

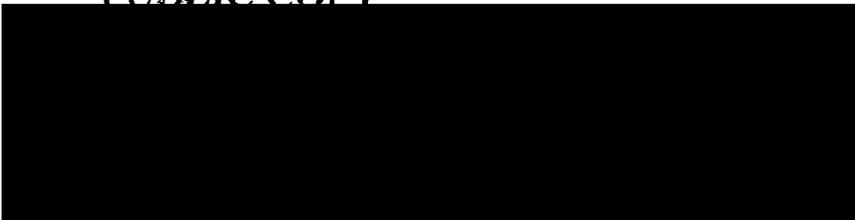
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FILE:

Office: MIAMI, FLORIDA

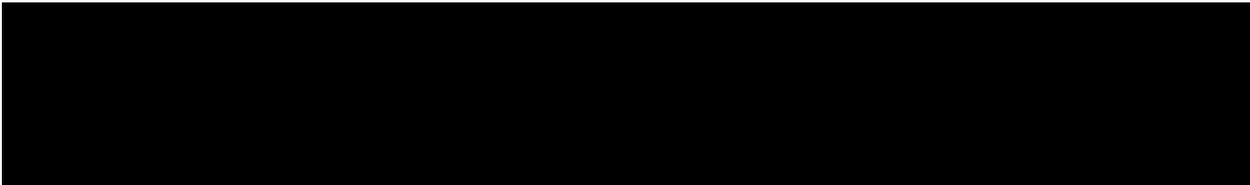
Date: FEB 28 2008

IN RE:



APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for status as a permanent resident was denied by the Acting District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The matter will be returned to the Acting District Director for treatment as a motion to reopen.

The applicant is a native and citizen of Venezuela whose mother was admitted to the United States on April 2, 1999 on a Venezuelan passport as a B-2 visitor. On April 28, 2000 she submitted an application to adjust status to permanent resident as the minor unmarried child pursuant to Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Acting District Director denied the application to adjust status, finding the applicant's mother had not established that she was a citizen of Cuba and was therefore ineligible to adjust status under the Cuban Adjustment Act. *Decision of the Acting District Director*, dated September 3, 2005.

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 does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status under the Cuban Adjustment Act. The AAO notes that the District Director did not certify the decision to the AAO for review.

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 (1st Cir. 1992) at 1178. All substantive or legislative rule making requires notice and comment in the Federal Register.

As the AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under the Cuban Adjustment Act, the appeal will be rejected. The matter will be returned to the Acting District Director for treatment as a motion to reopen.

ORDER: The appeal is rejected. The matter is returned to the Acting District Director for treatment as a motion to reopen. Should the Acting District Director again deny the application, the decision should be certified to the AAO for review.