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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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

File: [redacted] Office: MIAMI, FLORIDA Date: JUL 17 2009

IN RE: [redacted]

Petition: Petition for Widow(er) under Section 204 of the Immigration and Nationality Act, 8 U.S.C. § 1154

ON BEHALF OF SELF-PETITIONER:

[redacted]

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 Miami Field Office Director denied the self-petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the self-petitioner is a native and citizen of Nigeria. In a March 28, 2009 decision, the director denied the self-petitioner's Form I-360 in which she sought classification as the widow of a U.S. citizen. The petitioner filed an appeal from that decision.[1] The AAO does not have appellate jurisdiction over an appeal from the denial of a Form I-360, self-petition as a widow.

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.

An appeal of a Form I-360 for classification as a widow of a U.S. citizen is reviewed by the Board of Immigration Appeals (BIA), not U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 1003.1(b)(5). Therefore, to appeal the denial of a Form I-360 for a widow, a Form EOIR-29 is required. 8 C.F.R. § 1003.3(a)(2). On April 28, 2009, the petitioner's counsel filed a Form I-290B with USCIS, not the appropriate Form EOIR-29. The AAO does not have jurisdiction over an appeal from the denial of a Form I-360, self-petition as a widow. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.

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[1] The AAO notes that counsel indicated on the Form I-1290B that he was appealing both the I-360 and the I-485 denial decisions. The fee for a Form I-290B, however, covers only one application type. In addition, the denial of a Form I-485 may not be appealed.