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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 2 2 2014 Office: VERMONT SERVICE CENTER FILE:

IN RE: APPLICANT:

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in T Nonimmigrant Status Pursuant to Section 245(l) of the Immigration and Nationality Act, 8 U.S.C. § 1255(l)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) denied the Application to Register Permanent Residence or Adjust Status (Form I-485), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter returned for further processing and entry of a new decision.

The applicant was admitted to the United States in derivative T status and seeks to become a lawful permanent resident under section 245(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(l). The director found the applicant ineligible for lawful permanent residency because he no longer held derivative T status at the time of filing his Form I-485. On appeal, the applicant submits a brief.

Applicable Law

Section 245(l)(1) of the Act provides for the adjustment of status to lawful permanent residency of any person admitted under section 101(a)(15)(T)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(T)(ii), as the spouse, parent, sibling, or child of a T-1 nonimmigrant.[1] The implementing regulations require, in part, the qualifying family member to hold derivative T status at the time of filing the Form I-485 adjustment application. *See* 8 C.F.R. § 245.23(b)(2).

Facts and Procedural History

In March 2008, the applicant's mother submitted an Application for T Nonimmigrant Status (Form I-914) and concurrently filed an Application for Immediate Family Member of T-1 Recipient (Form I-914A) on the applicant's behalf. U.S. Citizenship and Immigration Services (USCIS) approved both applications, granting the applicant's mother T-1 status and the applicant derivative T-3 status until August 25, 2012. The applicant's mother became a lawful permanent resident in March 2010.

The applicant was living in Honduras at the time USCIS approved his Form I-914A and he subsequently obtained his T-3 visa at the U.S. consulate and was admitted to the United States in derivative T-3 status on August 15, 2012. He submitted the instant Form I-485 to USCIS less than two weeks after his arrival into the United States. The director denied the application, determining that because the applicant's mother had already become a lawful permanent resident, the applicant no longer held derivative T status at the time of filing his Form I-485. On appeal, the applicant asserts, in pertinent part, that the director's decision is erroneous under the implementing statute and regulations.

[1] Section 101(a)(15)(T)(ii) of the Act describes qualifying relatives eligible for derivative T status. If the T-1 principal is twenty-one years of age or older, her spouse and children are qualifying family members eligible for derivative T status. Section 101(a)(15)(T)(ii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(T)(ii)(II).

Analysis

We conduct appellate review on a *de novo* basis. Upon review, the applicant has overcome the stated basis for the director's decision.

Section 245(l)(1) allows USCIS to adjust the status of an individual who was admitted to the United States as the child of a T-1 nonimmigrant. Here, the applicant was admitted to the United States as a derivative T-3 based on an approved Form I-914A. His derivative T status has not been revoked as none of the grounds for revocation specified in the regulation at 8 C.F.R. § 214.11(s) exist in this case. Neither the statute nor the regulations direct that derivative T status, once properly granted, is lost upon the T-1 principal's admission to lawful permanent residency. The director's contrary decision is hereby withdrawn.

Conclusion

The regulation at 8 C.F.R. § 245.23(b)(4) requires a T derivative to demonstrate that he is admissible to the United States or that any ground of inadmissibility has been waived. As the director denied the application based solely on the applicant's failure to demonstrate that he held derivative T status when filing his Form I-485, the director did not address the applicant's admissibility. Accordingly, we return the matter to the director for further processing of the application and entry of a new decision once the director has determined the applicant's admissibility. In these proceedings, it is the applicant's burden to establish his eligibility for lawful permanent residency. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 14, 2013, decision is withdrawn and the matter returned to the Vermont Service Center for continued processing of the Form I-485 and entry of a new decision that the director shall certify to the AAO for review if it is adverse to the applicant.