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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

AI

APR 20 2004

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:

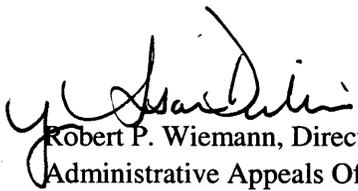
IN RE: Applicant: [Redacted]

APPLICATION: 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:
[Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The Application to Register Permanent Residence or Adjust Status (Form I-485) was found not to be readily approvable by the Director, Texas Service Center. Therefore, the director properly served the applicant with notice of her intent to deny the application, and her reasons therefore, and ultimately denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native of Haiti and citizen of Canada, born on July 8, 1949. She was last admitted to the United States on September 1, 1997 as a TN, NAFTA Professional, at Champlain, New York. She was admitted until February 28, 1998 and subsequently received an extension of stay until February 28, 1999.

On August 21, 1998, the applicant filed Form I-485. Her application is based upon an approved Immigrant Petition for Alien Worker (Form I-140) as a skilled worker or professional under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). The Application for Alien Employment Certification (Form ETA 750), that accompanied this petition, indicates the beneficiary's eligibility for blanket labor certification pursuant to 20 C.F.R. § 656.10(a), Schedule A, Group 1, based upon her occupation as a registered nurse.

An alien applying for adjustment of status to perform labor in a health care occupation as described in 8 C.F.R. § 212.15(c) must present evidence at the time he or she applies for adjustment of status, and, if applicable, at the time of the interview on the application, that he or she has a valid certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or the National Board of Certification in Occupational Therapy. 8 C.F.R. § 245.14.

The director requested that the applicant provide the CGFNS certificate and a statement clarifying her attempts to obtain such certificate on October 7, 1999. The record does contain a response to this request in which counsel asked that an extension of time be granted in order to provide the certificate. Since the certificate was not provided, the applicant was sent a Notice of Intent to Deny dated October 9, 2002. Again, the applicant did not provide the requested evidence, and the application was denied. The applicant subsequently filed an appeal.

The regulation at 8 C.F.R. § 245.2(a)(5) states, in pertinent part:

(ii) *Under section 245 of the Act.* [N]o appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 C.F.R. part 240.

The regulation cited above precludes the AAO from considering any appeal that is filed pursuant to the denial of an application for adjustment of status. Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.