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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File:



Office: TAMPA, FLORIDA

Date:

MAY 06 2009

IN RE: Applicant:



Petition: Application to Register Permanent Residence or Adjust Status (Form I-485) 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Tampa, Florida, and the matter is now before the Administrative Appeals Office (AAO). As there is no pending appeal to adjudicate, the matter will be rejected as moot.

The record reflects that the applicant is a native and citizen of Haiti. On April 24, 2007, the director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant filed an appeal from that denial, which the director properly treated as a motion because the denial of a Form I-485 may not be appealed. On August 29, 2007, the director denied the applicant's motion. In a September 26, 2007 letter to the director, counsel claimed that the director did not have the authority to render a decision on the appeal that the petitioner filed in May 2007. The Tampa District Office forwarded the record to the AAO for review.

As a preliminary matter, the AAO notes that 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.

Although the petitioner did file an appeal, 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. Therefore, the director's decision to treat the matter as a motion, although not required, was proper. As the petitioner paid one fee for the adjudication of the Form I-290B, and as the petitioner received a decision pursuant to the filing of the Form I-290B, there is nothing before the AAO to review. The AAO, therefore, rejects the matter as moot.

ORDER: The matter is rejected as moot.