



U.S. Citizenship
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Services

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FILE: 

Office: ATLANTA, GA

Date: AUG 05 2005

IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on September 15, 2003. The petitioner is a thirty-four-year old married citizen of the United States. The beneficiary was born in Jamaica on October 10, 1987. She is seventeen years old.

The district director issued a Notice of Intent to Deny the I-600 petition on April 22, 2004. The petitioner responded to the Notice of Intent to Deny, stating that the beneficiary's mother had disappeared and that the beneficiary's father was unable to provide for the beneficiary. The petitioner additionally asserted that she and her spouse adopted the beneficiary in Jamaica and that they were awarded joint custody over the beneficiary.

The I-600 petition was denied on September 22, 2004, based on a finding that the petitioner had failed to establish that the beneficiary was abandoned, or that her father was a sole or surviving parent unable to provide proper care to the beneficiary, as required by the Immigration and Nationality Act (the Act) and the Federal Code of Regulations. The district director found further that the petitioner had failed to establish that her spouse was awarded joint custody over the beneficiary.

On appeal, the applicant reasserts that the beneficiary's mother disappeared and that the beneficiary's father is unable to provide proper care to the beneficiary. The petitioner requested an additional 120 days to submit a brief and/or evidence in her case, and the petitioner subsequently submitted a Jamaican court order, which awarded joint custody over the beneficiary to the applicant and her spouse as of November 24, 2004.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed." The district director's decision to the petitioner also states clearly that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 if the decision is mailed).

The record reflects that the district director's decision denying the applicant's I-600 petition was dated September 22, 2004. The record reflects further that the applicant's appeal was not filed until October 26, 2004, after the 33 days allowed for filing an appeal in her case. Because the appeal was not filed within the time allowed, it must be rejected as improperly filed.

ORDER: The appeal is rejected.