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

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FILE:

Office: BALTIMORE, MD

Date: JAN 06 2009

IN RE:

APPLICATION: Application by Refugee for Waiver of Grounds of Excludability

ON BEHALF OF APPLICANT:

MICHAEL D. MERSHON

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 District Director, Baltimore, Maryland, and 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 Nigeria. On December 18, 2007, the district director denied the applicant's Form I-602, Application by Refugee for Waiver of Grounds of Excludability, and the applicant filed an appeal from that denial.¹ While the AAO has appellate jurisdiction over a Form I-601, Application for Waiver of Ground of Inadmissibility, the AAO does not have appellate jurisdiction over a Form I-602.

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 at 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

Although the AAO notes that the district director's decision informed the applicant that he could appeal the denial of the waiver application, there is no appeal from the denial of a Form I-602. The Form I-602 may, however, be considered by the immigration judge if the Form I-485, Application to Register Permanent Residence or Adjust Status, is renewed during removal proceedings pursuant to the regulation at 8 C.F.R. § 209.2(f). See *Adjudicator's Field Manual*, Chapter 41.6(b)(2)(B).

As there is no appeal from the denial of a Form I-602, the present appeal will be rejected.

ORDER: The appeal is rejected.

¹ Counsel has also requested oral argument. However, as the Form I-602 may not be appealed, counsel's request is denied.