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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: DENVER, CO

Date:

DEC 20 2007

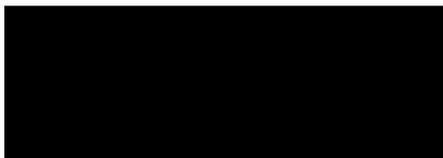
IN RE:



APPLICATION:

Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the District Director to treat as a motion to reopen.

The record reflects that the applicant is a citizen of Cuba. On July 29, 2005, the District Director denied the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status under the Cuban Adjustment Act of November 2, 1966 (Public Law 89-732), finding the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The AAO notes that the District Director gave the applicant notice of his right to appeal the denial of the Form I-485, Application to Register Permanent Resident or Adjust Status, to the AAO. Pursuant to the directions he received, the applicant paid the required fee and timely appealed the District Director's decision.

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).

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.

While the AAO may consider Form I-485 applications filed under the Cuban Adjustment Act (CAA) when they are certified by the District Director, there is no direct appeal of a denial of a CAA application. Accordingly, the appeal will be remanded to the District Director to treat as a motion to reopen.

ORDER: The appeal is remanded to the District Director to treat as a motion to reopen.