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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

Public Copy

FILE: [Redacted]

Office: Miami

Date: AUG 2 2001

IN RE: Petitioner:
Beneficiary:

[Redacted]

Petition: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J).

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected, and the case will be remanded for further action consistent with this decision.

The petitioner is a 20-year-old native and citizen of Haiti¹ who seeks classification as a special immigrant juvenile pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4).

The district director determined that the petitioner had not provided a dependency order that meets the definition of section 101(a)(27)(J) of the Act as had been requested. The district director, therefore, denied the petition for abandonment pursuant to 8 C.F.R. 103.2(b)(13) which states, in pertinent part, that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. The district director informed the petitioner that she could appeal the decision within 15 days.

8 C.F.R. 103.2(b)(15), however, states, in part, that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5. According to 8 C.F.R. 103.5(a)(6), a field office decision made as a result of a motion may be applied to the Administrative Appeals Unit (AAU) only if the original decision was appealable to the AAU.

In the instant case, the original decision to deny the petition was not appealable to the AAU, as it was based upon the petitioner's abandonment of the petition. Therefore, the AAU does not have jurisdiction to consider the appeal that was filed as a result of the director's denial of the petition.

The district director, in his denial, erroneously informed the petitioner that she had 15 days to file an appeal (18 days if the notice was received by mail). The district director's error, however, does not, and cannot, supersede the regulation regarding the jurisdiction of the AAU.

The appeal, therefore, will be rejected, and the case will be remanded to the district director to treat the appeal as a motion to reopen. The director shall enter a new decision which, if

¹ While the petition shows that the applicant was born on April 6, 1982 in the Bahamas, the petitioner's birth certificate shows that she was born on April 16, 1981 in Haiti.



adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.