

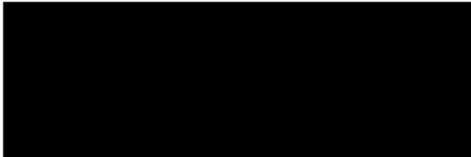
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



A1

Date: Office: DALLAS, TEXAS

FILE:

AUG 15 2011

IN RE: Applicant:

APPLICATION: 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Dallas, Texas, denied the application to register permanent residence or adjust status (Form I-485) and certified her decision to the Administrative Appeals Office (AAO) for review. The AAO director's decision will be affirmed and the application will remain denied.

The applicant seeks to adjust his status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255, based upon his marriage to a U.S. citizen. The director denied the application on July 18, 2008 because no visa was available to the applicant, as the alien relative petition (Form I-130) that was filed on his behalf had been denied on the same date. The director certified her decision to the AAO for review, providing the applicant a period of 30 days to submit a brief or other evidence for consideration. The applicant through counsel responded with additional evidence.

Section 245(a) of the Act states:

The status of an alien who was inspected and admitted or paroled into the United States . . . 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.

The evidence submitted by the petitioner in response to the certification notice primarily addresses the director's reasons for denying the Form I-130. The director certified her decision on the Form I-485 only, not her decision on the alien relative petition. As the Form I-130 remains denied, an immigrant visa is not available to the applicant pursuant to section 245(a) of the Act, and the denial of the Form I-485 was the proper result.¹ Consequently, the AAO will not disturb the director's decision.

As in all proceedings, the applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision, dated July 18, 2008, is affirmed. The application remains denied.

¹ We note that the alien appealed the director's July 18, 2008 denial of the Form I-130 to the Board of Immigration Appeals (BIA). On February 24, 2010, the BIA remanded the matter to the director for entry of a new decision, and she again denied the Form I-130 on August 9, 2010. The record contains no evidence that the Form I-130 has been approved.