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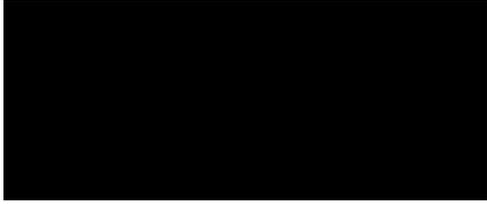
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Washington, DC 20536

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U.S. Citizenship
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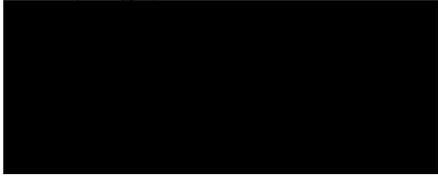


FILE: EAC 02 060 53645 Office: VERMONT SERVICE CENTER Date: FEB 04 2004

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

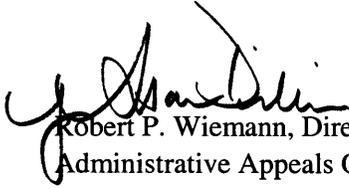
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a model agency that seeks to extend its authorization to employ the beneficiary as a high-fashion photographic model. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not a model of distinguished merit and ability. On appeal, counsel submits a brief.

Pursuant to 8 C.F.R. § 214.2(h)(4)(i)(A)(3), H-1B classification may be granted to an alien who is coming to the United States temporarily to perform services in the field of fashion modeling and who is of distinguished merit and ability.

Pursuant to 8 C.F.R. § 214.2(h)(4)(i)(C), an alien of distinguished merit and ability in the field of fashion modeling is one who is prominent in the field of fashion modeling.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Prominence means a high level of achievement in the field of fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of fashion modeling.

Pursuant to 8 C.F.R. § 214.2(h)(4)(vii)(C), a petitioner may establish that a beneficiary is a fashion model of distinguished merit and ability by the submission of two of the following forms of documentation showing that the alien:

- (1) Has achieved national or international recognition and acclaim for outstanding achievement in his or her field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;
- (2) Has performed and will perform services as a fashion model for employers that have a distinguished reputation;
- (3) Has received recognition for significant achievements from organizations, critics, fashion houses, modeling agencies, or other recognized experts in the field; or
- (4) Commands a high salary or other substantial remuneration for services evidenced by contracts or other reliable evidence.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires the services of an individual of distinguished merit and ability. On appeal, counsel submits copies of the beneficiary's photographs that are featured at the petitioner's website and in various fashion magazines.

Counsel also submits various letters about the beneficiary from modeling agencies. Counsel states, in part, as follows:

The beneficiary clearly qualifies for continued H-1B classification as a fashion model of distinguished merit and ability in that:

She has performed services as a fashion [model] for Thompson Models, an employer which clearly has a distinguished reputation; and

Has received recognition for significant achievements from experts in the field of fashion modeling. (We have attached for you [sic] review, reference letters in support of [the beneficiary's] H-1B petition from several well known fashion photographers which [sic] have worked with her in the past and are recognized as experts throughout the fashion and modeling industry.)

The record contains, in part, the following:

- Letter, dated September 27, 2002, from [REDACTED] of Alexei Productions, a high-fashion photographer, who states, in part, that the beneficiary is a top photographic model;
- Letter, dated September 18, 2002, from [REDACTED] President, Bill Morris Studio, who states, in part, that he considers the beneficiary to be a top model;
- Letter, dated June 13, 2003, from [REDACTED] President, Industria Superstudio, who states, in part, that the beneficiary is a top photographic model;
- Letter, dated June 6, 2002, from [REDACTED] President, Jacques Malignon Studio, who states, in part, that the beneficiary is an exceptional and unique high fashion photographic model;
- Letter, dated June 3, 2002, from [REDACTED] President, Fotograf Steen Andersson, who states, in part, that the beneficiary is one of the leading international male [sic] models;
- Various photographs of the beneficiary from the petitioner's website and various fashion magazines; and
- Federal tax documentation reflecting the beneficiary's salary as \$48,220 in 2000, and \$51,755 in 2001.

The above letters have been reviewed. They, however, are not sufficient to show that, as of the date of filing of the petition, the beneficiary had achieved national or international recognition for achievements evidenced by critical reviews or other published material about the alien as a fashion model in major newspapers, trade journals, magazines, or other publications.

The petitioner has not shown that the beneficiary has received recognition for significant achievements from organizations, critics, or other recognized experts in the field of fashion modeling. The letters from the

modeling agency representatives asserting that the beneficiary is a top model are noted. The record, however, contains no evidence in support of their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Nor has the petitioner shown that the beneficiary has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.