I urge USCIS to examine the N-400 regulations and statutes as a guide in drafting I-924 adjudication and appellate review regulations.

Regional Center Adjudication and Administrative Appeal Path:

When it comes to Regional Center Designation adjudications, Congress did not provide much raw material to work with so the **immigrant investor pilot program** and the requirements for designation as a **regional center** under that program are largely regulatory in nature as the regulations were pretty much a blank canvass to be creative with. Congress even cited to the regulations in later legislation on EB-5! USCIS should take full advantage of that situation to craft workable regulations before it is too late.

When Congress left ambiguity in the individual investor visa program and the INS put the program on hold and fought numerous battles in court, Congress slammed the agency with the dreaded EB-5 Amendments, §§ 11031-11033 of Pub. L.107-273 (November 2, 2002). USCIS inherited that mess and still to this very day [March 2011] has not yet published the implementing regulations which were mandated to be written in 120 days of enactment for the **special law cases**!

The AAO points out that it maintains plenary power to review each appeal or certification on a *de novo* basis, except as it shall limit the review by notice or rule in accordance with 5 USC § 557(b) *"On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."*

What rules and what notices are there to rely on?

In the newly formalized realm of Regional Center Designation adjudication, the I-924 form instructions invoke 8 CFR 103.3(b)(16) as to derogatory information and 8 CFR 103.3 as to appeal rights, however it should be noted that like any other applicant, 8 CFR 103.5 is available as to Motions to Reopen and/or Reconsider. The AAO has only issued four precedents on EB-5 and they barely touched on the Immigrant Investment Pilot Program within the context of I-526 petitions, **NOT** I-924 applications. It should be noticed that I-829's fall under USCIS for the initial decision but can be renewed before an Immigration Judge and appealed to the BIA.

From: ***Spencer Enterprises* v. *U.S.*,** 229 F.Supp.2d 1025, 1038 n. 4 (E.D. Cal. 2001) *aff"d* 345 F.3d 683 (9th Cir.2003): [In considering the 1998 AAO EB-5 Precedents.]

> "There were no interpretive guidelines published in the Federal Register. *See Pfaff v. HUD, 88F.3d 739, 748 (9th Cir. 1996)*. No officially published opinions of the INS General Counsel had been issued. *See Han v. DOJ, 45 F.3d 333, 339 (9th Cir. 1995)*. ***There was therefore no prior decision, no prior rule, no prior statute, no interpretive guideline, or officially published opinion on which any party could rely in good faith***. Plaintiffs had no legally vested right in or justification for relying on the prior unpublished decisions to give rise to estoppel."

The Form I-924 is eligible for an administrative appeal process via 8 CFR § 103.3(a) as directed in 8 CFR § 204.6(m)(5). As with virtually anything else, the I-924 is also subject to Motions to Reopen or Motions to Reconsider via 8 CFR § 103.5(a). These motion regulations, like the N-400 related motion and amendment regulations at 8 CFR §§ 334.5 and 334.16, are also broken down in terms of who may file: the applicant or the Government. The N-400 has its peculiar *Second Hearing* and subsequent judicial review pathway based on specific statutory provisions. In that the Immigrant Investor Pilot Program is primarily regulatory in nature, unique regulations on this aspect would be welcome, especially considering the unique nature of the program overall.

The Regional Center is a special designation sought from USCIS. It is a benefit but it is a different kind of benefit than USCIS is used to. It is similar to a form of *license*, a privilege that bestows rights and responsibilities. [*See* 5 USC § 551 (11)] An example of such a benefit that USCIS has tons of experience with is naturalization. The applicable statutes and regulations to examine in crafting I-924 regulations are those dealing with the N-400.

By comparison, a naturalization applicant must meet a minimum **physical presence** requirement and must have had their status for a minimum period of time, in most cases, before they may file an N-400, but, **continuous residence** can be broken and good moral character can be lost *or* proven *after filing*. A long absence from the United States or an affirmative change of residence abroad after filing an N-400 can make one ineligible. A crime committed or prosecuted after filing may negate good moral character, while the end of probation for an otherwise non-dispositive crime or violation may serve to rehabilitate and cement eligibility for naturalization, after filing, despite the prohibition against naturalizing (as in administering the Oath to) a person who is still on probation. In this context USCIS takes note of facts that arise after filing and these new facts do influence the ultimate determination of the case. The Regional Center Designation should be treated in the same manner. *It ain't over 'til the fat lady sings*[1].

