



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

L2



FILE: [REDACTED]  
SRC 01 024 52089

Office: TEXAS SERVICE CENTER Date: AUG 17 2007

IN RE: Applicant: [REDACTED]

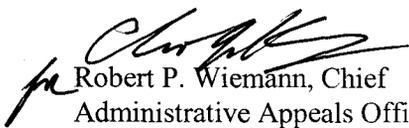
PETITION: Application to Register Permanent Residence or Adjust Status Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the application for adjustment of status and certified her decision for review by the Administrative Appeals Office (AAO).<sup>1</sup> The director's decision will be withdrawn and the matter will be remanded to the director for further action.

On October 25, 2000, the petitioner filed her Form I-485, Application to Register Permanent Residence or Adjust Status based on the September 16, 1999 approval of the petitioner's Form I-140 Immigrant Petition for Alien Worker classifying the petitioner as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). On March 24, 2005, the director issued a notice of intent to revoke the approval of the petition and on April 30, 2005, the director issued a final revocation notice. As there was no longer a valid Form I-140 petition underlying the Form I-485 adjustment application, the director, on May 3, 2005, denied the Form I-485 and certified the decision to this office.

The director acknowledged that section 204(j) of the Act precludes the denial of some long-pending adjustment applications where the alien has changed employers, but concluded that this provision did not preclude denial of an adjustment application if the underlying visa petition was never "valid." While we uphold the director's reasoning that section 204(j) of the Act does not preclude denial of the adjustment application in matters where the underlying visa petition was never valid, the director did not properly revoke the underlying petition in this matter as both the notice of intent to revoke the approval of the petition and the final revocation notice were mailed to the wrong address.

#### **Section 204(j) of the Act**

Although the petitioner never claimed benefits under section 204(j) of the Act, the director decision focuses on explaining why section 204(j) of the Act does not apply. Given the focus of the director's decision as certified to this office, we must examine this issue.

In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act (AC21), Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000). Section 106(c) of AC21 amended section 204 of the Act by adding the following provision, codified as 8 U.S.C. § 1154(j):

*Job Flexibility For Long Delayed Applicants For Adjustment Of Status To Permanent Residence-* A petition under subsection (a)(1)(D) [since redesignated section 204(a)(1)(F)] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained adjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

---

<sup>1</sup> No appeal lies from the denial of an application for adjustment of status under section 245 of the Act, 8 C.F.R. § 245.2(a)(5)(ii). As the director certified her decision pursuant to 8 C.F.R. § 103.4, however, the director's decision will be reviewed.

Section 204(a)(1)(F) of the Act, however, states; “Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2) or 203(b)(3) may file a petition . . . for such classification.”

As noted by the director, the underlying petition sought to classify the beneficiary pursuant to section 203(b)(1)(A) of the Act. Given that petitions filed pursuant to section 203(b)(1)(A) of the Act are not included in section 204(a)(1)(F) of the Act, the provisions of section 204(j) of the Act do not apply to the petitioner.

The director correctly concluded that section 204(j) of the Act does not preclude denial of the adjustment application. Section 204(j) of the Act, however, does not apply to matters involving the classification sought in the underlying petition in this case, aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act.

### **The Underlying Petition**

The Form I-140 petition is not before us and we decline to review the merits of the director’s determination that the Form I-140 petition was approved in gross error. As the director’s decision on the adjustment application, however, is based on the revocation of the approval of the underlying visa petition, it is appropriate for us to determine whether the revocation was properly effected.

The regulation at 8 C.F.R. § 103.4a(a)(1) provides that routine service consists of mailing a copy by ordinary mail “addressed to a person at his last known address.” Where the affected party is represented, service must include service upon the representative. 8 C.F.R. § 292.5(a). The regulation at 8 C.F.R. § 292.4(a) provides that substitution of representation may be affected by notification by the new attorney.

When the petitioner filed her petition in 1998, she included a Form G-28 Notice of Appearance as Attorney or Representative for [REDACTED]. On May 12, 2004, [REDACTED] submitted a letter to the Miami District Office that included a Form G-28 entering his appearance. Subsequently, on March 19, 2004, [REDACTED] submitted documentation that he asserted demonstrated the petitioner’s “entitlement to the I-140 classification.”

Despite the new G-28 from [REDACTED] the Service Center director issued the notice of intent to revoke and final revocation notice to [REDACTED]. As the petitioner was not properly served with those notices, the Form I-140 was not properly revoked and, thus, there is no revocation to serve as a proper basis of denial for the Form I-485.

Therefore, this matter will be remanded for purpose of mailing a new notice of intent to revoke the approval of the underlying petition *directly to the petitioner at her current address of record*, as she indicates on certification that she is no longer represented. Should the petition be properly revoked in the future, (and the petitioner would be entitled to appeal such a decision to this office pursuant to

8 C.F.R. § 205.2(d)), we concur with the director that the revocation would serve as an appropriate basis for denying the Form I-485. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision.