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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

A1



DATE: **AUG 22 2011**

Office: TEXAS SERVICE CENTER

File:   
SRC 08 003 59897

IN RE: Applicant:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED<sup>1</sup>

**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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

<sup>1</sup> The attorney representing the applicant's I-140 petitioner prepared the instant application to adjust status (Form I-485) but failed to submit a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Although we considered the evidence submitted by the attorney in response to the Notice of Certification, we deem the applicant self-represented in this matter.

**DISCUSSION:** The Director, Texas Service Center, denied the application to register permanent residence or adjust status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will remain denied.

The applicant seeks to adjust his status to that of a lawful permanent resident pursuant to section 245(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255(i). The director denied the application, finding that the applicant was not eligible to adjust his status under sections 245(a), (i) or (k) of the Act, and certified his decision to the AAO for review. On notice of certification, the director informed the applicant that he had 30 days to supplement the record with any additional evidence that he wished the AAO to consider. On notice of certification, the petitioner submits additional evidence.<sup>2</sup>

*Applicable Law*

Section 245(i) of the Act states, in pertinent part:

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

\* \* \*

(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.

\* \* \*

*Grandfathered alien* means an alien who is the beneficiary . . . of:

\* \* \*

(B) An application for labor certification . . . that was properly filed pursuant to the

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<sup>2</sup> The applicant is seeking to adjust his status pursuant to section 245(i) of the Act and does not dispute that he is ineligible to adjust his status pursuant to sections 245(a) or (k) of the Act. Consequently, we shall affirm but not discuss the director's findings on these two issues.

regulations of the Secretary of Labor on or before April 30, 2001, and which was approvable when filed.

8 C.F.R. § 245.10(a)(1)(i).

*Approvable when filed* means that, as of the date of the filing of the qualifying . . . application for labor certification, the qualifying . . . application was properly filed, meritorious in fact, and non-frivolous (“frivolous” being defined herein as patently without substance). This determination will be made based on the circumstances that existed at the time the qualifying . . . application was filed. A visa petition that was properly filed on or before April 30, 2001, and was approvable when filed, but was later withdrawn, denied, or revoked due to circumstances that have arisen after the time of filing, will preserve the alien beneficiary’s grandfathered status if the alien is otherwise eligible to file an application for adjustment of status under section 245(i) of the Act.

8 C.F.R. § 245.10(a)(3).

The burden of proof is on the applicant to demonstrate eligibility for the requested benefit. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

#### *Factual and Procedural History*

The applicant was admitted into the United States on a B-2 nonimmigrant visitor visa on June 24, 2000, with authorization to remain in the United States until December 23, 2000. The applicant was listed as the beneficiary on a Form ETA 750, Application for Alien Employment Certification (labor certification application), filed on his behalf by House of the Future, with an April 30, 2001 date of acceptance for processing. On February 24, 2005, the U.S. Department of Labor (DOL) issued to House of the Future a *Corrections List* and *Selection of Continuation Option Letter*. According to DOL, the existence of House of the Future could not be verified and House of the Future was requested to submit a copy of its Articles of Incorporation, business license, and state registration or other official document to establish itself as a *bona fide* business entity. In response, House of the Future withdrew the labor certification application, citing that the company had closed.

The applicant filed the instant Form I-485 on August 13, 2007. He is the beneficiary of a petition for alien worker (Form I-140) filed on his behalf by EUROTTEST and approved by U.S. Citizenship and Immigration Services (USCIS) on July 26, 2007. The applicant is seeking to use the April 30, 2001 processing date on the labor certification application from House of the Future to adjust his status pursuant to section 245(i) of the Act. The director determined that the labor certification filed by House of the Future was not approvable when filed and denied the application accordingly. On appeal, the petitioner submits the following evidence relating to House of the Future: payroll records for the period ending April 21, 2001; Quarterly Federal Tax Return (Form 941), dated March 31,

2001; and bankruptcy documents from the U.S. Bankruptcy Court, District of New Jersey.<sup>3</sup> The applicant claims that the evidence incontrovertibly demonstrates that House of the Future was a *bona fide* business entity and was conducting business as of April 30, 2001.

### *Analysis*

We concur with the director that the applicant is ineligible to adjust his status pursuant to section 245(i) of the Act because the labor certification application with a processing date of April 30, 2001 was not approvable when filed.

As noted earlier, on February 24, 2005, DOL notified House of the Future that further evidence was required in order to continue processing the labor certification application. The letter noted certain areas that required correction and provided House of the Future a period of 45 days to complete the requested action or the processing of the case would be closed and the labor certification application returned. Thus, DOL found the labor certification application to be deficient and not clearly approvable when filed as that term is defined at 8 C.F.R. § 245.10(a)(3).

The evidence submitted on certification fails to establish that the labor certification application was properly filed, meritorious in fact, and non-frivolous when it was accepted for processing on April 30, 2001. The payroll records and Form 941 indicate that House of the Future had only one employee, who was the company's owner. These documents do not demonstrate that House of the Future was, as DOL required it to establish, a *bona fide* business entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not demonstrated his eligibility to adjust his status pursuant to section 245(i) of the Act because the labor certification application filed on his behalf by House of the Future with an April 30, 2001 processing date was not approvable when filed.

### *Conclusion*

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 not met his burden. Accordingly, the AAO affirms the director's denial of the applicant's Form I-485 application to adjust status.

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

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<sup>3</sup> Case No. ██████████