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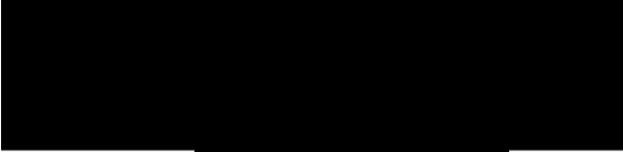
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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U.S. Citizenship  
and Immigration  
Services

A1



File:

MSC 08 157 20985

Office: CHICAGO FIELD OFFICE

Date: JUL 20 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 PETITIONER:

SELF-REPRESENTED

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 Field Office Director, Chicago, Illinois and 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 Mexico. On March 13, 2009, the field office director denied the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, and the applicant filed an appeal from that denial. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status.<sup>1</sup>

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 her 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.

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 appeal must be rejected.<sup>2</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup> The AAO notes that the field office director certified the applicant's appeal to the AAO for review; however certification is used to certify the director's decision for the AAO's review of specific, unique issues. Certification is not a method for forwarding an appeal for the AAO's review when the AAO does not have jurisdiction.

<sup>2</sup> The AAO notes that, even if it had appellate jurisdiction over this appeal, the appeal would have been rejected because it was not timely filed. The director issued the denial decision on March 13, 2009 and the appeal was received by U.S. Citizenship and Immigration Services (USCIS) 39 days later, on April 21, 2009. An affected party must file the complete appeal within 30 days of service of the unfavorable decision. 8 C.F.R. § 103.3(a)(2)(i). If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).