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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

File:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

DEC 10 2008

IN RE: Beneficiary:

[REDACTED]

Petition: Application to Register Permanent Resident or Adjust Status (Form I-485) under Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

IN BEHALF OF PETITIONER:

[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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant's permanent residence status was rescinded by the Field Office Director (FOD), Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Kenya. On June 21, 2008, the acting district director in Philadelphia issued to the applicant a Notice of Intent to Revoke the previously approved I-485 Application to Adjust Status. In this notice, the acting district director stated, "[y]ou[r] Application to Register Permanent Residence or Adjust Status (Form I-485) that you filed on May 15, 2002 is hereby held for the process of adjudicating your filed Form I-601." In response to this notice, counsel filed a Form I-290B on July 8, 2008, indicating that he was seeking to appeal the acting district director's decision. The AAO notes that the applicant's permanent residence status was not actually rescinded until July 29, 2008, a date after counsel filed the Form I-290B.

Because the Form I-290B was filed prior to the rescission of the applicant's permanent residence status, the appeal will be rejected. Even if counsel had filed a timely appeal, such an appeal would have been rejected because the AAO does not have appellate jurisdiction over an appeal from a decision to either rescind or deny permanent residence status.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992) All substantive or legislative rule making requires notice and comment in the Federal Register.

Because the AAO does not have jurisdiction over an appeal from the decision to rescind or deny permanent residence status filed on a Form I-485, Application to Register Permanent Residence or Adjust Status, the appeal must be rejected.

ORDER: The appeal is rejected.