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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: SANTA ANA, CA

Date:

MAR 04 2009

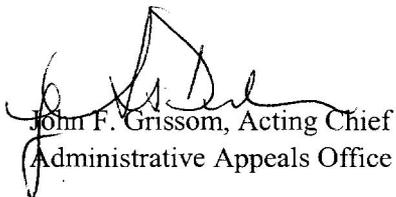
IN RE: Applicant:

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

ON BEHALF OF PETITIONER:

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 (FOD), Santa Ana, California on May 24, 2006. The applicant filed a motion to reopen that denial, which the field office director forwarded to the Administrative Appeals Office (AAO) as an appeal. On February 7, 2008, the AAO remanded the matter to the field office director to consider the motion. On March 27, 2008, the field office director affirmed her May 24, 2006 decision to deny the application. On April 28, 2008, the applicant filed an appeal, which is before the AAO. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Canada. On March 27, 2008, the field office director affirmed her decision to deny the applicant's I-485 application. On the Form I-290B, Notice of Appeal or Motion, counsel checked Box A at Part 2, which states: "I am filing an appeal. My brief and/or additional evidence is attached." 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 a brief attached to the Form I-290B is titled "Motion to Reopen to Request Reconsideration." Despite the brief's title, counsel clearly checked Box A at Part 2 of the Form I-290B which indicates that he is 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 245 of the Immigration and Nationality Act. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.