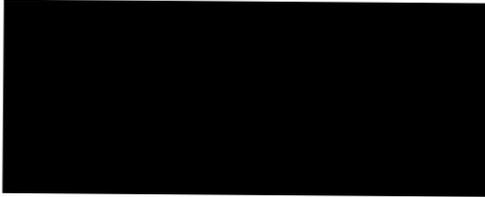


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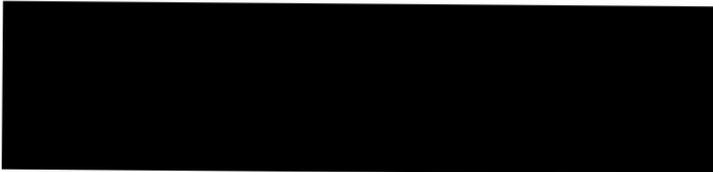
FILE: EAC 06 156 50579 Office: VERMONT SERVICE CENTER Date: **MAR 31 2008**

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 personal management firm. It seeks to employ the beneficiary as a fashion model. The director denied the petition based on his 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) the Form I-129 filed April 19, 2006 and supporting documentation; (2) the director's October 5, 2006 request for evidence (RFE); (3) counsel's December 27, 2006 response to the director's RFE; (3) the director's March 16, 2007 denial letter; and (4) the 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 his 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. The director did not find the petitioner's documentation of the beneficiary's appearance in a range of fashion magazines 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 the director conclude that the information the petitioner submitted from three individuals in the fashion field was sufficient to establish that the beneficiary had received recognition for significant achievements. Upon review of the record and the materials provided by counsel on appeal, the AAO has reached these same conclusions.

On appeal, counsel for the petitioner asserts that the "tear sheets" initially submitted and also in response to the director's RFE are evidence that the beneficiary 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," as required to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(vii)(C)(1). Counsel submits additional photographs of the beneficiary's work on modeling websites on appeal. Counsel contends that the photographs, advertisements, catalogs, and "tear-sheets" with the beneficiary's image and captioned in different languages, demonstrate the beneficiary's success in her field in nations all over the globe. The AAO finds that the appearance of the beneficiary's photographs in different media does not establish that the beneficiary has received national or international recognition or acclaim for outstanding achievement. 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. The photographs are not reviews of the beneficiary's national or international recognition or outstanding achievement as a fashion model. The petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(vii)(C)(1).

Likewise, the appearance of the beneficiary's photographs in advertisements, catalogs, "tear-sheets," and on websites do not establish that the beneficiary has received recognition for significant achievements from organizations, critics, fashion modeling agencies, or other recognized experts in the field under 8 C.F.R. § 214.2(h)(4)(vii)(C)(3). The record contains three letters from individuals in the modeling field. In a December 20, 2006 letter, [REDACTED], Model Coordinator for Complex Magazine, states that the beneficiary is one of the most exciting and inventive models on the international fashion scene and that she has an extensive understanding of the commercial world and environment in which publications operate. In a December 20, 2006 letter signed by [REDACTED] of [REDACTED] Management, Mr. [REDACTED] references another model when attempting to describe the beneficiary's ability and then notes that the beneficiary's photograph appears in European fashion magazines. In a third letter dated December 20, 2006, [REDACTED], vice-president of JGK states: "[the

beneficiary] is primed for a brilliant career as a professional fashion model. Her ability to create fortuitous images transcends national borders. From her native Slovak Republic to North America, [REDACTED] is recognized for her skill both on the runway and in print work." On appeal, counsel for the petitioner submits a revised letter dated April 17, 2004, authored by [REDACTED] that changes the reference to [REDACTED] to the name of the beneficiary. As the director discussed, the letter writers do not describe the beneficiary's recognition and ability in factual terms. The authors of the letters provide general statements, do not support their statements with evidence of the beneficiary's recognition for significant achievements, and do not otherwise provide evidence substantiating their knowledge of this particular beneficiary. The letters do not establish that the beneficiary in this matter has received recognition for significant achievements in the modeling field. The letter writers have provided formulaic statements generally acknowledging that the beneficiary is a working model. The petitioner has not established the third criterion at 8 C.F.R. § 2142(h)(vii)(C)(3).

The AAO observes that the petitioner does not address the fourth criterion at 8 C.F.R. § 2142(h)(vii)(C)(4) on appeal and the record does not contain contracts or other evidence establishing that the beneficiary commands a high salary or other substantial remuneration for her services.

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.