

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



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

A1

FILE: [REDACTED]

Office: DALLAS, TEXAS

Date:

JAN 07 2011

IN RE:

Applicant: [REDACTED]

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 APPLICANT:

[REDACTED]

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.

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 will withdraw the director's certified decision and remand the matter.

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. The director initially denied the application to adjust status on August 6, 2009. On September 8, 2009, the applicant filed a motion to reopen and reconsider the director's decision. On November 3, 2009, the director granted the applicant's motion and informed him that his interview date would be rescheduled and he would be scheduled for a biometrics appointment. The director subsequently canceled that appointment. On January 7, 2010, the director again denied the Form I-485 application. The record contains another denial decision that is undated.

The record contains a Notice of Certification (Form I-290C) that is undated. It is not clear, therefore, whether this notice was mailed to the applicant and his attorney of record as required pursuant to 8 C.F.R. § 103.4(a)(2).¹ In addition, the director committed a procedural error that was prejudicial to the applicant. The record reflects that, prior to issuing the Form I-290C, the last action taken by the director in this matter was her January 7, 2010 denial decision, or possibly the other decision that is undated. Attached to the Form I-290C is the director's November 3, 2009 decision to reschedule the applicant's adjustment interview. The director's response to the applicant's motion to reopen and reconsider was to schedule an appointment, then cancel the appointment, and then issue two different denial decisions, one dated January 7, 2010 and the other undated. Only the undated decision addresses the arguments advanced by the applicant's counsel in the motion to reopen and reconsider.

Once a director issues a decision to deny an application, she may not prepare a new denial decision without first issuing a Service motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), which states:

Service motion with decision that may be unfavorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

Here, if the director desired to issue a new decision subsequent to her January 7, 2010 denial letter, she was required to issue a Service motion to reopen pursuant to 8 C.F.R. § 103.5(a)(5)(ii). Through the issuance of a motion, she would provide the applicant a 30-day period to submit a brief or other evidence. Only after that 30-day period had expired or the applicant had waived the time period would the director have been able to render a decision on the Service motion, a decision which she

¹ We note that neither the applicant nor counsel has supplemented the record with any evidence for the AAO to consider.

then could have certified to the AAO for review.²

As the applicant was not properly notified that his case was being certified to the AAO for review, and as the director failed to issue a Service motion to reopen, we are withdrawing the director's certification and remanding the matter for further processing.

ORDER: The matter is remanded to the director. The director should issue a notice to the applicant and his attorney that the director is going to reopen the proceeding on her own motion and enter a new decision that may be unfavorable to the applicant. That notice should be dated, including the file copy of the notice. The director should give the applicant 30 days to submit a brief in support of the adjustment application. After receipt of the brief or after the 30-day period, the director should issue a new decision. That decision should be dated, including the file copy of the decision. If the director wishes to certify that decision to the AAO for review, the director must inform the applicant that the decision is being certified to the AAO for review by providing the applicant and his attorney with a copy of Form I-290C and the decision that is being certified. See 8 C.F.R. § 103.4(a)(2). [REDACTED] should be dated, including the file copy of the notice of certification. [REDACTED] should provide the applicant with the correct address of the AAO, which is shown at the top of the first page of this remand notice. The director is not required to certify her decision to the AAO for review, as certification is appropriate when a case involves an unusually complex or novel issue of law or fact. [REDACTED] This case does not involve an unusually complex or novel issue of law or fact.

² Only when an officer reconsiders a previously-issued decision and intends to take favorable action may he or she combine the motion and the favorable decision in one action. 8 C.F.R. § 103.5(a)(5)(i).