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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D8

DATE: **MAY 18 2011**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. On March 2, 2011, the AAO withdrew the director's decision and approved the petition. The AAO subsequently reopened the petition *sua sponte* for further review and entry of a new decision. The AAO will affirm its prior decision and approve the petition.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) as an alien with extraordinary ability in the arts. The petitioner is a model management firm and the beneficiary is a professional fashion model. The petitioner requests that the beneficiary be granted a change of status from H-1B to O-1 and an extension of stay for a period of three years.

On November 16, 2010, the director denied the petition, concluding that the petitioner failed to submit evidence of a complete itinerary of confirmed events and activities for the requested period of employment and copies of contracts between the beneficiary and her actual employers, as required by 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). Noting that the petition involves complex issues of law and fact, the director certified the decision to the AAO for review. *See* 8 C.F.R. §103.4(a)(5).

I. THE LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. In the case of the arts, the term "extraordinary ability" means "distinction" for purposes of O-1 visa petitions. Sec. 101(a)(46) of the Act, 8 U.S.C. § 1101(a)(46).

An O-1 petition "may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent." 8 C.F.R. § 214.2(o)(2)(i). The regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

- (A) The evidence specified in the particular section for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(A) states further states that "[a] petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work."

Finally, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) imposes the following requirements on petitions filed by United States agents:

Agents as petitioners. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
- (2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.
- (3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the act and 8 CFR part 274a.

II. DISCUSSION

The sole issue addressed by the director is whether the petitioner satisfied the evidentiary requirements applicable to "agents as petitioners" pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E). The director found that the petitioner filed the petition in the capacity of an agent representing both the beneficiary and multiple employers, but failed to submit both a complete itinerary of events and the contracts between the beneficiary and her employers or clients. *See* 8 C.F.R. § 214.2(o)(2)(iv)(E)(2).

A. Procedural and Factual Background

The petitioner is a model-management company that develops and promotes the careers of models in the fashion and advertising industries. Founded in 1971, the petitioner has established offices in Paris, New York, Los Angeles and Toronto and has represented such well-known stars as [REDACTED] and [REDACTED] during its 30-year history. The petitioner indicates that the beneficiary is "a sought-after fashion model and advertising 'commodity,'" who has been highly successful throughout Europe and the United States, working with premiere clients, photographers and fashion publications.

In support of the petition, the petitioner provided a copy of its model management agreement with the beneficiary, which is valid for an initial term of three years. Under the terms of the agreement, the petitioner's "scope of services" is described as follows:

Our services include managing, advising, counseling, promoting and negotiating, on your behalf, in all areas and modes of professional modeling and the entertainment industry, including, without limitation, print media, photography, advertising, industrial exhibition, runway, live show, publishing, merchandising, licensing and endorsement, television, video, internet and film. Our services include advising and assisting with personal appearances, composites and your portfolio, arranging your schedule; advising and supervising your publicity and public relations; aiding in the negotiation of agreements; . . . and invoicing and collecting your fees as provided below.

The model management agreement contains an exclusivity clause under which the beneficiary agrees "not to accept any assignments or opportunities in the Territory [North America], except those booked through [the petitioner]." The beneficiary was required to represent that she is not a party to any other agreement regarding her professional representation or management, and to agree to forward to the petitioner any inquiries and offers made directly to her for her services or use of her image.

In a document titled "Itinerary of Events," the petitioner submitted the names, addresses, telephone numbers, and names of contact persons for "a selection of clients who will work with the beneficiary" pending approval of the petition. The itinerary also included a chart detailing the agency's schedule of annual fashion events. The petitioner stated that the beneficiary would be booked through its agency, and perform all work "pursuant to the terms outlined in the enclosed management agreement." The petitioner explained that modeling assignments "may be given on very short notice, even as early as a few days" and that "there is no mechanism to forecast future assignments of bookings several weeks, months or even years in advance." Accordingly, the petitioner stated that "there exists no fixed itinerary for modeling assignments or bookings in the fashion industry."

Citing to 8 C.F.R. § 214.2(o)(2)(iv)(E)(I), the petitioner further explained that it "is acting as an *employer* and therefore, under the regulations, contracts with all the numerous employers to whom services will be rendered do not need to be included with the petition." (Emphasis in original.)

