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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 27 2004

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 APPLICANT:

[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

DISCUSSION: The Application to Register Permanent Residence or Adjust Status was denied by the director, Nebraska Service Center. The petitioner filed an appeal of this application on Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO). Thus, the appeal was forwarded to this office. The case will be remanded for further consideration.

The regulation at 8 C.F.R. § 245.2 provides: "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 CFR part 240." The regulation at 8 C.F.R. § 103.1(f)(3)(E)(iii) provides that this office has jurisdiction over adjustment applications "when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act."

On the Form I-290B counsel refers to the appeal as a "motion." According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion to reopen under 8 C.F.R. § 203.5(a)(2) or a motion to reconsider under 8 C.F.R. § 103.5(a)(3) resides in the official who made the latest decision in the proceeding. Because, in this case, the disputed decision was rendered by the director, the AAU has no jurisdiction over this motion and the case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.