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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

L2

File:

[REDACTED]

Office: ATLANTA GEORGIA

Date:

MAY 06 2009

IN RE: Applicant:

[REDACTED]

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:

[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 application was denied by the Acting District Director, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Pakistan. On September 6, 2006, the director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant filed a motion to reopen or reconsider the director's decision. On May 23, 2007, the director affirmed his decision and determined that the application should be denied. Counsel appealed the director's denial decision to the AAO on June 4, 2007.

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 (1<sup>st</sup> 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 AAO must reject the appeal, and the director's decision to deny the application stands.

**ORDER:** The appeal is rejected. The application is denied.