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U.S. Citizenship  
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Services

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FILE:



Office: MIAMI, FL

Date: OCT 02 2006

IN RE:



APPLICATION:

Application for Permanent Residence 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, FL. The Administrative Appeals Office (AAO) affirmed the director's decision on certification. The district director filed a motion to reconsider the AAO decision. The prior decisions are withdrawn and the application is approved.

The record reflects that the applicant is a native and citizen of Argentina who was found to be ineligible to adjust her status to lawful permanent resident status pursuant to section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255, based on a finding of inadmissibility pursuant to section 212(a)(4) of the Act, 8 U.S.C. § 1182(a)(4).

The district director originally concluded that the applicant's spouse is required to file an affidavit of support for the applicant as he owns more than five percent of the petitioning company, however, because he is neither a U.S. citizen or lawful permanent resident, he does not qualify as a sponsor and cannot seek a joint sponsor. *Decision of the District Director*, at 4, dated May 12, 2005. The AAO found that the district director's decision was correct as the relevant law required the applicant's spouse to file Form I-864, Affidavit of Support under Section 213A of the Act, but he did not qualify as a sponsor as he is not a citizen, national or lawful permanent resident of the United States. *Decision of AAO*, dated July 6, 2006.

The record includes, but is not limited to, the applicant's labor certification, employment-based immigrant petition and adjustment of status application. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that [REDACTED] was incorporated in the state of Florida on May 8, 1997 and the issuance of 7,500 shares of common stock was authorized. On November 21, 1997, Unicenter issued 51 shares of stock to the applicant's spouse and 49 shares to another owner. There is no indication that any other shares were issued since then.<sup>1</sup> Unicenter filed ETA Form 750, Application for Alien Employment Certification, on October 4, 1999 and it was certified by the Department of Labor on March 27, 2001. On May 21, 2001, the applicant married her current spouse. On September 14, 2001, Unicenter filed Form I-140, Immigrant Petition for Alien Worker, on behalf of the applicant. The I-140 petition was approved on February 27, 2002. On October 8, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, and her spouse filed a derivative I-485 application.

Section 212(a)(4) of the Act states, in pertinent part:

(D) Certain employment-based immigrants. -Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is excludable under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

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<sup>1</sup> The record reflects that the applicant's spouse had one hundred percent stock ownership of Unicenter in 2002(as opposed to fifty-one percent ownership).

The district director cites an interoffice memorandum, dated June 27, 2006, which details a revision to the section of the Adjudicator's Field Manual (AFM) dealing with Form I-864. *Motion to Reconsider*, at 1, dated August 29, 2006.

Chapter 20.5 of the AFM now states, in pertinent part:

(b) Persons Required to Have Sponsorship. The following intending immigrants are required to have Form I-864 filed on their behalf:

- Employment based immigrants if a relative of the alien has a significant ownership interest (5% or more) in the for-profit petitioning entity, **and is a U.S. citizen or a Lawful Permanent Resident.**

The applicant's spouse has a significant ownership interest in the for-profit petitioning entity, however, he is not a U.S. citizen or lawful permanent resident. Therefore, the applicant is not required to have Form I-864 filed on her behalf and she is no longer inadmissible under section 212(a)(4)(D) of the Act.

As the applicant is no longer inadmissible under section 212(a)(4)(D) of the Act, the applicant's adjustment of status application is approved.

**ORDER:** The previous decisions are withdrawn and the application is approved.