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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

FILE:

Office: ORLANDO, FLORIDA

Date: FEB 08 2011

IN RE:

Applicant:

APPLICATION: 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 APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, Florida, denied the application to register permanent residence or adjust status (Form I-485) and certified her decision to the Administrative Appeals Office (AAO) for review. The AAO withdraws the director's certified decision and remands the matter to the Orlando Field Office.

The applicant seeks to adjust his status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255. On April 22, 2010, the director denied the Form I-485 adjustment application for abandonment because the applicant failed to appear for a scheduled interview. The director notified the applicant that he could file a motion to reopen or reconsider if he believed that the director's decision was in error; however, the applicant did not file a motion. On November 4, 2010, the director certified her April 22, 2010 decision to the AAO for review, and informed the applicant that he had 30 days to supplement the record with any evidence that he wanted the AAO to consider. As of this date, the applicant has not submitted any additional evidence.

We are withdrawing the certification in this matter because the director committed a procedural error when certifying her April 22, 2010 decision to the AAO on November 4, 2010. Once a director issues a decision to deny an application, she may not certify that denial at a later date simply by placing a Form I-290C cover sheet on it to indicate that it is being certified to the AAO. Rather, if a director would like the AAO to review a previously-issued decision on which she does not intend to take favorable action, she must first issue a Service motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), which states:

Service motion with decision that may be unfavorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

Here, the director was required to notify the applicant that she intended to reopen or reconsider her April 22, 2010 decision and provide the applicant a 30-day period to submit a brief or other evidence. Only after that 30-day period had expired or the applicant had waived the time period would the director have been able to render a decision on the Service motion, a decision which she then could have certified to the AAO for review. As the director failed to reopen or reconsider this matter on a Service motion, we withdraw her November 4, 2010 certification and remand the matter to the Orlando Field Office. We find no reason to certify this matter to the AAO again upon remand because it does not entail a complex or novel issue of law or fact. 8 C.F.R. § 103.4(a)(1).

ORDER: The director's November 4, 2010 certification is withdrawn and the matter remanded to the Orlando Field Office.