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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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File:

Office: MIAMI, FLORIDA

Date:

MAR 13 2009

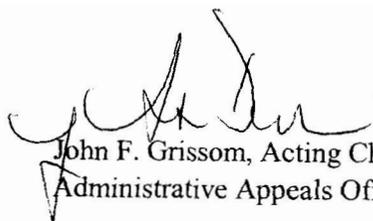
IN RE: Applicant:

Application: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment 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 Acting District Director, 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 Colombia who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, as the spouse of a Cuban citizen who is also described in section 1 of the CAA. The director denied the application on June 14, 2006, 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.

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

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 he 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). Accordingly, the appeal must be rejected¹.

ORDER: The appeal is rejected.

¹ The AAO notes that, even if it had appellate jurisdiction over this application, the AAO would have rejected the appeal because it was filed late. The applicant filed the appeal on September 21, 2007, which is one year, three months and seven days after the director issued her decision. In order to properly file an appeal, the 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).