The director issued a notice of intent to deny the petition requesting additional evidence. The director acknowledged the model management agreement, but noted that the agreement did not indicate that the petitioner is the beneficiary's employer or that an employer-employee relationship exists. Instead, the director concluded that the beneficiary is an independent contractor and that the petitioner represents both the ultimate employers and the beneficiary. The director requested a detailed itinerary and copies of the contracts between the beneficiary and the ultimate employers.

In response, the petitioner emphasized that the regulations at 8 C.F.R. § 214.2(o)(2)(iv)(E) allow agents to act as an employer. The petitioner asserted that the correct interpretation of the relationship between the petitioner and the beneficiary is that of an agent which "performs the function of an employer," as it "negotiates the fees with all clients, collects the fees due, and after withholding its commission, distributes the fees to the beneficiary." The petitioner stressed that it acts as an employer by exercising "complete and exclusive control and supervisory rights over the beneficiary." The petitioner further explained that it does not represent "multiple employers" as its services to its clients are limited to "location of a suitable talent and making sure the talent is on location at a specified time."

With respect to the requested itinerary, the petitioner further sought to distinguish the fashion industry from other more traditional industries. The petitioner explained that for a model, "it is possible for an agreement to be made on a Monday, airline tickets to be bought on a Tuesday, and the model to be flown in later that some day to perform on a Wednesday," with the contracts finished "weeks after the work has been completed." In support of its explanation of the nature of the beneficiary's activities, the petitioner submitted expert opinion testimony regarding the employment practices of the fashion industry.¹

After reviewing the petitioner's response, the director denied the petition. The director found that the petitioner "has not submitted evidence of a complete itinerary of confirmed events and activities," or "evidence of contracts between the beneficiary and client (employers) required under the regulations at 8 C.F.R. § 214.2(o)(2)(iv)(E)(2)."

The director emphasized that the petitioner's contract with the beneficiary "specified the petitioner is not the beneficiary's employer and there is not an employer/employee relationship as such between the petitioner and the beneficiary." Although the director acknowledged the petitioner's claims that it is an agent functioning as an employer as described in the regulations at 8 C.F.R. § 214.2(o)(2)(iv)(E)(1), the director concluded that "the petitioner is required to comply with 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) because employment is provided by multiple clients (employers), thus requiring confirmation of dates demonstrating employment for the beneficiary."

¹ As a matter of discretion, USCIS may consider letters and advisory opinions as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; expert opinion testimony is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (finding that expert opinion testimony does not purport to be evidence as to "fact" but rather is admissible only if "it will assist the trier of fact to understand the evidence or to determine a fact in issue," citing Rule 702 of the Federal Rules of Evidence).

Ultimately, the director concluded that the petition is based wholly on speculative employment, and as such, cannot be approved.

B. The Issues on Certification

For the reasons discussed below, the AAO will withdraw the director's decision and approve the petition.

When reviewing a petition filed by an agent, it is helpful to focus on the nature of "agency" and the general function of an agent. As defined by common law, the concept of agency posits a consensual relationship in which one person acts as a representative of another person with the power to affect the legal rights and duties of the other person. *See generally Restatement (Third) of Agency* § 1.01 (2006). In other words, one party (the agent) acts on behalf of another party (the principal) based on a contractual relationship. *See Black's Law Dictionary* 70 (2009) (defining "agency").

The concept of agency encompasses a complex range of relationships and circumstances:

The elements of common-law agency are present in the relationships between employer and employee, corporation and officer, client and lawyer, and partnership and general partner. People often retain agents to perform specific services. Common real-estate transactions, for example, involve the use of agents by buyers, sellers, lessors, and lessees. Authors, performers, and athletes often retain specialized agents to represent their interests in dealing with third parties. Some industries make frequent use of nonemployee agents to communicate with customers and enter into contracts that bind the customer and a vendor. Agents who lack authority to bind their principals to contracts nevertheless often have authority to negotiate or to transmit or receive information on their behalf.

Restatement at § 1.01(c).

