

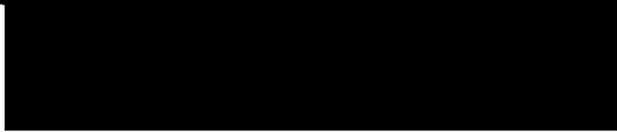


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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-01-085-53905 Office: California Service Center

Date: **NOV 19 2002**

IN RE: Petitioner:
Beneficiary:



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

PUBLIC COPY

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a model and talent management agency with three employees and an estimated gross annual income of \$1 million. It seeks to employ the beneficiary as a fashion model for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

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.

8 C.F.R. 214.2(h)(4)(ii) defines "prominence" as:

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 determined that the petitioner had not established that the beneficiary is an alien who is of distinguished merit and ability in the field of fashion modeling. On appeal, counsel states, in part, that the beneficiary has appeared in countless magazine editorials, advertisements, fashion shows, and catalogues, including Tommy Hilfiger, Estee Lauder, Clairol, and many others. Counsel further states that the beneficiary has been featured in numerous music videos as well the television sitcom, Just Shoot Me. Counsel additionally states that the Service previously granted the beneficiary H-1B fashion model status. Counsel submits numerous letters from industry experts in support of his claim.

The record contains, in part, the following:

- * A letter dated January 15, 2001, from the person in charge of sales and marketing for Hot Kiss clothing in Los Angeles, CA, who states that the beneficiary has modeled in many of their shows and ads;
- * A letter of recommendation dated January 14, 2001, from Shayan, a freelance photographer, who indicates that he "has shot with [the beneficiary] many times";
- * A letter dated January 18, 2001, from the vice president of The Casting Couch, Inc., who states that she has cast the beneficiary "countless times" as a model for feature films, commercials, music videos, and print work;
- * A letter dated January 12, 2001, from the producer of Alessante Films LLC, who states that he has cast the beneficiary numerous times in music videos;
- * A letter dated January 13, 2001, from a fashion designer/merchandiser of Papillon Eastern Imports, Inc., who states, in part, that she has hired the beneficiary as a model for catalogues, print campaigns, showroom work and runway shows;
- * A letter dated January 21, 1998, from the president of Dynamic Entertainment Los Angeles, a model management company, who states, in part, that various photographers, casting directors, designers, and advertisers in the Los Angeles area have expressed a strong desire to work with the beneficiary;
- * A letter dated January 15, 1998, from an agent of a business that trains and places models for "Runway," who states, in

part, that she has worked with and represented the beneficiary;

* A letter dated January 19, 1998, from the president of a Canadian model agency, Excel Models, who states, in part, that the said agency has represented the beneficiary for four years;

* An undated letter from a free-lance photographer in Canada who states, in part, that he has hired the beneficiary for catalogue and self promotion work.

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. 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.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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.