



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

File: [REDACTED] Office: ATLANTA, GEORGIA

Date: OCT 20 2004

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

IN 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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent disclosure of information  
invasion of personal privacy

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**DISCUSSION:** The District Director of the Citizenship and Immigration Services Atlanta, Georgia, District office revoked approval of the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petition was initially approved by the district director on April 14, 1998. The approval was subsequently revoked on August 6, 2001, after the district director determined the petitioner failed to establish the beneficiary was an orphan. Specifically, the district director noted that an overseas investigation had revealed that the beneficiary's father was still living and the petitioner had not adopted the beneficiary abroad or secured custody of the beneficiary for immigration and adoption.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Further, in order to properly revoke a petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby

incorporated into the particular section of the regulations in this chapter requiring its submission.

As it pertains to the proper filing of an appeal, the regulation at 103.3(a)(2)(i) provides:

*Filing Appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.<sup>1</sup>

The record indicates that the district director issued the decision revoking approval of the petition on August 6, 2001, and provided the petitioner with the Form I-290B. We note the following instructions, which are stated on the Form I-290B:

**Filing.** You must file your appeal with the [Citizenship and Immigration Services] office which made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date of the decision. Do *not* send your appeal directly to the [AAO]. Submit an original appeal only. Additional copies are not required.

[Emphasis added in original.]

Despite the clear instructions on the Form I-290B, the petitioner sent her original request for appeal to the AAO. On September 18, 2001, the AAO returned the petitioner's appeal and fee with a letter stating that to be considered properly filed, the appeal must be filed "at the office that made the original decision . . . ."

The record reflects that on September 24, 2001, 49 days after the decision was issued, the petitioner's appeal was received by the district director and accepted for filing. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). In this instance, that official declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).