Agents frequently serve the role of an intermediary or go-between. The services provided by agents who perform an intermediary function vary greatly, along with the scope of the agency relationship and its consequences for the principal. An intermediary who is a "finder" typically functions by identifying and introducing the parties to a business transaction, but does not participate in negotiations. *See Black's* at 707 (2009) (defining "finder"). Intermediaries who are "brokers" or "broker-agents," on the other hand, may negotiate on behalf of the principal. *See id.* at 219 (defining "broker"). Finally, as in the present case, some intermediary agents have the power to negotiate and commit the principal to the binding terms of a transaction. *Restatement* at § 1.01(h).

In the context of employment-based immigration law, the right to file a nonimmigrant visa petition is limited to the actual "importing employer" of the alien worker. *See* sec. 214(c)(1) of the Act; *but see* sec. 214(c)(5)(B) of the Act (discussing the joint liability of the "petitioner" and "employer" with respect to the O or P nonimmigrant alien's return transportation). While the statute requires that O petitions be filed by an importing employer, the

legacy Immigration and Naturalization Service (INS) interpreted the statute to include agents as importing employers under specific circumstances. 59 Fed. Reg. 41818, 41829 (August 15, 1994).

1. *Agents as Petitioners*

The first issue to be addressed is whether the petitioner in this matter is "an agent performing the function of an employer" for a worker who is "traditionally self-employed," pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(1), or whether the petitioner is "a person or company in business as an agent filing the petition involving multiple employers, as the representative of both the employers and the beneficiary, pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2).

The director concluded that the petitioner is an agent filing a petition involving multiple employers, acting as the representative of both the employers and the beneficiary, as described at 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). The director focused on the clause of the model management agreement that states: "You agree that the relationship between you and us is that of an independent contractor and not an employment contract." By signing the agreement, the beneficiary agreed that she will not be reimbursed for expenses, will not participate in the petitioner's employee benefits programs, and will not have federal, state or local tax liabilities or contributions withheld from payments she receives through the petitioner. The director concluded that this contract language "rebutts and nullifies any argument that the petitioner is the beneficiary's employer, or will be performing the functions of an employer, or is acting as the beneficiary's employer."

Upon review, the facts in the present matter fall squarely under 8 C.F.R. § 214.2(o)(2)(iv)(E)(1), as the modeling agency is an agent performing the function of the beneficiary's employer. The record indicates that the petitioner is not an agent representing both the employers and the beneficiary, but instead offers the beneficiary's professional modeling services to clients in the fashion and media industries.

Both USCIS and the INS have a long history of accommodating agents as petitioners. In 1986, the INS recognized that not all nonimmigrant visa petitions involve "one employer, one beneficiary, and employment in one location." 51 Fed. Reg. 28576, 28577 (Aug. 8, 1986)(Proposed Rule). The INS had allowed other types of petitions, but found it necessary to prescribe filing requirements by regulation due to "the increasing complexities of the situations involved." *Id.*; see also 53 Fed. Reg. 43217 (Oct. 26, 1988)(Superseding Proposed Rule). Accordingly, the filing of nonimmigrant petitions by "agents" was codified in 1990 by an amendment to the regulations applicable to temporary H-1 workers under section 101(a)(15)(H) of the Act, 8 U.S.C. § 1101 (1990). See 55 Fed. Reg. 2606-01 (Jan. 26, 1990)(Final Rule). At that time, the H-1 nonimmigrant visa classification encompassed artists, performers and entertainers of "distinguished merit and ability," including fashion models.

Subsequently, the Immigration Act of 1990 created the O and P nonimmigrant visa categories which now include most artists, performers, and entertainers. Immigration Act of 1990 § 207, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990). After the creation of the O-1 visa classification, the INS adopted the existing H-1 agent procedures and practices for the O-1 visa classification. See 59 Fed. Reg. at 41818; see also 62 Fed. Reg. 18508 (April 16, 1997)(Final Rule).

Therefore, the AAO finds it instructive to look to the commentary accompanying the 1990 Final Rule for clarification of the regulations pertaining to "agents as petitioners":

(B) Agents as petitioners—§ 214.2(h)(2)(i)(F). In recognition of the fact that certain services involve workers who are traditionally self-employed and who use agents to arrange their employment with numerous employers, the Service had proposed to permit an established agent instead of the employer to file a petition under two circumstances. The agent could file an H petition involving multiple employers as the representative of the actual employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. *In addition, the agent could assume responsibility as the actual employer, such as a modeling agency, but must guarantee the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies).*

55 Fed. Reg. 2606, 2607-8 (emphasis added).

Based on the above, it was the agency's expressed intention to include modeling agencies among those agents who may "perform the function of an employer," pursuant to 8 C.F.R. § 214.2(h)(2)(i)(F)(I). Importantly, the regulations recognize that the petitioner is an agent, but treat the petitioner as the actual employer and the beneficiary as an employee. The AAO concludes that an agent performing the function of an employer need not have an actual employer-employee relationship with the beneficiary.