Naturalization has aspects towards eligibility that are *prerequisite* to filing the application but it is not complete until the final administration of the Oath of Renunciation and Allegiance. An N-400 application is only *recommended for approval* until such time as the applicant is admitted to citizenship. The premise of an investment as asserted in a Regional Center application, i.e. the business plan, and the previously vetted written documentation, are only *recommended for a favorable determination* as supporting *prima facie evidence of eligibility* for a future I-526 and even further I-829. A *prima facie showing of eligibility*, through use of previously vetted plans and documentation, is a good starting point but is not the final word. An individual applicant *must still prove complete eligibility for a favorable determination* on the individual petition.

[1] **It ain't over till (*or* until) the fat lady sings** is a colloquialism, essentially meaning that one should not assume the outcome of some activity (e.g.: a sports game) until it has actually finished, similar to a common proverb. It is a perception of Grand Opera, typically overweight sopranos, and perhaps *Brünnhilde's* final arias from *Die Walküre* or *Götterdämmerung* in particular, from an American working class cultural perspective of the early 20th century. http://en.wikipedia.org/wiki/It_ain't_over_'til_the_fat_lady_sings

The only concrete *prerequisite* to filing an I-924 is to *actually exist as* **the entity that applies**[2], i.e., incorporated or organized as a legally recognized company or partnership or if a government agency or public-private cooperative that it is authorized to pursue Regional Center Designation. Even that basic requirement is not spelled out in the regulations. It is spelled out in the form instructions that the form may be filed by an individual on behalf of a State or local government agency, partnership, or any other business *entity* but is drawn from the non-precedent AAO Decision noted and linked below. A nonexistent entity cannot be designated as a regional center.

An I-924 is similar to an N-400 in terms of reciprocity also. In the case of: Luria v. United States, 231 U.S. 9, 34 S. Ct. 10, 58 L. Ed. 101 (1913), *excerpt below*, it was recognized by the U.S. Supreme Court that a grant of naturalization is a mutual agreement between the naturalization applicant and the United States of America. The designation as Regional Center can be viewed in a similar light. There must be a mutual agreement between the parties to respect their agreement. Each party bears a responsibility to the other.

The Regional Center must prove itself to get the desired chance and then it must fulfill its promise through its actions. Just as a naturalization applicant can perfect his/her N-400 application during the process, so too, can a Regional Center applicant perfect its I-924 application. A naturalization applicant automatically has two chances to pass INA § 312 English and civics requirements and is afforded more chances through a *Second Hearing* (N-336 "appeal') and three further tiers of judicial review. A Regional Center should be afforded ample opportunities to perfect its application for designation due to the benefits that it is expected to provide in return for that honor. Many high standards and promises are extracted from the applicant in order to attain status and gain rights and privileges in an air of mutual agreement to assume and bear obligations and duties on both sides in a formal exchange between them.

> "…..Citizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other…….
>
> ……These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name,—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past….."

I suggest incorporating similar language as found in 8 CFR § 336.2(b) to § 204.6, as follows: [suggested (m)(5)(i) is a modification and expansion of existing § 204.6 (m)(5)].

[2] "The regulation at 8 C.F.R. § 204.6(j) notes that additional evidence other than that specified in the regulations may be required. Clearly, only an entity that exists can be designated as a regional center. Thus, it is reasonable to require evidence of the proposed regional center's existence." From a non-precedent AAO Decision at: http://www.uscis.gov/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2008/Nov182008_01K1610.pdf at page 5.

(m) Requirements for regional centers…….

(5) Decision to participate in the Immigrant Investor Pilot Program.

(i) Prompt Decision on Initial Application. The Service Center Director shall notify the regional center applicant of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program under subparagraph (3) of this paragraph (m) and § 103.2 of this chapter.

