



**U.S. Citizenship  
and Immigration  
Services**

Refer to: A78 853 352

Date: **MAY 17 2004**

Dear Mrs. Freeman

Upon consideration, it is ordered that your application for status as a lawful permanent resident be denied for the following reasons:

The records of this Service reflect that you were admitted to the United States on June 13, 2001 as a nonimmigrant visitor pursuant to the Visa Waiver Pilot Program provisions of Section 217 of the Immigration and Nationality Act, as amended (the Act). On September 1, 2001, you filed an Application to Register Permanent Residence or Adjust Status (Form I-485) with this Service. This application was based upon a relative petition filed on your behalf by Robert Freeman.

Section 245 of the Immigration and Nationality Act states in pertinent part:

- (a) The status of an alien . . . may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if . . . (3) an immigrant visa is immediately available to him at the time his application is filed.

Your husband, Robert Freeman, died on February 5, 2002. Since that time, you have no longer been a spouse of a citizen of the United States; therefore, you are not entitled to status as an immediate relative under section 201(b) of the Immigration and Nationality Act, as amended. Matter of Varella, 13 I & N Dec. 453 (BIA 1970).

Under 8 CFR the authority of the Board of Immigration Appeals to review decisions on visa petitions is limited to that accorded by article 204 of the regulations, which provides only for an appeal by the petitioner. See Matter of Sano, Interim Dec. 2999 (BIA 1985). Accordingly, it is determined that you are not entitled to an appeal in this matter.

Therefore, in the absence of any indication that you are entitled to any other status, it must be determined that you have failed to establish that an immigrant visa is immediately available to you as required by Section 245(a)(3) of the Act. Furthermore, any employment authorization previously granted by this Service is hereby immediately terminated.

Title 8, Code of Federal Regulations, Part 217.4(b)(1) states:

An alien who has been admitted to the United States under the provisions of section 217 of the Act of this part, who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Form I-863, for a proceeding in accordance with § 208.2(b)(1) and (2) of this chapter.

As previously noted, you were admitted to the U.S. pursuant to section 217 of the Act. Therefore, in accordance with 8 CFR 217.4, an immigration judge will not review the denial of your adjustment of status application and there will be no further inquiry, examination, or hearing regarding this matter. If you are willing to depart the United States voluntarily and at your own expense, please contact the Deportation Branch of this Service at the above address. Otherwise, you will be contacted regarding the implementation of your departure.



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William D. McNamee  
District Director  
jpb

cc: Eric P. Lin  
Brent Renison