

April 6, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60221
Summary Calendar

KARESH KUMAR,

Petitioner,

versus

ALBERTO R. GONZALES,
U.S. Attorney General,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
A72 373 116

Before REAVLEY, DAVIS and PRADO, Circuit Judges.

PER CURIAM:*

We deny the petition for review for the following reasons:

1. Kumar seeks to take advantage of 8 U.S.C. § 1255(i) as a beneficiary of his spouse's petition for classification. The statute requires that this petition must have been filed on or before April 30, 2001.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

2. The spouse did file a visa petition on behalf of Kumar in 1997, and he filed a simultaneous application for adjustment of status. The lack of good faith of the marriage was fully developed in that proceeding, and eligibility for the visa was denied by the Immigration Judge on April 26, 2000 and then by the Board by February 19, 2002.

3. By that decision it was determined that the 1997 petition failed and Kumar could not change status.

4. We have no explanation why the INS acted on another petition filed by the spouse on December 17, 2001 and approved on January 9, 2003. However, because it was filed after April 30, 2001, it affords no help to Kumar here, as the Board has correctly held.

PETITION DENIED.