If approved, the Approval Notice will describe the geographic area covered, the specific industries or types of businesses approved for investment and will make specific reference to the job projection and economic impact model and/or methodology that was submitted and reviewed for acceptability. The written Approval Notice will inform the Regional Center of its recordkeeping and reporting responsibilities and prohibition against making substantive material changes to previously submitted and reviewed standard written business documents and/or business plans and/or investment instruments anticipated to be submitted with individual investor petitions.

If the application is denied, the applicant will be informed of the reasons for the denial and of the applicant's right of appeal to the Administrative Appeals Office (AAO). The Director will issue a detailed analysis of the law and facts of the case in support of its decision as contemplated by 5 USC § 557(c). The written Denial Notice will inform the applicant of the reasons for denial along with notification of motion and appeal rights. The procedures for appeal may be the same as those contained in § 103.3 of this chapter, or as modified herein, while motions may be treated as described in § 103.5 of this chapter, or as modified herein, as applicable.

(ii) Prompt Decision on Amendment Application. The Service Center Director shall notify the regional center applicant of his or her decision on the request to amend or modify its participation in the Immigrant Investor Pilot Program under subparagraph (3) of this paragraph (m) and § 103.2 of this chapter.

If approved, the Approval Notice will add to, subtract from, or otherwise modify the prior Approval Notice and include the specific changes made by the amendment to the Regional Center's previously authorized participation in the Immigrant Investor Program.

A Denial of a Proposed Amendment does not void the prior Approval Notice unless that participation is officially terminated pursuant to subparagraph (6) of this paragraph (m).

If the amendment application is denied, the Amendment Denial Notice shall inform the applicant of the reasons for the denial and of the applicant's right of appeal to the Administrative Appeals Office (AAO). The Denial Notice shall be restricted to the amendment only, and will inform the applicant of motion and appeal rights. The Director will issue a detailed analysis of the law and facts of the case in support of its decision as contemplated by 5 USC § 557(c)[3]. The procedures for appeal may be the same as those

[3] Paragraph following (c)(3):

contained in § 103.3 of this chapter, or as modified herein, while motions may be treated as described in § 103.5 of this chapter, or as modified herein, as applicable.

(iii) Initial Agency Review of Appeal or Motion. The Center Director shall expeditiously and thoroughly review any appeal or motion of a denied Regional Center Initial or Amendment Application. If the applicant indicates that the brief and/or additional evidence will follow submission of the I-290B, the case may set aside until the additional submission has been received or the allotted time has passed. The applicant is only allowed the time specified for a *single submission of the brief and/or additional evidence*. No extensions of time shall be granted by the Center Director in the context of an Appeal or Motion.

If no brief or additional evidence has been submitted within the time allowed, *the Center Director may summarily dismiss* an unsupported and meritless Appeal or Motion in accordance with § 103.3 (a)(1)(v) of this chapter and restrict further review of that summarily dismissed case to renewed right of appeal only, with no further motion option; or *make and issue a new decision based on the record as altered by* any statement on the I-290B and any evidence initially submitted with the I-290B Motion and restrict further review of that re-denied case to renewed right of appeal only, with no further motion option; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression.

Any such subsequently filed restricted appeal shall be immediately forwarded to the AAO, without the detailed review afforded to an initial submission for agency review.

(A) *Favorable Initial Decision on Appeal or Motion.* The Center Director shall review any appeal or motion and if the case is approvable as submitted, shall approve the application and issue the decision; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression.

(B) *Unfavorable Initial Decision on Appeal.* If the initial submission for review is denoted as an **appeal** but is not approvable as submitted, the appeal and complete application receipt file shall be forwarded to the AAO.

(C) *Unfavorable Initial Decision on Motion*. If the initial submission for review is denoted as a **motion** but is not approvable as filed, the Director may either, dismiss the motion and restrict further review to renewed right of appeal only, with no further motion option; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression. The Director will issue a detailed analysis of the law and facts of the case in support of its decision but may incorporate the prior decision by reference.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Any such subsequently filed restricted appeal shall be immediately forwarded to the AAO, without the detailed review afforded to an initial submission on review.

