

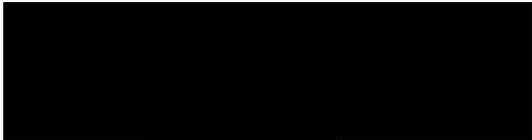
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Division of Federal Security

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

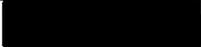


U.S. Citizenship
and Immigration
Services

PUBLIC COPY



File:



Office: NEW ORLEANS, LOUISIANA

Date:

MAY 06 2009

IN RE:

Petitioner:

Beneficiary:



Petition: Petition for Alien Relative (Form I-130) under Section 204 of the Immigration and Nationality Act, 8 U.S.C. § 1154

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DISCUSSION: The petition's approval was revoked by the Field Office Director, New Orleans, Louisiana, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the beneficiary is a native of Vietnam and citizen of Germany. In a December 14, 2008 decision, the director revoked the approval of the petitioner's Form I-130, Petition for Alien Relative, to classify the beneficiary as the spouse of a U.S. citizen. The petitioner filed an appeal from that decision. The AAO does not have appellate jurisdiction over an appeal from the revocation of a Form I-130.

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-130 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 revocation of an approved Form I-130, a Form EOIR-29 is required. 8 C.F.R. § 1003.3(a)(2). **On February 3, 2009, the petitioner's counsel filed a Form I-290B with USCIS, not the appropriate Form EOIR-29 with the BIA.¹** The AAO does not have jurisdiction over an appeal from the denial of a Form I-130 filed under section 204 of the Immigration and Nationality Act. Accordingly, the appeal must be rejected.²

ORDER: The appeal is rejected.

¹ The AAO notes that, even if it had appellate jurisdiction over this appeal, it would have rejected it because it was not timely filed. The director issued the revocation decision on December 14, 2008 and the appeal was received by USCIS 51 days later, on February 3, 2009. An affected party must file an appeal of a revoked petition within 15 days of service of the unfavorable decision. 8 C.F.R. § 205.2(d). **If the decision was mailed, the appeal must be filed within 18 days. See 8 C.F.R. § 103.5a(b).**

² On March 2, 2009, counsel requested an additional unspecified period of time to submit evidence in support of the appeal. As the appeal must be rejected for lack of jurisdiction over the matter, no purpose would be served in permitting counsel additional time to supplement the record. Her request is, therefore, denied.