



U.S. Citizenship  
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File:



Office: Miami, Florida

Date:

MAR 04 2008

IN RE: Applicant:



Application: Application for Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255.

IN 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

A small handwritten mark or flourish, possibly a stylized "d" or a similar character.

**DISCUSSION:** The application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Venezuela 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), as the beneficiary of an approved immigrant visa petition. The director denied the application after the approval of the immigrant visa petition was automatically revoked pursuant to the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(C) due to its withdrawal.<sup>1</sup>

The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the AAO for review. 8 C.F.R. § 103.3(a)(2).

Regarding the denial of an application for adjustment of status, the regulation at 8 C.F.R. § 245.2(a)(5)(ii) states, in pertinent part: "No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 C.F.R. part 240."

Furthermore, the AAO notes that the application was denied after the director automatically revoked the approval of the associated immigrant visa petition pursuant to 8 C.F.R. § 205.1(a)(3)(iii). In this instance as well, no appeal lies from the automatic revocation of a visa petition. *Matter of Zaidan*, 19 I&N Dec. 297, 298 (BIA 1985) ("There is no such provision for appellate review when a petition is automatically revoked under 8 C.F.R. section 205.1 (1985)."); *see also* 8 C.F.R. § 103.1(f)(3)(iii)(D) (2002) (providing an appeal only for petitions that are revoked on notice under 8 C.F.R. § 205.2).

For these reasons, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> On appeal, counsel seeks to contest the director's finding that the letter from the applicant's former employer constituted a withdrawal of the visa petition. While this assertion may be true, the AAO has no appellate authority to address the question. Instead, the proper course of action is to file a motion and request that the director reopen or reconsider his decision. *See generally*, 8 C.F.R. § 103.5. Under the regulations, the director may excuse a late-filed motion as a matter of discretion, if the affected party demonstrates that the delay was reasonable and beyond his or her control. *See* 8 C.F.R. § 103.5(a)(1)(i). Additionally, if the director determines that the decision was made in error, the director may reopen on Service motion at any time. 8 C.F.R. § 103.5(a)(5).