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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

File: WAC-02-053-55136

Office: CALIFORNIA SERVICE CENTER

Date: **Aug 15 2003**

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)

ON BEHALF OF PETITIONER:



**PUBLIC COPY**

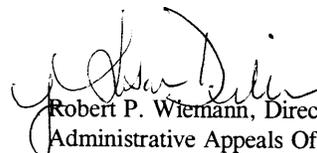
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a model-marketing agency with five employees and an estimated gross annual income of \$4 million. It seeks to employ the beneficiary as a print/commercial model for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation. The director further determined that, as the petitioner had not submitted contracts or an itinerary indicating where the beneficiary would work, the petitioner had not established that it is the beneficiary's employer.

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" is defined as follows:

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 beneficiary is prominent in the field of fashion modeling, or that the beneficiary would be performing for events, productions, organizations or establishments that have a distinguished reputation. In addition, the petitioner had not submitted contracts or an itinerary. On appeal, counsel submits articles about the beneficiary from two publications, various shots of the beneficiary from actual modeling shoots, and various letters about the beneficiary from modeling agencies. Counsel states, in part, as follows:

Regarding the Petitioner's qualification as an agent, please note that the petitioner cannot book [the beneficiary] for any current employment, bookings, traveling employment, nor photo shoots because the availability of [the beneficiary] cannot be guaranteed until the visa is approved. . . .

The record contains, in part, the following:

- Letters dated October 26, 2001, and March 20, 2002, respectively, from the petitioner's agent, who states, in part, that it seeks to employ the beneficiary as a top commercial model;
- Undated letter from Rana Morrison of Rising Stars, a business that acts as an agent, manager, and publicist for its clientele, stating, in part, that the beneficiary "would be a very positive influence to the modeling world here in the United States. . . .";
- E-mails dated after the filing date of the instant petition from two publications responding to a request made by Rana

Morrison of Rising Stars that the beneficiary be featured in such publications;

- Website article of the Filipino newspaper "The Daily Tribune" dated after the filing of the instant petition entitled "Introducing Cathleen Oveson" in which the beneficiary is interviewed;
- Newspaper article dated after the filing of the instant petition, from a New Hampshire local newspaper, which is currently "inactive", which mentions that the beneficiary starred in the movie "Going Back";
- Letter dated February 14, 2002, from Robert Zuckerman of Robert Zuckerman Photography in Los Angeles, who states, in part, that he intends to call the beneficiary for casting and hiring, if she is available;
- Certification from the officer-in-charge of "Snap Shots Talent and Modelling [sic] Agency" in the Philippines, who states, in part, that the beneficiary is one of the top models in the Philippines;
- Undated letter, with no letterhead, from Honey Gueco, who states, in part, that she was the beneficiary's agent in the Philippines and that the beneficiary "commanded substantial remuneration for her services while performing as a model . . . .";
- Letters dated June 19, 2001, from Maani Golesorkhi and Peter Novick of the Los Angeles-based Abrams Artists Agency, who state, in part, that they highly recommend the beneficiary as a model;
- Undated letter from screenwriter Greg Mellott of the Vietnam War film "Going Back" who states, in part, that the beneficiary (who played the part of one of three hostesses) "has a compelling presence on film";
- Undated letter from director Sidney J. Furie of the Vietnam War film "Going Back" who states, in part, that the beneficiary "did an excellent job" in her supporting role, and that he highly recommends her to model in the United States; and

- Letter dated June 25, 2001, from the executive producer of Ivory Cane Productions, Inc., who states, in part, that he would highly recommend the beneficiary to a U.S. modeling agency.

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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation or that the beneficiary qualifies for a specialty occupation, the petitioner's employer/agent status need not be examined further in this proceeding.

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.