



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 21 2006

IN RE:

Petitioner:

[REDACTED]

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 PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Houston, Texas District Office denied the Application to Register Permanent Residence or Adjust Status (Form I-485). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On December 19, 2001, the applicant filed a Form I-485, application to adjust status. The applicant's adjustment was based upon two immigrant petitions. First, the applicant's late husband filed a Form I-130 petition for alien relative on the applicant's behalf, which was approved on September 24, 1993. Second, the applicant filed a self-petition, Form I-360, under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the spouse of an abusive lawful permanent resident of the United States.

On January 31, 2005, the District Director denied the Form I-485 application because the applicant was ineligible to adjust status on the basis of either immigrant petition. The director determined that the Form I-360 petition was approved in error because the applicant's abusive husband, [REDACTED] a U.S. lawful permanent resident, had died before the Form I-360 petition was filed. The record contains a copy of Mr. [REDACTED] death certificate showing that he died on May 26, 2002. The applicant filed her Form I-360 nearly five months later on October 17, 2002. While the widow of an abusive U.S. citizen may file a Form I-360 within two years of her husband's death pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, no such provision exists for widows of abusive U.S. lawful permanent residents. See Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

Despite the applicant's inability to adjust status based on the erroneously approved Form I-360, the District Director considered humanitarily reinstating the Form I-130 filed by Mr. [REDACTED] pursuant to the regulation at 8 C.F.R. § 205.1(a)(3)(i)(C). However, the applicant was convicted of endangering a child, a felony offense, on May 28, 1996 by the District Court of Harris County Texas. On August 18, 2004, the District Director issued a Request for Evidence (RFE) asking the applicant to submit a certified copy of the indictment that led to her conviction. The RFE notified the applicant that her Form I-485 application would be denied if she failed to submit the requested evidence by September 18, 2004. The applicant did not respond to the RFE.

Accordingly, on January 31, 2005, the District Director automatically revoked the approval of the Form I-130 filed by Mr. [REDACTED] pursuant to 8 C.F.R. § 205.1(a)(i)(C) and denied the Form I-485 because the applicant was no longer the beneficiary of an approved immigrant petition and because she was inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, as an alien convicted of a crime involving moral turpitude. The Vermont Service Center subsequently revoked the approval of the applicant's Form I-360 on March 28, 2005.

On March 2, 2005, the applicant filed a Form I-290B on which she indicates that she is appealing the January 31, 2005 decision of the District Director denying her Form I-485 application. The District Director's decision cannot be appealed. The regulation at 8 C.F.R. § 245.2(a)(5)(ii) provides: "No appeal lies from the denial of an application [to adjust status under section 245 of the Act] by the

director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240.”

Moreover, the AAO has no jurisdiction to consider this appeal. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO only has jurisdiction over adjustment applications “when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.” 8 C.F.R. § 103.1(f)(3)(iii)(JJ) (as in effect on February 28, 2003). The applicant’s case does not fall within our jurisdiction.

No appeal lies from the director’s decision denying the Form I-485 application and the AAO is without jurisdiction to consider the appeal. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.