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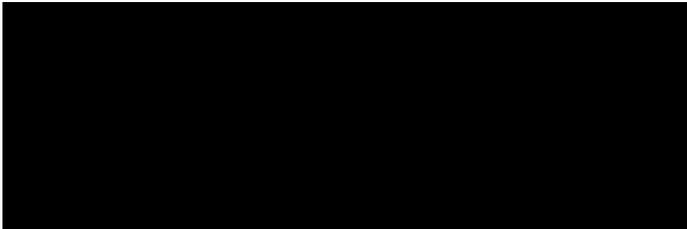
FILE: SRC 03 057 50507 Office: TEXAS SERVICE CENTER Date: **AUG 16 2005**

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:



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 director of the Texas Service Center 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 modeling and talent agency. It seeks to employ the beneficiary as a fashion model. The director denied the petition based on her determination that the petitioner had failed to establish that the beneficiary is a model of distinguished merit and ability.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the beneficiary may be classified as an alien of distinguished merit and ability in the field of fashion modeling.

Section 101(a)(15)(H) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H) provides for the nonimmigrant admission of an alien who is coming temporarily to the United States to perform services as a fashion model and who is of distinguished merit and ability.

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

H-1B classification may be granted to an alien who is of distinguished merit and ability in the field of fashion modeling. An alien of distinguished merit and ability in the field of fashion modeling is one who is prominent in the field of fashion modeling. The alien must also be coming to the United States to perform services which require a fashion model of prominence.

Prominence is defined at 8 C.F.R. § 214.2(h)(4)(i)(C)(ii) 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.

Further discussion of how the petitioner may establish the beneficiary as being of distinguished merit and ability is found at 8 C.F.R. § 214.2(h)(4)(vii)(C), which requires the submission of two of the following forms of documentation showing 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 instant petition based on her determination that the evidence of record established the petitioner as able to meet only one of the requirements just noted, that of proving the beneficiary had performed or would perform as a fashion model for employers with a distinguished reputation. She did not find the petitioner's documentation of the beneficiary's appearance in a range of Latvian fashion magazines and her work for several modeling agencies to be sufficient proof that the beneficiary had achieved the required recognition needed to establish her as prominent in the field of modeling. Nor did she conclude that the information provided by the petitioner regarding the petitioner's earnings, proposed or past, established that the beneficiary commanded a high salary or other substantial remuneration for her modeling services. Upon review of the record and the materials provided by counsel on appeal, the AAO has reached these same conclusions.

On appeal, counsel resubmits copies of the covers of Latvian fashion magazines featuring the beneficiary, as well as a copy of an article, and a summary translation of the article, about her, and contends that such coverage should be viewed as proof that she has received the national acclaim required to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(vii)(C)(1). The AAO does not agree. The appearance of the beneficiary's photographs in the Latvian media and the summary translation of a published interview do not establish that the beneficiary has received national or international recognition and acclaim for outstanding achievement under 8 C.F.R. § 214.2(h)(4)(vi)(C)(1) or that she has received recognition for significant achievements under 8 C.F.R. § 214.2(h)(vii)(C)(3). The record, as already noted by the director, lacks the media coverage of the beneficiary's career that would qualify as evidence that her professional achievements have received the required recognition under either of these regulations. The AAO further notes that the sole article about the beneficiary is a summary translation, which is insufficient under the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document in a foreign language be accompanied by a full English translation.

Counsel also asserts that the above media exposure, the beneficiary's appearance in a photograph book prepared by a noted fashion photographer, and her work for two Milan modeling agencies meets the requirements of the third criterion – the beneficiary has received recognition for significant achievements from organizations, critics, fashion modeling agencies, or other recognized experts in the field. Again, the AAO does not agree. The beneficiary works in a profession where employment results in the publication of photographs in various media and involves association with modeling agencies. The evidence provided by the petitioner, therefore, establishes only that the beneficiary is a working model. It does not constitute recognition of any significant achievements in her field.

To establish the beneficiary as commanding a salary high enough to meet the requirements of the fourth criterion, counsel contends that the salary of \$13.77 per hour is the prevailing wage for a fashion model in Miami, asserting that most modeling "shoots" last only three to four hours and that the beneficiary would still be paid as though working an eight-hour day. Counsel also states that the \$13.77 per hour wage to be paid to the beneficiary constitutes a base salary that does not include production bonuses, travel and living expenses, accommodation expenses, spending money and other fringe benefits. He further indicates that the \$6,871 earned by the

beneficiary over a 22-day period in 2001, was not for full-time work and, therefore, more financially rewarding than it would appear from the information initially provided.

Counsel's attempt to establish the beneficiary as commanding a high salary or other substantial remuneration for her modeling work is not persuasive. The fact that the \$13.77 per hour wage to be paid to the beneficiary is the prevailing wage for a fashion model in Miami does not constitute proof that it is, therefore, a high salary. Moreover, counsel's statements that the beneficiary will be paid at the prevailing wage undermines the petitioner's contention that the beneficiary is a model of distinguished merit and ability who stands above others in her profession. As the regulation requires a high salary or other substantial remuneration, such an individual could be expected to command a salary above the prevailing wage.

Although counsel also states that the prevailing wage to be paid to the beneficiary would constitute only a base salary and lists additional types of payment that she would receive, he offers no documentation of the financial remunerations paid to other models who have been managed by the petitioner as an indication of what the beneficiary might expect to receive in the way of additional monies beyond her hourly wages. His statements regarding the limited length of modeling shoots and the resulting effect on the daily wages paid to the beneficiary are also offered without evidence. As a result, the AAO will not consider counsel's statements regarding these issues. Without documentation to support the claim, the assertions of counsel do not constitute evidence and will not satisfy the petitioner's burden of proof in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez* 17 I&N Dec. 503,506 (BIA 1980).

For reasons previously discussed, the petitioner has not established that the beneficiary is an alien of distinguished merit and ability in the field of fashion modeling. Accordingly, the AAO will not disturb the director's denial of the petition.

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. The petition is denied.