As with other simple "one employer, one beneficiary" cases, the O-1 regulations require an agent performing the function of an employer to provide the contractual agreement that specifies the wage offered and the other terms and conditions of employment of the beneficiary. 8 C.F.R. § 214.2(o)(2)(iv)(E)(I).

The AAO finds that the director's conclusion is not in accord with the facts or the regulations. Here, the beneficiary works in an occupation in which workers are traditionally self-employed. *See* 55 Fed. Reg. at 2608. She has entered into an exclusive contract with the petitioning modeling agency which explains in detail the terms and conditions of their relationship. While the petitioner is not the beneficiary's "employer" in the traditional sense that it pays her a fixed salary and enrolls her in its employee benefits programs, this arrangement does not prohibit a finding that the petitioning agency does not otherwise "function as an employer." The regulations clearly create a distinction between "employers" and "agents performing the functions of employers" for workers who are traditionally self-employed.

The terms and conditions of the contractual agreement between the petitioning agent and the beneficiary are critical to making a case-by-case factual determination as to whether an agent is acting or functioning as an employer for O-1 purposes. A review of the model management agreement in its entirety reveals that the beneficiary has relinquished significant control over her modeling career to the petitioning agency.

Under the agreement, the petitioner is responsible for "managing, advising, counseling, promoting and negotiating on the beneficiary's behalf in all areas of professional modeling." The agreement is exclusive and the beneficiary agrees not to accept any assignments or opportunities in North America except for those booked through the petitioner. The beneficiary is also unable to seek any other representatives, managers or agents concerning any aspect of her career without written consent from the petitioner. In addition, the

beneficiary is obligated to perform any and all modeling assignments the petitioner obtains for her. The petitioner maintains the right to terminate the agreement if the beneficiary does not maintain her physical appearance, does not cooperate with the petitioner's booking policies and procedures, receives unsatisfactory feedback from clients or photographers, or engages in any form of misconduct that harms the petitioner's professional image.

While the agreement does not specify the beneficiary's exact wages, it does contractually guarantee that the beneficiary will retain a very high percentage of her gross earnings and that the petitioner is responsible for negotiating and collecting all of her fees and depositing them in her account. She has authorized the petitioner to negotiate the fee to be charged, and in that way, the petitioner does exercise control over her earnings. The beneficiary also authorizes the petitioner to execute in the beneficiary's name and on her behalf "any and all agreements, documents and instruments providing for your services to clients." While the beneficiary will work with multiple clients, photographers and fashion publications during the term of her contract, the evidence indicates that these entities are the petitioner's clients and not the beneficiary's "actual employers."

Overall, the AAO concludes that the terms and conditions of the beneficiary's employment are primarily determined by the petitioning agency, not by the beneficiary or the specific clients for whom she will work. The petitioner's obligations and involvement with respect to the beneficiary's career go far beyond merely arranging employment for the beneficiary and collecting a commission. The beneficiary herself provides a service for the petitioner by making her highly sought-after modeling services available to the petitioner's clients and potential clients. She is represented to clients as one of the petitioner's models and is required to maintain the petitioner's professional image.

Therefore, while the petitioner is not the beneficiary's employer, the AAO finds that the petitioner is "performing the function of an employer" within the meaning of 8 C.F.R. § 214.2(o)(2)(iv)(E)(1). As such, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) does not obligate the petitioner to provide a complete itinerary of events with the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. Nor must the petitioner submit contracts between the petitioner's clients and the beneficiary.

Accordingly, the director's finding that the petitioner is an agent filing a petition involving multiple employers as the representative of both the employers and the beneficiary, pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2), will be withdrawn.²

² This conclusion should not be construed as a determination that all modeling agencies or individual agents representing a fashion model will be deemed to be "performing the function of an employer" for the purposes of this classification. Each petitioner must prove by a preponderance of evidence that it is eligible for the benefit sought. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

2. *Itinerary*

The remaining issue addressed by the director is whether the petitioner is required to submit a complete itinerary of the event or events in which the beneficiary will participate.

