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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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FILE:

Office: TEXAS SERVICE CENTER

Date:

JUL 18 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 and subsequent motions to reconsider were denied by the Director, Texas Service Center. The issue is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected.

On November 28, 2007 the director denied the Application to Register Permanent Status or Adjust Status. (Form I-485). On December 27, 2007, and again on February 7, 2007, the applicant filed Forms I-290B Notice of Appeal or Motion (Form I-290B). On both Forms I-290B he indicated that he wished to appeal the director's decision. The director treated both Forms I-290B as motions and affirmed the initial denial. At the insistence of counsel, the director forwarded the matter to the AAO. Counsel refers to an AAO decision which he indicates has a similar fact pattern. He asserts that the AAO completed a decision on that matter and therefore has jurisdiction over this matter. Though not included in the record, counsel indicates that the other case was certified to the AAO. The AAO notes however, that a certification under 8 C.F.R. § 103.4 is distinct from an appeal under 8 C.F.R. § 103.3. While the AAO may accept a certification from a Service office regarding matters not in its jurisdiction, it cannot accept appeals regarding case types not within its appellate jurisdiction.

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.

The AAO does not have jurisdiction over an appeal of a denial of a motion to reconsider a Form I-485 denial. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes at the outset that as the director has responded to both Forms I-290B, there is technically no matter to be decided, but, to clarify the issue, the AAO will respond to the matter at hand.