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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 03 213 50541

Office: VERMONT SERVICE CENTER

Date: FEB 14 2005

IN RE:

Applicant:

PETITION: Application to Register Permanent Residence or Adjust Status pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application to register permanent residence or adjust status was denied by the director, Vermont Service Center. The applicant filed a timely "Motion for Reopen/Reconsideration" [sic]. The director made no decision on the motion, and forwarded the case file to the Administrative Appeals Office (AAO). The case will be remanded for further consideration.

No notice of appeal has been filed in this case. Moreover, even if a notice of appeal had been filed, the AAO would lack jurisdiction over any such appeal.

The applicant seeks to adjust status to that of lawful permanent resident under section 245(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a). The director denied the application on September 1, 2004 on the ground that the applicant had claimed to qualify as the derivative spouse or child of a person admitted in an immigrant category which allows derivative status for spouses and children, but that CIS records indicated that the application for adjustment of status filed by the principal applicant had been denied or withdrawn.

The applicant's Motion for Reopen/Reconsideration was received by the director's office on September 30, 2004, within the thirty-day period allowed for motions to reopen and motions to reconsider. See 8 C.F.R. § 103.5. In the motion, the applicant asserted that the principal applicant and the petitioner of a Form I-140 for the principal applicant were filing motions for reconsideration of the director's decisions dated September 1, 2004 to deny the principal applicant's I-485 application and the I-140 petition on which it was based.

Although the Motion for Reopen/Reconsideration filed by the derivative adjustment of status applicant in the instant case was timely, the director made no decision on the motion, and forwarded the case file to the AAO.

Under paragraph (U) of the Department of Homeland Security Delegation Number 0150.1, *Delegation to the Bureau of Citizenship and Immigration Services* (CIS), CIS is delegated the "authority to exercise appellate jurisdiction over matters described in 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003)." The regulations allow for the AAO to adjudicate an appeal from the denial of an application to register permanent residence or adjust status filed under section 245(a) of the Act in very limited circumstances. The regulation grants the AAO appellate jurisdiction over section 245(a) adjustment applications only "when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act." See 8 C.F.R. § 103.1(f)(e)(E)(iii)(JJ), (as in effect on February 28, 2003). The denial of the applicant's I-485 was not related to those grounds. Therefore the AAO would not have jurisdiction over an appeal of the director's decision, even if a notice of appeal had been submitted.

No appeal has been filed in the instant case. Therefore nothing is pending before the AAO.

**ORDER:** The case is remanded to the director for a decision on the applicant's motion.