(iv) AAO Review of Regional Center Application. Unless the Chief of the Administrative Appeals Office has specifically delegated authority to a different USCIS Officer than the Officer who rendered the initial decision who is a journeyman level adjudicator or higher at the Service Center to further develop a particular case, these procedures are reserved for use by the reviewing Appeals Officer within AAO. Any such delegated Officer is prohibited from discussing the case with the initial deciding Officer.

(A) *Basic Review.* The reviewing officer shall have the authority and discretion to review the application for Regional Center Designation and any evidence already on record, and either to affirm the findings and determination of the original adjudicating officer or to modify or re-determine the original decision in whole or in part.

(B) *Availability of Additional Records.* The reviewing officer shall also have the discretion to review any administrative record which was created as part of the adjudication procedures as well as other USCIS files and reports, including VIBE, or outside sources of information and databases, including internet sources.

(C) *Request for evidence or testimony; independent inquiry or investigation in the course of an Administrative Appeal of a denial of a benefit under the INA.*

(1) He or she may request specific evidence, receive new evidence or interview the applicant and witnesses, in-person or telephonically, and take such additional testimony as may be deemed relevant to the applicant's eligibility for Designation as a Regional Center and may consider any additional evidence that the applicant seeks to provide, within a reasonable period of time, before a decision is made. Any derogatory information, is subject to disclosure in accordance with § 103.2 (b) (16) of this chapter, as hereafter amended, or modified in the interests of national security.

(2) The Appeals Officer or, Service Center Officer delegated specific authority by the Chief of the AAO, who is or may reasonably be expected to be involved in the decisional process who receives, or who makes or knowingly causes to be made, a communication ordinarily prohibited by this 5 USC § 557 shall place within the record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications;

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(v) standardized sworn statements will suffice as documentation of in-person communication;

(vi) telephonic interviews that may be recorded with consent of both (or all) parties; and

(vii) non-redacted e-mail directly pertaining to the case will be incorporated into the record.

(D) *Flexibility in standard of review.* Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further deliberation with respect to essential requirements, the reviewing Officer may, in his or her discretion, conduct a *full de novo*[4] *review* or may utilize an *ad hoc*[5] *review* procedure, as he or she deems reasonable or *in the interest of or furtherance of justice*[6] *and/or of economic benefit to the United States*.

(E) *AAO Decision.* The Appeals Officer shall follow established procedures in consultation with fellow Appeals Officers and Supervisors. Any delegated Reviewing Officer shall coordinate any consultation or outside research through the AAO. AAO may consult with the USCIS Office of Chief Counsel, other USCIS or DHS components, the Library of Congress, the State Department, or any other Government Agency *as authorized by superiors at USCIS* in researching legal questions and complex or novel issues concerning business practices, investments, economics, labor, or any other relevant subject. *The Appeals Officer may further develop the case and facts thereof within a reasonable period of time as set by AAO and USCIS management.* The Appeals Officer may approve or deny the benefit upon completion of development and review of the case. The written decision will reflect the grant or denial of the benefit with specificity. The least desirable option is to remand for correction of USCIS procedural or substantive errors.

(1) *AAO Approval of the Benefit.* This may be in the form of a sustained appeal or motion. This may be the remand of an overturned recommended denial with instructions to approve, *as specified in the written remand order,* and notify the applicant of rights and responsibilities. This may be an affirmance of a recommended approval, with or without modification. The AAO may either prepare an Approval Notice itself and remand it to the Service center to issue, or remand to the Service Center to prepare and issue the Approval Notice as systems capabilities and staffing dictate to ensure prompt notification.

The Approval Notice will describe the geographic area covered, the specific industries or types of businesses approved for investment and will make specific reference to the job

[4] Anew, afresh, from the beginning; without consideration of previous instances, proceedings or determinations
en.wiktionary.org/wiki/de_novo
[5] Ad hoc is a Latin phrase which means "for this purpose". It generally signifies a solution designed for a specific problem or task, non-generalizable, and which cannot be adapted to other purposes.
en.wikipedia.org/wiki/Ad_hoc
[6] As a matter of discretion, but only when required by the existence of some compelling factor, consideration or circumstance clearly demonstrating that the alternative inflexibility of rules would constitute or result in injustice and would be likely reversed as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the spirit as well as the letter of the law. Patterned after: New York Criminal Procedure Law §§ 170.40 and 210.40 and 5 USC § 706 (1) (A).

projection and economic impact model and/or methodology that was submitted and reviewed for acceptability. The written Approval Notice will inform the Regional Center of its recordkeeping and reporting responsibilities and prohibition against making substantive material changes to previously submitted and reviewed standard written business documents and/or business plans and/or investment instruments anticipated to be submitted with individual investor petitions.

