



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

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[Redacted]

File: [Redacted] Office: BALTIMORE DISTRICT OFFICE Date: **NOV 16 2009**

IN RE: Applicant: [Redacted]

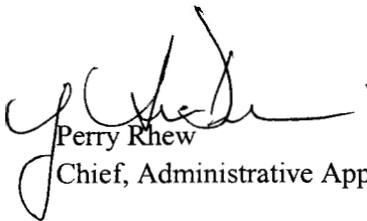
Petition: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the application for adjustment of status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for further action.

The applicant is a native and citizen of Guatemala who filed this application for adjustment of status to that of a lawful permanent resident under section 245 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1255. The applicant is seeking to adjust his status as a derivative beneficiary based on his stepfather's approved I-140 petition in the "skilled worker" category (3rd preference).

Upon review of United States Citizenship and Immigration Services (USCIS) records, the AAO finds that at the time this matter was certified to the AAO, the alien had already been placed into removal proceedings before an Immigration Judge.¹ When the alien was placed into proceedings, USCIS no longer had jurisdiction over the adjudication of the Form I-485; thus, no decision should have been certified for review. 8 C.F.R. § 245.2(a)(1). The regulation at 8 C.F.R. § 1003.14(a) states in pertinent part: "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." Moreover, the regulation at 8 C.F.R. § 1245.2(a)(1) states in pertinent part: "After an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status under section 245 of the Act . . . shall be made and considered only in those proceedings." As the alien was placed in proceedings in March 2009, the district director improperly certified his decision on the alien's motion to reopen in June 2009. As such, the district director's decision is withdrawn and the matter is remanded for the director to reopen the I-485 on a Service motion and deny it for lack of jurisdiction.

ORDER: The director's decision is withdrawn. The matter is remanded for the director to reopen the matter on a service motion and deny the applicant's Form I-485 for lack of jurisdiction.

¹ A Notice To Appear was issued on March 9, 2009 placing the alien into removal proceedings before an Immigration Judge on March 23, 2009. The alien had an initial hearing before the Immigration Judge on April 15, 2009 and his next scheduled hearing is on November 18, 2009. The director certified his decision to the AAO on June 12, 2009.