



U.S. Citizenship  
and Immigration  
Services

L-2

[Redacted]

FILE: [Redacted]  
SRC 02 051 55597

Office: VERMONT SERVICE CENTER

Date: JUL 12 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

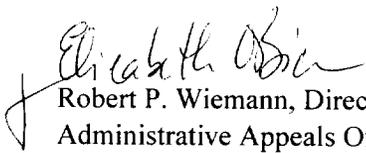
PETITION: Application for Adjustment of Status to that of Permanent Resident Alien Pursuant to section 245(h) of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:

[Redacted]

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

Identify by [Redacted] to  
prevent clearly identifiable  
invasion of personal privacy

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

The applicant is a native and citizen of Mexico who filed this application for adjustment of status to that of a lawful permanent resident. The applicant states that he is applying for adjustment to permanent resident status because his father was granted lawful permanent residence in an immigrant visa category that allows derivative status for children. On December 3, 2001, approximately six weeks after reaching the age of 21, the applicant filed a Form I-485 as the child of Jose Guadalupe Alanis.

The director denied the application on July 23, 2002, finding that the applicant turned 21 on October 17, 2001 and therefore was not eligible for adjustment of status as a "child" under the Immigration and Nationality Act (the Act).

On September 30, 2002, counsel for the applicant filed a motion to reopen, requesting that the adjustment application be reconsidered due to the passage of the Child Status Protection Act (CSPA). The director determined that because the applicant is not eligible to retain classification as a child under the provisions of the CSPA, the motion must be denied.

In review, the applicant is not eligible for adjustment of status to permanent residence because he cannot be considered a "child" as defined in the Act.

Counsel for the applicant asserts that under the CSPA, a child's age is fixed as of the date that a visa number becomes available for the alien's parent, reduced by the number of days that the petition was pending. Counsel further asserts that a visa number became available for the applicant's father the day the father's I-360 petition for Special Immigrant Religious Worker was approved (July 7, 2000). Counsel concedes that the CSPA was not enacted until after the applicant filed his application for adjustment of status, but asserts that since CSPA was enacted to prevent "aging-out," the director should extend its coverage to the applicant. Counsel's argument is not persuasive. The CSPA was signed by the President on August 6, 2002. CSPA clearly states that the law is effective as of the date of enactment, August 6, 2002. Section 8 of the CSPA provides:

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to any alien who is a derivative beneficiary or any other beneficiary of –

- (1) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) approved before such date but only if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition;
- (2) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) pending on or after such date; or

(3) an application pending before the Department of Justice of the Department of State on or after such date.

Here, the applicant's father's petition and application for adjustment of status were approved before the enactment date. The applicant's application for adjustment of status was filed and denied prior to the enactment date. The director correctly denied the applicant's application for permanent resident status.

We note that the decision to deny the Form I-485 application to adjust status was not appealable to the AAO and was final when issued on July 23, 2002. The filing of the motion to reopen did not extend the finality of the director's determination. 8 C.F.R. § 103.5 provides that "[u]nless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date."

We note further that the applicant's motion to reopen and reconsider was filed on September 25, 2002, almost 60 days following the director's decision on July 23, 2002. A motion to reopen and reconsider must be filed within 30 days of the decision the motion seeks to reopen/reconsider. 8 C.F.R. § 103.5(a)(1)(i). The applicant may not untimely file a motion to reopen/reconsider and revive a final determination. As the director's determination on the applicant's adjustment application was final prior to the effective date of CSTA, the application may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The director's decision dated September 24, 2003 is affirmed.