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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SANTA ANA, CALIFORNIA

Date: FEB 07 2008

IN RE:



APPLICATION:

Application for Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Santa Ana, California and is now before the Administrative Appeals Office (AAO). The matter will be remanded to the Field Office Director.

The record reflects that the applicant is a citizen of Canada. On May 24, 2006, the field office director denied the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, and the applicant filed a motion to reopen that denial. The Field Office Director improperly forwarded the motion to the AAO indicating that it was an appeal. The AAO notes that both appeals and motions are filed on the same form, Form I-290B. In this instance, counsel clearly indicated that it was a motion, not an appeal. The regulations at 8 C.F.R. § 103.5, relating to motions, state in pertinent part:

(a)(1)(ii) Jurisdiction. The official having jurisdiction is the official who made the latest decision in the proceeding....

In this instance, the Field Office Director clearly has jurisdiction.

Further, the AAO does not have appellate jurisdiction over an appeal 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).

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*, 965 F.2d at 1178. All substantive or legislative rule making requires notice and comment in the Federal Register.

This matter was improperly forwarded a motion to reopen to the AAO as an appeal. In addition, the AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. Accordingly, the matter must be remanded to the Field Office Director for any further action.

ORDER: The matter is remanded to the Field Office Director.