U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 10 2006

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 245(a) of the Immigration and Nationality Act; 8 U.S.C. § 1255(a).

ON BEHALF OF APPLICANT:

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The applicant is a native and citizen of Brazil. He entered the United States on June 14, 2001 in K-1 status as the fiancé of a U.S. citizen. He married the individual who sponsored him for K-1 status on June 16, 2001. Based on this marriage, the applicant filed the present Form I-485, Application to Register Permanent Residence or Adjust Status, on July 13, 2001. However, his marriage was dissolved in December 2004. The applicant seeks to adjust his status to lawful permanent resident under section 245(a) of the Immigration and Nationality Act (INA, the Act); 8 U.S.C. § 1255(a).

The director determined that the applicant was ineligible for adjustment of status pursuant to 245 of the Act because he is no longer in a bona fide marriage to the U.S. citizen who sponsored him for K-1 status. *Decision of the Director*, dated August 17, 2006.

The regulation at 8 C.F.R. § 214.2(k)(6) states the following:

> (6) Adjustment of status from nonimmigrant to immigrant --
>
> > (ii) Nonimmigrant visa issued on or after November 10, 1986. Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K-1 visa issued on or after November 10, 1986, the K-1 beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

Section 245(a) of the Act provides the following:

> (a) The status of an alien who was inspected and admitted or paroled into the United States 1/ or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) or 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 an 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.

Section 216 of the Act states the following, in pertinent part:

> (a) In general.-
>
> > (1) Conditional basis for status.-Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.
>
> (b) Termination of Status if Finding that Qualifying Marriage Improper.-
>
> > (1) In general.-In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that-
> >
> > > (A) the qualifying marriage-
> > >
> > > > (i) was entered into for the purpose of procuring an alien's admission as an immigrant, or
> > > >
> > > > (ii) has been judicially annulled or terminated, other than through the death of a spouse . . .
> > >
> > > (B) . . . the Attorney General shall so notify the parties involved and . . . shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

Upon review, the record reflects that the applicant is not eligible to adjust his status based on his prior marriage to the U.S. citizen who sponsored him for K-1 fiancé status. Individuals in K-1 status are eligible to apply for adjustment of status under section 245a of the Act. 8 C.F.R. § 214.2(k)(6)(ii). However, their applications are subject to the limitations of section 216 of the Act, and they may only be accorded conditional permanent resident status. *Id.*; Section 216 of the Act. Section 216(b) of the Act describes facts that result in the termination of an individual's conditional permanent resident status. Among these facts is the termination of the underlying marriage on which the conditional permanent residence was based. Section 216(b)(1)(A)(ii) of the Act. As the applicant's marriage has been terminated, he meets one of the conditions that would require the termination of his conditional permanent resident status. Thus, he is not eligible for conditional permanent resident status under sections 245a and 216 of the Act based on his prior marriage, and the present application may not be approved.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met that burden. Accordingly, the decision of the director will be affirmed.

ORDER: The director's decision is affirmed.