

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

A₂

FILE:

Office: KENDALL FIELD OFFICE

Date:

JUL 20 2009

IN RE:

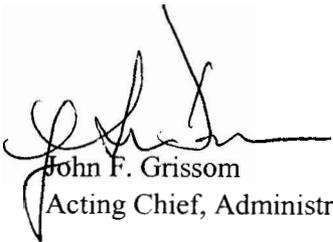
Applicant:

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

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 Field Office Director, Kendall Field Office, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Venezuela who entered the United States on a B-2 nonimmigrant visa on January 1, 2004. On December 8, 2004, she married a native and citizen of Cuba, who had adjusted his status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. On May 4, 2006, the applicant filed this application for adjustment of status to that of a lawful permanent resident as the spouse of a native and citizen of Cuba, who had adjusted his status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966.

The director denied the application on March 31, 2009 determining that the marriage entered into between the applicant and her spouse on December 8, 2004 was entered into for the purpose of circumventing immigration laws. United States Citizenship and Immigration Services (USCIS) issued a Notice to Appear, in removal proceedings to the applicant on April 1, 2009, as she had remained in the United States for a time longer than permitted. The applicant, through counsel, filed an appeal from the field office director's April 20, 2009 denial decision. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status.¹

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

¹ The AAO does have appellate jurisdiction over denials of adjustment of status applications if the denial is solely because the applicant failed to establish eligibility for the *bona fide* marriage exemption contained in 8 C.F.R. § 245.1(c)(8), which applies to any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. In this matter, the marriage did not occur while the applicant was in removal proceedings. Thus, the AAO's appellate jurisdiction set out at 8 C.F.R. § 245.1(c)(8)(vii) does not apply in this matter.

The AAO takes note that, in the denial decision, the director did not advise the applicant that the denial could be appealed. Counsel filed a Form I-290B, Notice of Appeal or Motion, indicating that she was filing an appeal. The AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. Accordingly, the appeal must be rejected.²

ORDER: The appeal is rejected.

² In addition, the AAO finds that the statement submitted on behalf of the applicant in support of the appeal does not provide a basis for an appeal. The field office director in this matter determined that the marriage was entered into for the primary purpose of circumventing the immigration laws of the United States. Counsel does not identify specifically an erroneous conclusion of law or a statement of fact in the field office director's decision. The AAO acknowledges that the decision does contain a typographical error regarding the date of the applicant's marriage and that the interview was not recorded. However, counsel's assertion that the applicants claim that several of the answers they gave during their interview were not accurately reflected in the denial is not supported by any specific facts or explanations. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Further, counsel's citation to case law regarding a marriage that is "valid at inception is valid for immigration purposes" is not applicable in this matter. To reiterate, the field office director determined that the marriage was entered into for the primary purpose of circumventing immigration laws; thus, the field office director determined that the marriage was not valid at inception. Even if not rejected, this appeal would have been summarily dismissed for these reasons. *See* 8 C.F.R. § 103.3(a)(1)(v).