(2) *AAO Denial of the Benefit.* This may be in the form of a dismissed appeal or motion. This may be an affirmance of a recommended denial, with or without modification. This may be an overturned recommended approval. The AAO will issue a detailed analysis of the law and facts of the case in support of its decision. The denial will include the rights to submit a single optional motion to reopen and/or reconsider or to submit a new application, or to file for judicial review in accordance with 5 USC § 706.

(3) *Remand.* With the procedures afforded to the Appeals Officer or delegated Reviewing Officer in this paragraph (m) (5) (iv), remands should be limited to:

Remand with specific instructions, described in (iv)(E)(1), or

A procedural error: **Reversible error** during a proceeding sufficiently harmful to justify reversing the judgment of the prior Officer, or

A substantive error:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence which by due diligence could not have been discovered in time to avoid forwarding the case to AAO [such as late interfiling of mail];

(iii) fraud, misrepresentation, or other misconduct of an adverse party (for referral to fraud investigation or OIG, if employee misconduct);

(iv) a prior rule, whether, precedent, statute or regulation, upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the rule should have prospective application; or

(v) any other reason in the interest of justice that relieves appellant from the operation of the rule.

(4) *Consideration for Publication*. Any decision, whether an Approval, Denial, or remand in which the case involves an unusually complex or novel issue of law or fact, or matter of first impression, the decision shall be referred to the appropriate parties in accordance with § 103.3 (c) of this chapter.

Drawn, in part, from:

8 CFR § 336.2 Hearing before an immigration officer.

(b) Upon receipt of a timely request for a hearing, the Service shall schedule a review hearing before an immigration officer, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review shall be with an officer other than the officer who conducted the original examination under section 335 of the Act, or who rendered the Service determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. **The reviewing officer shall have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to re-determine the original decision of the Service in whole or in part**. The reviewing officer shall also have the discretion to review any administrative record which was created as part of the examination procedures as well as Service files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. **Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential** naturalization **requirements**, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a **full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.**

The Differences between AAO and BIA:

It is clear that the current regulations pertaining to Appeals and Motions were created for a different venue than what now exists. The BIA is in a different forum than AAO. The BIA is the appellate body from an **adversarial** administrative proceeding which much more resembles a criminal trial while the AAO is the appellate body from an **inquisitorial** administrative paper-based and usually faceless adjudication. **The BIA and AAO are qualitatively different in nature.** Since March 1, 2003, the AAO should have been forming a new self identity in accordance with its new home in a customer service oriented agency. USCIS is charged with the fair and impartial evaluation of eligibility for benefits under the Immigration and Nationality Act. AAO needs to re-evaluate its place in the grand scheme of the current reality as a part of the U.S. Citizenship and Immigration Services.

The AAO is charged with reviewing requests for benefits under the INA. The BIA deals with appeals of Orders of Removal from the United States. An IJ is also tasked with determining eligibility for certain benefits but the alternatives to the IJ denial are more drastic by comparison as the IJ denial can result in expulsion from the United States or continued detention. The BIA is also tasked with considering eligibility for certain benefits under the INA but again the consequences of their denial are more drastic. The AAO can also be in such a position in the cases concerning a waiver that will allow for adjustment of status if approvable on all other grounds by the District or Center ISO or potential issuance of a visa if approved by a Consular Officer as to other grounds.

However, many of the cases before the AAO are more akin to the benefits being determined by other Administrative Appellate Bodies. For example, the Social Security Administration has a more elaborate Appeals Process and handles cases a bit differently.

