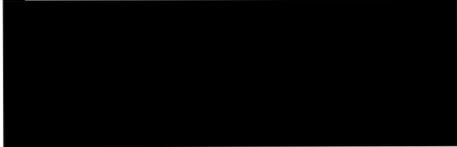


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FILE: [REDACTED]
MSC 07 184 12003

Office: TEXAS SERVICE CENTER Date: **SEP 22 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from Temporary to Permanent Resident Status was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and returned to the director. The director may *sua sponte* reopen the decision.

The applicant submitted a Form I-698, Application to Adjust from Temporary to Permanent Resident on March 30, 2007. The director issued a Request for Evidence (RFE) to the applicant on August 8, 2007. The RFE afforded the applicant 90 days within which to provide additional evidence in support of his application. On December 13, 2007, the director denied the application, stating that because his office did not receive a response to the RFE, the applicant had abandoned his application.

Upon his Motion to Reopen and Reconsider, counsel for the applicant asserts that the applicant responded timely to the RFE. He submits the return receipt and a tracking receipt, which both indicate that additional evidence was received by the director on September 11, 2007. However, counsel asserts that on September 12, 2007 the Texas Service Center returned that evidence to the applicant, informing him that the director's decision was completed prior to his submission of the **additional evidence. Counsel submits a photocopy of this correspondence. As the applicant** submitted the response to the director's decision in less than 90 days, this response to the RFE was timely. Because the submission was made timely and because the director's decision was not issued until December 13, 2007, the return of the evidence submitted in response to the RFE was made in error.

In this case, the applicant submitted a Form I-290B, Notice of Appeal or Motion. At part #2 of this For-I-290B, counsel for the applicant indicated that he was filing a combined motion to reopen and reconsider the decision. Though the AAO has jurisdiction over an appeal of the director's decision pursuant to the regulation at 8 C.F.R. § 245a.3(j), it does not have jurisdiction over a motion to reconsider. Therefore, the AAO must reject the motion to reconsider and reopen based on a lack of jurisdiction over the matter.

The AAO notes that by returning the applicant's timely response to the RFE before the final adjudication was complete, the director failed to consider the entire record of proceeding before denying the application, as is required by the regulation at 8 C.F.R. § 245a.3(i).

It is further noted that, pursuant to 8 C.F.R. § 245a.3(k) the director may *sua sponte* reopen and reconsider any adverse decision. The regulation goes on to state that when an appeal to the AAO has been filed, the director may issue a new decision. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 245a.3(l).

ORDER: The appeal is rejected because of the AAO's lack of jurisdiction over the matter. The director may *sua sponte* reopen the decision for reconsideration. As such, the motion to reconsider will be returned to the director.