

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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

A₁

File:

Office: VERMONT SERVICE CENTER

Date: APR 06 2010

IN RE:

Applicant:

Petition:

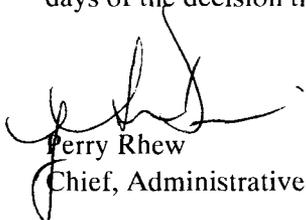
Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245(l) of the Immigration and Nationality Act, 8 U.S.C. § 1255(l)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed, the application will be denied.

The record reflects that the applicant, a native of Vietnam, filed the Form I-485, Application to Register Permanent Resident or Adjust Status, as the derivative family member of a principal applicant who was admitted into the United States in T-1 classification, as a victim of human trafficking. On May 18, 2009, the director issued a Notice of Intent to Deny (NOID) the application, informing the applicant that the record showed that the T-1 principal was deceased. The director, referencing the regulation at 8 C.F.R. § 245.23(b), further informed the applicant that adjustment of derivative family members is not allowed independent of the principal applicant. The director informed the applicant that a final decision would not be made for 33 days during which time the applicant could submit additional evidence to overcome the noted reasons for denial.

On August 6, 2009, the director, after receiving no response from the applicant or his counsel, denied the application for the reasons stated in the NOID. The director also noted that the record did not include a copy of the applicant's birth certificate and a completed Form I-693, Report of Medical Examination record. The director certified his decision to the AAO for review and notified counsel for the applicant that the applicant had an opportunity to provide additional evidence on certification. The record on certification does not include further evidence and thus the record is considered complete.

The regulation at 8 C.F.R. § 245.23(b) reads in pertinent part:

Eligibility of derivative family members. A derivative family member of a T-1 nonimmigrant status holder may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided:

- (1) The T-1 principal nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described . . .

The regulation at 245.23(b)(1) makes clear that the T-1 nonimmigrant must be eligible to adjust status in order for his or her derivative family members to adjust status. As the principal T-1 nonimmigrant in this matter had not applied to adjust her status and is now deceased, the derivative family members are unable to satisfy this criterion. There is no relief for the derivative family members pursuant to section 245(l) of the Act.

The director's decision will be affirmed and the application will be denied for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The director's decision is affirmed. The application is denied.