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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

File:

[Redacted]

Office: TAMPA DISTRICT OFFICE

Date:

**AUG 10 2009**

IN RE:

Applicant:

[Redacted]

Petition:

Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF 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 application was denied by the District Director, Tampa, Florida. A subsequent appeal was rejected by the Administrative Appeals Office (AAO) as the AAO did not have jurisdiction of the matter. Counsel for the applicant has submitted a motion to the AAO to reconsider its decision. The motion will not be granted. The appeal remains rejected for lack of jurisdiction.

The record reflects that the applicant is a native and citizen of Brazil. In a February 6, 2008 motion decision, the district director affirmed her October 15, 2007 denial of the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status. Counsel for the applicant filed an appeal from that denial which was rejected on March 5, 2009 for lack of appellate jurisdiction over an appeal from the denial of an application for adjustment of status. On motion, counsel for the applicant asserts that the AAO has appellate jurisdiction to determine whether United States Citizenship and Immigration Services (USCIS) may deny an adjustment application after it has already been approved without following the required procedures mandated by federal regulations and case law. Counsel references an unpublished AAO decision wherein the underlying question of law was certified to the AAO for review.

The AAO reiterates that 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. There is no appellate jurisdiction for an appeal from the denial of an adjustment application whether the denial is made subsequent to an approval or not. The AAO does have jurisdiction as set out in 8 C.F.R. § 103.4 over matters that involve complex or novel issues of law of fact when the matters are certified to the AAO for review. In this matter, the director has not certified her decision to the AAO, thus the AAO is without authority to render a decision.

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

The AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. Accordingly, the appeal must be rejected.

**ORDER:** The appeal is rejected.