

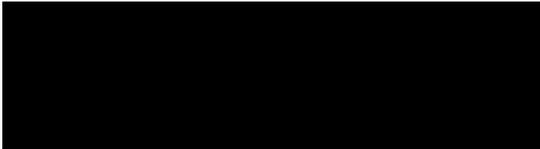
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FI

FILE:



Office: EL PASO, TEXAS

Date:

OCT 24 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 PETITIONER:

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, El Paso, Texas denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The district director concluded that the petitioner had abandoned his Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) by failing to respond in a timely manner to repeated requests for additional supporting documentation. The I-600 petition was denied accordingly.

The petitioner asserts on appeal that he and his wife did not abandon their I-600 petition. The petitioner asserts that he complied with updated fingerprint requests in February 2004. The petitioner asserts further that his wife did not comply at that time because she was out of town and because they were not given a specific time frame in which to take their fingerprints. In addition, the petitioner asserts that the beneficiary's mother is destitute and unable to care for the beneficiary, and that he has submitted authentic and legal documents from Sierra Leone to support his petition to classify the beneficiary as an orphan.

The AAO notes that contrary to the petitioner's assertion that his wife did not take her fingerprints because they were unaware of a time limit for taking the fingerprints, the U.S. Citizenship and Immigration Services (CIS) letter sent to the petitioner on October 23, 2003, clearly refers to an enclosed fingerprint appointment letter. Specifically, the letter states that in taking their fingerprints, the petitioner and his wife are to, "[f]ollow the instructions on the included fingerprint appointment letters." The letter states further that CIS must receive a definitive response from the FBI concerning the petitioner's and his wife's fingerprints before a final decision can be made on their I-600 petition. Moreover, the AAO notes that the petitioner submitted no evidence on appeal to establish that his wife has, as of yet, taken her required fingerprints.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) § 103.2(b)(13) states:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

8 C.F.R. § 103.2(b)(15) states:

Effect of withdrawal or denial due to abandonment. [A] denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under Sec. 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application or petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

The district director determined that the I-600 petition had been abandoned. Accordingly, the petition was denied pursuant to 8 C.F.R. § 103.2(b)(13). A denial due to abandonment cannot be appealed under 8 C.F.R. § 103.2(b)(15). The petitioner's appeal must therefore be rejected.



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ORDER: The appeal is rejected.