> Social Security wants to be sure that every decision made about your Social Security or Supplemental Security Income (SSI) claim is correct. We carefully consider all the information in your case before we make any decisions that affect your eligibility or your benefit amount.
>
> When we make a decision on your claim, we will send you a letter explaining our decision. If you do not agree with our decision, you can appeal—that is, ask us to look at your case again.
>
> When you ask for an appeal, we will look at the entire decision, even those parts that were in your favor. If our decision was wrong, we will change it.
> *****
> **How many appeal levels are there?**
>
> Generally, there are four levels of appeal. They are:
>
> - Reconsideration;
> - Hearing by an administrative law judge;
> - Review by the Appeals Council; and
> - Federal Court review.
>
> When we send you a letter about a decision on your claim, we will tell you how to appeal the decision.

Above from: **http://www.ssa.gov/pubs/10041.html**

The Department of Labor has its particular processes as well.

WELCOME TO DOL APPEALS

DOL Appeals is the gateway to information about formal hearings and appeals at the Department of Labor. This site, however, must not be relied upon for legal advice.

Disclaimer

- **Administrative Review Board (ARB)**
  Whistleblower, immigration, child labor, employment discrimination, federal construction/service contract, et al. Appeals
- **Benefits Review Board (BRB)**
  Black Lung Act and Longshore and Harbor Workers' Compensation Act Appeals

- **Employees' Compensation Appeals Board (ECAB)**
  Federal Employee Compensation Act Appeals
- **Office of Administrative Law Judges (OALJ)**
  Trial court for many of the Department of Labor's programs
  - Board of Alien Labor Certification Appeals
    (BALCA): Permanent Labor Certification Appeals

From: http://www.dol.gov/appeals/

Following from *Matter of HealthAmerica*, 2006-PER-1 (BALCA July 18, 2006) (en banc) (vacating denial), *held*:

- The Employer committed a typographical error on Form 9089 regarding newspaper ad dates. When the CO denied the PERM application for failing the two-Sunday publication rule, the Employer requested reconsideration, submitting newspaper tear sheets clarifying the unintentional typo. The CO denied reconsideration.

- The Board found that documentation "previously submitted" in support of a labor certification application constructively includes materials held by the Employer under the recordkeeping provisions of PERM. BALCA held that the Employer may submit such pre-existing documents to support a reconsideration request, without violating the "no-new-evidence" rule of § 656.24(g)(2).

"This matter arises under Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations.*1 It is the first appeal docketed by the Board under the regulatory scheme that became effective on March 28, 2005, popularly known as .PERM.*2 The PERM regulations emphasize streamlined electronic processing of applications, and as part of the streamlining, the Employment and Training Administration ("ETA") promulgated a restrictive rule on motions for reconsideration. **We hold that, although an agency may impose a rigid regulatory scheme to promote administrative efficiency, under the particular circumstances of this case the ETA Certifying Officer's ("CO") *denial of reconsideration was an abuse of discretion*." [Emphasis added.]**

*Footnotes in original:

[1] Citations in this Decision and Order are to the 2006 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2006), unless otherwise noted. References to the Appeal File are shown as "AF."

[2] "PERM" is an acronym for "Program Electronic Review Management" system. See DOL Annual Report, Fiscal Year 2004 at 284 (www.dol.gov/_sec/media/reports/annual2004/response.pdf).

Above from:
http://www.oalj.dol.gov/Decisions/ALJ/PER/2006/In_re_HEALTHAMERICA_2006PER00001_(JUL_18_2006)_072241_CADEC_SD.PDF

Types of immigration cases that may be heard by an ALJ, BALCA or the ARB

> The Secretary of Labor is responsible under the Immigration and Nationality Act for administering labor certification and attestation programs which are generally designed to ensure that the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers. ….

From: http://www.oalj.dol.gov/Information_for_Aliens.htm

A non-precedent AAO Decision pertaining to an *I-140, Immigrant Petition for Alien Worker*, as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C.§ 1153(b)(2). *See:* Apr282009_01B5203.pdf

> "The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). By way of analogy, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id*. at 590. [*See* INA § 205]
>
> The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of *equitable estoppel* so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (*BIA 1991). Res judicata* and *estoppel* are equitable forms of relief that are available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 103.1 (f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's *equitable estoppel* and *res judicata* claims."

Does AAO really know what it can and can't do or what it should or should not do?