

42

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

MAR 13 2003

FILE: [Redacted] Office: California Service Center

Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

PUBLIC COPY

[Redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who is seeking to adjust her 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. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140), filed by [REDACTED] to perform the offered position as "Live-in Housekeeper" at the petitioner's residence in East Norwich, New York.

Section 245 of the Act states, in part:

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

The director reviewed the evidence of record and noted that the applicant entered the United States on October 6, 1990, and there is no record that the applicant requested or received an extension of stay beyond the date she was authorized to remain in the United States upon her entry. He further noted that:

1. The Form ETA 750, Application for Alien Employment Certification, was filed on April 1, 1991 by [REDACTED] in behalf of the applicant, to perform the position of "Live-in Housekeeper" at the residence of [REDACTED] in New York for the wage of \$5.47 per hour (\$14,560 per year). It was approved by the Department of Labor on June 4, 1991.

2. The Form G-325A, Biographic Information, reflects that the applicant relocated from New York to California in January 1992, approximately seven months after the approval of the labor certification.

3. The Form I-140, Immigrant Petition for Alien Worker, filed by [REDACTED] on November 16, 1994, was approved in the applicant's behalf on January 13, 1995.

4. The Form G-325A reflects that the applicant was employed in California doing "odd jobs" from April 1992 to September 1993, and as a data entry clerk from September 1993 to the present time.

5. The applicant, since her arrival in California 11 years ago, has never been employed as a live-in housekeeper. The applicant's job title, according to the employment verification, is that of document control analyst with a biweekly salary of \$1,919, which equates to a yearly income of \$49,894.

6. The applicant filed the Form I-485, Application to Adjust Status, on November 7, 2000; she subsequently filed Form I-765, Application for Work Authorization (EAD), which was approved and she was authorized employment from January 30, 2001 to January 29, 2002. A second Form I-765 is pending receipt of requested additional evidence before adjudicative action can be completed for that I-765 application.

The director determined that even though the applicant obtained employment authorization two years ago, she had not taken the opportunity to work for the petitioner who filed the labor certification in her behalf 12 years ago. He further determined that it is doubtful that if the application were approved, the applicant would relocate to New York for a job that would pay \$14,560 per year as a live-in housekeeper, considering that in her present position she is compensated over \$50,000 for her services. Therefore, it has not been established that the applicant intends to permanently fill the offered position. Citing Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966), the director concluded that doubt has been cast upon the applicant's true intent, and that it has not been established that the applicant intends to be employed by the petitioner immediately, or in the foreseeable future. The director, therefore, denied the application as a matter of discretion.

In response to the notice of certification, counsel asserts that the applicant intends to be employed by the petitioning employer and was merely awaiting renewal of her EAD, submitted in November 2001, before making travel arrangements. She claims that the applicant did not receive her employment authorization until July 2001, and she was under the impression that employment with her petitioning employer will be legal only upon receipt of her employment card. Thus, she has not made arrangements to relocate to New York as she was awaiting her employment card. Then, the events of September 11, 2001 happened, and she was apprehensive that she might be accosted by INS agents at the airport as there was widespread scare that aliens were being picked up at airports, especially in New York, and held in custody.

Counsel asserts that during the applicant's adjustment interview in February 2002, and as stated in the applicant's declaration that is attached, the applicant was very candid in stating that she has the intention to assume employment with her petitioning employer in New York, and she was just awaiting her employment authorization renewal. Counsel further asserts that the petitioner is willing to hire the applicant upon receipt of her valid green card. She submits a statement from the petitioner confirming that he is

willing to hire the applicant "as a houseworker on a permanent basis, with a basic salary of \$11,378 per year." Counsel states that although the salary of the applicant's present job may be higher than the job offer under the I-140, the applicant still had decided to pursue a job with her petitioner.

The applicant was authorized employment from January 30, 2001 to January 29, 2002. While the applicant claims that she was apprehensive that she might be accosted by INS agents at the New York airport based on the September 11, 2001 event, the applicant had several months to make preparations for her move to New York, and to make her actual move upon receipt of her EAD in July 2001.

Further, while counsel states that the applicant still had decided to pursue a job with her petitioner even though the salary of the applicant's present job may be higher, it is not reasonable to believe that the applicant will disrupt a job that offers approximately \$50,000 in annual salary to accept another job for an annual salary of \$11,378, as the petitioner had indicated in his statement dated April 6, 2001.

An applicant for adjustment of status under section 245 of the Act who meets the objective prerequisites is merely eligible to apply for adjustment of status. She is in no way entitled to adjustment. See Matter of Tanahian, 18 I&N Dec. 339 (Reg. Comm. 1981). When an alien seeks the favorable exercise of discretion of the Attorney General, it is incumbent upon her to establish that she merits adjustment. The applicant, in this case, has not established that she warrants a favorable exercise of the Attorney General's discretion.

The director determined that doubt has been cast upon the applicant's true intent, and that it has not been established that the applicant intends to be employed by the petitioner immediately, or in the foreseeable future. Upon review of the record of proceeding, it is concluded that the director is correct in his findings. Accordingly, the director's decision to deny the application as a matter of discretion will be affirmed.

ORDER: The director's decision is affirmed.