70 No. 34 Interpreter Releases 1172

Interpreter Releases
September 3, 1993

INS NIXES NEW ADJUSTMENTS OF STATUS FOR CURRENT PERMANENT RESIDENTS

In recent correspondence, the INS has reiterated its position that aliens who have previously attained permanent residence may not adjust to permanent residence under a different basis. This position is somewhat contrary to the State Department's, which holds that an alien may obtain an immigrant visa even if he or she previously obtained a visa under a different basis.

Edward H. Skerrett, the Chief of the Immigrant Branch at the INS' Office of Adjudications, discussed this issue in an exchange of correspondence with Dallas, Texas attorney Eugenio Cazorla. Mr. Skerrett's July 19, 1993 letter is reproduced in Appendix VII of this Release.

In his initial inquiry, Mr. Cazorla explained that he filed immigrant visa petitions and applications for adjustment of status for two clients. At the interview, the INS examiner advised that since the applicants were already lawful permanent residents, she could only adjudicate the petitions, as INA §245 does not authorize adjustment of status for resident aliens.

Mr. Cazorla disagreed. He noted that the State Department will issue an immigrant visa to resident aliens who wish to obtain permanent residence under a different basis of eligibility. This is done, for example, to prevent some countries from detecting on the alien's green card that he or she obtained permanent residence after being granted asylum. [45]

In response, Mr. Skerrett pointed out that the INS is not bound by the State Department's opinion. “While immigrant visa issuance and adjustment of status have many similarities and both lead to an alien becoming a lawful permanent resident of the United States, these processes are not identical,” Mr. Skerrett said. Adjustment of status, he noted, is a discretionary privilege that is not granted to all persons who qualify for lawful permanent resident status.

Mr. Skerrett pointed to INA §101(a)(20), which defines “lawfully admitted for permanent residence” as having been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws, such status not having changed. Mr. Skerrett noted that an alien's status as a permanent resident may change through dissolution in accordance with law. The INS may terminate the status for a conditional resident who fails to satisfy the requirements for removal of the conditions from status, he said. Also, adjustment may be rescinded under certain circumstances, or an alien may lose resident status through the entry of a final order of exclusion or deportation. Likewise, acquisition of citizenship also ends a person's status as a permanent resident alien, and an individual outside the U.S. may abandon permanent residence.

If none of those circumstances applies in a particular case, Mr. Skerrett said, the alien will continue to be a permanent resident. “There is no provision allowing an individual to voluntarily renounce lawful permanent resident status within the United States for the purpose of acquiring some other immigrant classification which he or she would prefer over the present classification,” he added. “Nor do we see the need for allowing an individual to apply to change his or her class of admission for lawful permanent residence.”

A 1990 legal opinion by the INS' Office of General Counsel elaborates on the Service's position in cases like this. See 67 Interpreter Releases 468, 480 (Apr. 23, 1990).

Footnotes

45 For an exchange of correspondence explaining the State Department's position, see 69 Interpreter Releases 354, 365 (Mar. 23, 1992).

End of Document