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

U.S. Citizenship
and Immigration
Services

AI

File:

[REDACTED]
SRC 08 014 53413

Office: TEXAS SERVICE CENTER

Date:

SEP 09 2009

IN RE:

Applicant: [REDACTED]

Petition:

Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to
Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:

[REDACTED]

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the application for adjustment of status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for the continued processing of the applicant's adjustment of status application.

The applicant is a native and citizen of the Philippines who filed this application for adjustment of status to that of a lawful permanent resident under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255. The applicant is seeking to adjust his status based on the approval of a Form I-140, Immigrant Petition for Alien Worker, as an employment-based immigrant. A review of the record reveals the following facts and procedural history.

The applicant entered the United States on January 6, 2000 as a B-1 visitor. The applicant continued to reside in the United States subsequent to the expiration of his authorized stay on July 5, 2000. The applicant's sister filed a Form I-130, Petition for Alien Relative, on the applicant's behalf. The Form I-130 is date-stamped received by the legacy Immigration and Naturalization Service (INS) on April 30, 2001. On May 25, 2001, the Los Angeles, California District Office issued a Notice of Rejection of the Form I-130 checking the box that the Form I-130 must be submitted to the Western Service Center as the reason for rejection. The Notice of Rejection does not note any other reason for rejection. The applicant's sister re-submitted the Form I-130 on September 5, 2001 which was approved on September 6, 2005 with a priority date of July 26, 2001. In addition, the applicant in this matter is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, approved on January 22, 2007. The applicant filed a Form I-485 with a Form I-485, Supplement A, Adjustment of Status Under Section 245(i), with the required fees. The director issued a request for further evidence (RFE) on November 24, 2008 requesting that the applicant submit evidence of physical presence on December 21, 2000 to establish eligibility for adjustment of status under section 245(i) of the Act. The applicant provided such evidence in a December 15, 2008 response.

The applicant acknowledged and the director found that the applicant had not maintained lawful status, had engaged in employment not authorized by United States Citizenship and Immigration Services (USCIS), and was not in lawful immigration status at the time of filing the adjustment application that is the subject of this certification. The director determined that the applicant was not eligible to apply for adjustment of status pursuant to sections 245(c)(9) of the Act. The director also considered whether, despite the ineligibility of the applicant based on this section of the Act, the record included evidence that the applicant was eligible to adjust status pursuant to section 245(i) of the Act.

Section 245(i) of the INA states, in pertinent part: (1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d) of--

- (i) a petition for classification under section 204 that was filed with the Attorney General on or before April 30, 2001; or
- (ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence.

The director in this matter determined that the applicant was not eligible to adjust status under section 245(i) of the Act because the Form I-130, the petition establishing eligibility for section 245(i) of the Act, was not properly filed with the Western Service Center on or before April 30, 2001. In ordinary circumstances, the AAO would agree; however, due to the high volume of individuals attempting to establish eligibility under section 245(i), legacy INS provided explicit instructions that all field offices and service centers shall accept all properly filed immigrant visa petitions and applications for adjustment of status without regard to jurisdiction through the close of business April 30, 2001 for applications filed in person and through May 3, 2001 for applications filed by mail. 8 C.F.R. § 245.10(a)(2)(i). In this matter, as the Notice of Rejection of the Form I-130 date-stamped April 30, 2001, cites jurisdiction as the only reason for rejecting the Form I-130 and as the INS had temporarily waived the jurisdictional issue, the AAO finds that the Form I-130 submitted and date-stamped April 30, 2001, on behalf of the applicant is sufficient to establish the applicant's eligibility pursuant to section 245(i) of the Act.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Here, the applicant has met his burden. Accordingly, the AAO withdraws the director's denial of the Application for Adjustment of Status and remands the matter for further processing of the applicant's Form I-485.

ORDER: The director's decision is withdrawn. The matter is remanded for the director to continue processing the applicant's Form I-485.