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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**

A<sub>1</sub>



Date: **FEB 02 2012** Office: TEXAS SERVICE CENTER

FILE:

IN RE: Applicant:

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

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 Director, Texas Service Center (“the director”), denied the application to register permanent residence or adjust status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO) for review. In a prior proceeding, the AAO affirmed the director’s denial decision and the applicant subsequently submitted a motion to reconsider.<sup>1</sup> The motion shall be granted; the AAO’s prior 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(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1255(i).

Section 245(i) of the Act states, in pertinent part:

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

\* \* \*

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d) of--

- (i) a petition for classification under section 204 that was filed with the Attorney General on or before April 30, 2001; or
- (ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date . . . .

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence.

\* \* \*

*Grandfathered alien* means an alien who is the beneficiary . . . of:

\* \* \*

(B) An application for labor certification . . . that was properly filed pursuant to the regulations of the Secretary of Labor on or before April 30, 2001, and which was approvable when filed.

8 C.F.R. § 245.10(a)(1)(i).

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<sup>1</sup> Counsel incorrectly indicated on the Notice of Appeal or Motion (Form I-290B) at Part 2.A that he was filing an “appeal.” Despite such error, we shall consider the filing to be a motion to reconsider.

*Approvable when filed* means that, as of the date of the filing of the qualifying . . . application for labor certification, the qualifying . . . application was properly filed, meritorious in fact, and non-frivolous (“frivolous” being defined herein as patently without substance). This determination will be made based on the circumstances that existed at the time the qualifying . . . application was filed. A visa petition that was properly filed on or before April 30, 2001, and was approvable when filed, but was later withdrawn, denied, or revoked due to circumstances that have arisen after the time of filing, will preserve the alien beneficiary’s grandfathered status if the alien is otherwise eligible to file an application for adjustment of status under section 245(i) of the Act.

8 C.F.R. § 245.10(a)(3).

The burden of proof is on the applicant to demonstrate eligibility for the requested benefit. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the factual and procedural history was adequately documented in its prior decision, the AAO shall repeat only certain facts as necessary here.

The applicant was listed as the beneficiary on a Form ETA 750, Application for Alien Employment Certification (labor certification application), filed on his behalf by [REDACTED] with an April 30, 2001 date of acceptance for processing. On February 24, 2005, the U.S. Department of Labor (DOL) issued to House of the [REDACTED] and [REDACTED] *Letter*. According to DOL, the existence of House of the Future could not be verified and [REDACTED] was requested to submit a copy of its Articles of Incorporation, business license, and state registration or other official document to establish itself as a *bona fide* business entity. In response, House of the Future withdrew the labor certification application, citing that the company had closed.

In denying the adjustment application, the director determined that the labor certification filed by House of the Future was not approvable when filed. On appeal, the petitioner submitted the following evidence relating to House of the Future: payroll records for the period ending April 21, 2001; Quarterly Federal Tax Return (Form 941), dated March 31, 2001; and bankruptcy documents from the U.S. Bankruptcy Court, District of New Jersey.<sup>2</sup> The applicant claimed that the evidence incontrovertibly demonstrated that House of the Future was a *bona fide* business entity and was conducting business as of April 30, 2001.

In its appellate decision, the AAO determined that the DOL’s issuance of a *Corrections List* and *Selection of Continuation Option Letter* demonstrated that the DOL found the labor certification application to be deficient and not clearly approvable when filed as that term is defined at 8 C.F.R. § 245.10(a)(3). The AAO noted further that the payroll records and Form 941 showed that House of the Future had only one employee, who was the company’s owner, and that these documents did not

demonstrate that House of the Future was, as DOL required it to establish, a *bona fide* business entity.

On motion, counsel states that the DOL's issuance of the *Corrections List* and *Selection of Continuation Option Letter* cannot be considered evidence that the labor certification application was not approvable when filed. Counsel claims that the AAO concluded that [REDACTED] was not a *bona fide* business entity because it went bankrupt in 2005. According to counsel, House of the Future's dissolution in 2003 proves that it existed in 2001, and that the AAO failed to abide by the policy guidance in the March 9, 2005 memorandum entitled *Clarification of Certain Eligibility Requirements Pertaining to an Application to Adjust Status under Section 245(i) of the Immigration and Nationality Act*, HQPRD 70/23.1.

Contrary to counsel's assertions on motion, the AAO never pointed to House of the Future's declaration of bankruptcy as evidence that the labor condition application was not approvable when filed. As noted in our prior decision, the payroll records and Quarterly Federal Tax Return (Form 941) showed that House of the Future had only one employee, who was the company's owner. The record contained no evidence that when it filed a labor condition application on the applicant's behalf House of the Future was conducting business or was a *bona fide* business entity. Its eventual bankruptcy was not considered in our determination of whether the labor condition application was approvable when filed. Counsel's assertion that House of the Future's bankruptcy in 2003 is evidence that it existed in 2001 has no merit, as the DOL's decision to issue the *Corrections List* and *Selection of Continuation Option Letter* related to whether the company was *bona fide*, despite its existence in name in corporate documents. Although counsel asserts that the [REDACTED] existed in 2001, he has presented no evidence that the company was a *bona fide* business entity, and his unsupported assertions carry no weight in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

### *Conclusion*

The applicant has not demonstrated through the filing of a motion his eligibility to adjust his status pursuant to section 245(i) of the Act because the labor certification application filed on his behalf by House of the Future with an April 30, 2001 processing date was not approvable when filed. 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. Here, the applicant has not met his burden.

**ORDER:** The AAO's prior decision, dated August 22, 2011, is affirmed. The application remains denied.