



U.S. Citizenship
and Immigration
Services

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[REDACTED]

File:

[REDACTED]

Office: LOS ANGELES, CA

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 is appealing the denial of the adjustment application and the decision by Immigration and Customs Enforcement (ICE) to reinstate a prior order of removal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of El Salvador who was removed from the United States in May 1989 and again in May 2008 pursuant to an order of deportation. The alien reentered the United States without inspection or prior authorization from the Secretary of the Department of Homeland Security. The applicant filed an I-485 Adjustment of Status Application in 1997 based upon his marriage to a U.S. citizen. That application was denied in June 2003 by the District Director, Los Angeles. The AAO does not have appellate jurisdiction over the reinstatement of a prior removal order by ICE or from the denial of an application for adjustment of 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.

Counsel's filing of an appeal regarding the reinstatement of the applicant's prior removal order is without merit, as the AAO does not have jurisdiction over this matter or the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.