In the present matter, the petitioner fully explains the nature of the events and activities and accounts for why specific, confirmed dates cannot be provided for the beneficiary's assignments. The petitioner also submits expert testimony that describes the nature of the fashion model industry, confirming the petitioner's explanation. The petitioner asserts that the beneficiary's three-year exclusive contract with the petitioning agency should be considered the "event" which requires the beneficiary's services. Finally, the petitioner provides a list of its high-profile clients who expect to require the petitioner's services (to be provided by the beneficiary) during the requested period of employment, identifies the dates of high-profile fashion shows in which the beneficiary is expected to participate, and submits several testimonials from the petitioner's clients who look forward to working with the beneficiary upon extension of her nonimmigrant status.

There is no statute that requires an O-1 petitioner to submit an itinerary; the question of whether a petitioner is required to submit an itinerary is dictated entirely by regulation. The regulations must be read as a whole and interpreted in a manner consistent with the plain purpose of the Act. *See Defensor v. Meissner*, 201 F.3d 384, 387-8 (5th Cir. 2000); *see also Bahramizadeh v. INS*, 717 F.2d 1170, 1173 (7th Cir.1983) ("An agency may not interpret its regulations in a manner so as to nullify the effective intent or wording of a regulation.").

Through the itinerary submitted with the initial petition, or a specific explanation of the events or activities, a petitioner is required to show that a beneficiary is entering the United States for definite, non-speculative employment associated with the alien's extraordinary ability. Discussing periods of admission for O-1 nonimmigrant aliens, the INS noted that "an O . . . classification may not be granted to an alien merely to enter the United States to freelance and seek employment," but must only be "admitted to perform in specific events as detailed on the initial petition." 59 Fed. Reg. at 41828.

The O-1 regulations require an itinerary in three separate sections. When viewed independently, it appears possible for one section to require an itinerary while another absolves the petitioner of the itinerary requirement. On their face, the regulations seem ambiguous and self-contradictory.

The first and most significant section, 8 C.F.R. § 214.2(o)(2)(ii)(C), lists the required evidence for all O-1 visa petitions. This section mandates that all petitions must include "[a]n explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of *any itinerary* for the events or activities." (Emphasis added.) While all petitioners are expected to explain the nature of the event and provide specific dates for the beneficiary's activities, the use of the non-mandatory word "any" recognizes that an itinerary may not be required in all circumstances.

Second, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(A) states that "a petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work." This provision further states that the address provided on the petition will be considered the petitioner's location for purposes of this paragraph. *Id.* If the petitioner "requires the alien to work" at any other address, then an "itinerary with the dates and locations of work" is required. *Id.*

And finally, 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) specifically states that a company in business as an agent may file a petition "involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events." This section is in contrast to the provision relating to an "agent performing the function of an employer" in that it does not specifically require an itinerary. 8 C.F.R. § 214.2(o)(2)(iv)(E)(1). When read separately from any other provision, these two sections imply that an O-1 agent performing the function of an employer is not required to submit an itinerary.³

As previously discussed, the AAO concludes that the petitioner is an agent performing the function of an employer. However, this fact does not exempt the petitioner from the remaining independent regulatory requirements generally applicable to all petitioners. The petitioner is still obligated to provide an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of "any itinerary" for the events or activities. 8 C.F.R. § 214.2(o)(2)(ii)(C). And if the petition "requires the alien to work" at any other address other than the one listed on the petition, the petitioner is still required to submit an itinerary. 8 C.F.R. § 214.2(o)(2)(iv)(A).

To read the regulations any other way would lead to an absurd result. If USCIS were to read the regulations as exempting an "agent performing the function of an employer" from the itinerary requirement, even when the nature of the employer's business required the alien to work in multiple locations, then a petitioner could circumvent the general itinerary requirement at 8 C.F.R. § 214.2(o)(2)(iv)(A) by styling or presenting itself as an agent employer. Such an interpretation would permit a petitioner to more easily subvert the statutory requirement that O-1 aliens enter the United States for definite, non-speculative employment that is associated with the alien's extraordinary ability.

