 886-8000, or facsimile at (312) 886-1688.

For additional resources regarding the H-2B application process and regulatory provisions, please visit the Department's website at: http://www.foreignlaborcert.doleta.gov/.

Sincerely,

Certifying Officer

cc: PETRINA GROUP INTERNATIONAL, INC.

AGENCY FOR WORKFORCE INNOVATION

U.S. Department of Labor **Employment and Training Administration**
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604

March 2, 2015

THE MAR-A-LAGO CLUB
1100 S OCEAN BLVD.
PALM BEACH, FL 33480

Case Reference Number: H-400-13213-866604
Date of Filing: August 1, 2013
Date Certified: August 16, 2013
Dates of Need: October 1, 2013 to May 31, 2014
Occupation: Cooks, Restaurant
Foreign Workers: 29

Notice of Audit Findings

Dear Sir/Madam:

On November 18, 2014, the Department of Labor (Department) issued a Notice of Audit Examination letter informing the employer that the H-2B temporary labor certification referenced above was selected for Audit. After reviewing the employer's response to the Notice of Audit Examination, the Chicago National Processing Center (Chicago NPC) issued a Request for Supplemental Information letter on February 9, 2015. Pursuant to its authority under Department regulations at 20 CFR § 655.24, the Department has reviewed the employer's response(s) and has found the following violations with respect to the temporary non-agricultural labor certification.

Please be advised that at this time, the Department has decided it will not take further action against the employer with respect to this audit examination. However, the employer's future H-2B applications must fully comply with all requirements of the H-2B program enumerated in Department regulations at 20 CFR § 655, Subpart A. All audit violations are noted below.

1. <u>Employer obligations – number of workers, reason for need, and dates of need shown on application</u> **20 CFR § 655.22(n)**

The employer must attest that the dates of temporary need, reason for temporary need, and number of positions being requested for labor certification have been truly and accurately stated on the application. *See* 20 CFR § 655.22(n).

In item 1.b of the NOAE, the employer was instructed that if it did not employ the number of temporary workers for which it was certified and/or those workers it employed did not perform the services or labor for the entire period of certified employment, the employer must provide an explanation demonstrating how it fulfilled its work obligations in light of these shortages. The documentation submitted by the employer in its response contains the following deficiencies which required additional inquiry.

The employer indicated in its response that it hired 11 H-2B workers, 7 of which arrived at least one month after the start date of need. The recruitment documentation submitted with the original application indicated that one domestic worker had been hired or offered employment during the certified period of need. The employer stated "the remaining 18 temporary positions left open were filled with domestic workers hired subsequent to the start date of the period of certified employment."

Even though the employer provided some documentation that indicated how it was able to fulfill its work obligations, its response was insufficient to show that the dates of temporary need and number of positions requested for labor certification had been truly and accurately stated on the application.

Additionally, the employer did not explain how it fulfilled its work obligations from October 1, 2013 through the arrival dates of the H-2B workers.

Therefore, an RSI letter was issued on February 9, 2015 and it requested the following:

- An explanation, with supporting documentation, demonstrating how the employer was able to locate sufficient domestic workers to meet its temporary need. Documentation should include, but is not limited to, copies of any advertisements, job orders, employment fairs, etc. used to recruit U.S. workers;
- An explanation, with supporting documentation, of how the employer fulfilled its work obligations from October 1, 2013 through the arrival dates of the H-2B workers; and
- An explanation of how the employer accurately stated its start date of need and the number of workers requested on its *Application for Temporary Employment Certification*.

In response the employer stated, "Because suitable replacements could not be identified in time and in line with the limitations imposed on us by the regulations, we were forced to alter our business level and practices to accommodate such unforeseen circumstances." The employer further indicated that it reduced non-member contracted services and allowed overtime hours. It is noted that overtime hours were worked. However, the employer did not submit any documentation to support its statements regarding its reduced operations. Additionally, the employer did not address how it fulfilled its work obligations from October 1, 2013 through the arrival dates of the H-2B workers.

The employer failed to demonstrate that its dates of temporary need, reason for temporary need, and number of positions requested for labor certification had been truly and accurately stated on the application. As such, the employer failed to show that it complied with the Department's regulations at 20 CFR § 655.22(n).

2. Employer obligations - Reporting of separated H-2B workers **20 CFR § 655.22(f)**

Upon an H-2B worker's separation from employment, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department of Labor and the Department of Homeland Security, in writing, of the separation from employment not later than two work days after such separation is discovered. *See* 20 CFR § 655.22(f).

Based on the documentation submitted in the employer's response to the Notice of Audit Examination, all H-2B workers separated from employment with the employer prior to the end date specified on its application. The employer's file contained no written notification of this early separation.

Therefore, an RSI letter was issued on February 9, 2015 and it requested that the employer submit evidence that it contacted the Department to notify it of the early separation of the H-2B workers from employment.

In response the employer stated, "based on the fact that USCIS approved the change of employer petitions for those H-2B workers, we believed the separation notice requirement in the H-2B context was met and that no subsequent action was required." However, the employer must notify the Department of Labor of an H-2B worker's separation from employment if the separation occurs prior to the certified end date of the employment.

The employer failed to demonstrate that it notified the Department of the early separation of the H-2B workers from employment. As such, the employer failed to show that it complied with the Department's regulations at 20 CFR § 655.22(f).

Important Notice: Failure to comply with the H-2B regulations may result in a finding by the Certifying Officer (CO) to require the employer to conduct supervised recruitment in future filings of H-2B temporary labor certification applications as provided under Department regulations at 20 CFR § 655.30 or a finding by the OFLC Administrator to debar the employer from receiving future H-2B temporary labor certifications as provided in Department regulations at 20 CFR § 655.31.

The Department has closed the audit and will take no further action at this time. However, the Department reserves the right to provide the audit findings and underlying documentation to the Department of Homeland Security, the Department's Wage and Hour Division, or another appropriate enforcement agency. The CO may also refer any findings that an employer has discouraged any eligible U.S. worker from applying, or

failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice's Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

Questions concerning this audit can be directed by e-mail to TLC.Chicago@dol.gov, phone at (312) 886-8000, or facsimile at (312) 886-1688.

For additional resources regarding the H-2B application process and regulatory provisions, please visit the Department's website at: http://www.foreignlaborcert.doleta.gov/.

Sincerely,

Certifying Officer

cc: PETRINA GROUP INTERNATIONAL, INC.

AGENCY FOR WORKFORCE INNOVATION