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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



U.S. Citizenship
and Immigration
Services

A1

FILE:

Office: SAN FRANCISCO

Date:

SEP 29 2009

IN RE:

APPLICATION:

Application for Adjustment of Status to Permanent Residence under 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 that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment of status was denied by the District Director, San Francisco, California. 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 Mexico. On March 6, 2006, the director determined that the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming U.S. citizenship, and denied the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485) accordingly. The director noted that there is no waiver available for the ground of inadmissibility arising under section 212(a)(6)(C)(ii) of the Act. On April 20, 2006, the applicant, through counsel, filed an appeal of the denial of his Form I-485 with the AAO. The applicant asserted that he should have been granted the opportunity to file an Application for Waiver of Ground of Inadmissibility (Form I-601) and/or an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). The director treated the applicant's appeal as a motion to reopen his Form I-485. On August 8, 2006, the director denied the motion on the grounds that a Form I-601 would serve no purpose because the Immigration and Nationality Act does not provide a waiver for the ground of inadmissibility arising under section 212(a)(6)(C)(ii). The director forwarded the matter to the AAO. The denial of the applicant's Form I-485 is now on appeal before the AAO.

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 v. Sullivan*, 965 F.2d 1175, 1178 (1st 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 April 20, 2006 appeal from the denial of the applicant's Form I-485 adjustment application must be rejected.

ORDER: The appeal is rejected.