Therefore, it must be concluded that the plain language of the regulations requires all petitioners, including agents performing the function of an employer, to submit an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities. 8 C.F.R. § 214.2(o)(2)(ii)(B).

In the present matter, the petitioner has explained the nature of the event in which the beneficiary will engage. Specifically, the beneficiary will engage in modeling assignments for the high-profile clients listed in the itinerary, and all assignments will be made through the petitioner. The beneficiary will perform these duties during the length of the contract, for a period of three years.

The remaining question then is whether the short-term services to be provided by the beneficiary to the petitioner's clients should be considered to be "work in more than one location" such that the petitioner would be required to submit the detailed itinerary discussed at 8 C.F.R. § 214.2(o)(2)(iv)(A).

³ The O-1 regulations are unique in this regard. The H and P nonimmigrant visa regulations also allow for petitions filed by agents performing the function of an employer, but specifically require the agent to submit an itinerary in all cases. See 8 C.F.R. §§ 214.2(h)(2)(i)(F)(1) and (p)(2)(iv)(E)(1).

Looking to the H-1B visa classification as a comparison, the AAO takes notice that the Department of Labor (DOL) defines "place of employment" as "the worksite or physical location where the work actually is performed." 20 C.F.R. § 655.715. However, the definition further states that the term does not include any location where "[t]he nature and duration of [a] nonimmigrant's job functions may necessitate frequent changes of location with little time spent at any one location." For such a worker, a location would not be considered a "place of employment" or "worksite" if three requirements are met: first, the nature and duration of the worker's job functions mandates his or her short-time presence at the location; second, the worker's presence at the locations to which he or she travels from the "home" worksite is on a casual, short-term basis, which may be recurring but not excessive; and third, the nonimmigrant is not at the location as a "strikebreaker." See 20 C.F.R. §§ 655.715(1)(ii)(A) to (C).

Here, the petitioner provided the model management agreement, a description of the activities, and an "Itinerary of Events" that illustrated the short term nature of the model's bookings. The itinerary listed fashion show engagements that range from five to nine days, for an average duration of seven days. The petition and the contract also discuss other shorter duration modeling engagements, such as photography sessions, industrial exhibitions, runway and live show events, and television, video, internet and film appearances. As described in the petition, these engagements may last anywhere from a few hours to a few days. See also Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 edition, available at <http://www.bls.gov/oco/ocos337.htm> (last accessed May 9, 2011) ("A typical modeling job lasts only 1 day . . .").

To bolster the submitted evidence, the petitioner supplemented the record with expert opinion testimony from prominent persons in the fashion modeling industry who confirm the unique nature of the occupation. The experts verified that an agency cannot confirm months or years in advance where a fashion model will work because the industry does not operate on rigid, long-term schedules. Instead, fashion models must be flexible and willing to travel anywhere in the world on very short notice.

Although the DOL regulations are not applicable to the present matter, the AAO finds the reasoning to be persuasive. As explained above, the petitioner has established that a fashion model's job is inherently peripatetic or itinerant in nature, due to the unique demands of the fashion industry. The normal duties of a fashion model's occupation - rather than the needs of the agent's business - requires frequent travel from location to location, normally on short notice. The model's presence at the locations to which she travels is on an irregular, casual, and short-term basis. The petitioner established that the model's bookings are not typically recurring nor are they excessive, as they do not typically last more than nine days at most. Finally, the beneficiary is not traveling to a worksite to function as a "strikebreaker."

The AAO concludes, therefore, that the petition does not require the alien to change work locations, but that the nature of a fashion model's job functions necessitates frequent changes of location with little time spent at any one location. In other words, the visa petition does not impose any special requirement that the model change work locations - such impromptu changes in location are simply intrinsic to the nature of the fashion model's occupation.

Accordingly, the AAO does not consider the location of the fashion model's bookings to be her "worksite" and the petition does not require her to work in multiple locations. The address provided on the petition will be considered the petitioner's location for purposes of this petition. The petitioner need not submit a detailed itinerary in accordance with the regulatory requirement at 8 C.F.R. § 214.2(o)(2)(iv)(A).

III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1362. Here, that burden has been met.

ORDER: The AAO's decision dated March 2, 2011, is *sua sponte* reopened and affirmed. The petition is approved.