



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

OFFICE: ATLANTA, GA

Date: JUN 09 2006

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)

ON 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on certification. The district director's decision will be affirmed and the petition denied.

The petitioner is a forty-two-year-old married citizen of the United States. The beneficiary was born in India on April 11, 1988, and she is seventeen-years-old. The record reflects that the petitioner initially filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on April 2, 2004. The I-600 petition was rejected by the CIS district office in Atlanta. A subsequently submitted I-600 petition was accepted and filed at the CIS district office in Atlanta on May 12, 2004. The district director denied the I-600 petition on December 7, 2004, based on a finding that the beneficiary was statutorily ineligible for qualification as an "orphan" under section 101(b)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(F), because she was over the age of sixteen when the I-600 petition was filed.

The AAO found on appeal that the CIS district office in Atlanta erroneously rejected the I-600 petition received by the office on April 2, 2004, and that the I-600 petition was properly filed on April 2, 2004, nine days prior to the beneficiary's sixteenth birthday. The AAO subsequently remanded the matter to the district director for adjudication and determination regarding whether the petitioner had complied with regulatory requirements for filing an I-600 petition and regarding whether the beneficiary met the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The AAO instructed that if the new decision was adverse to the petitioner, the decision should be certified to the AAO for review.

In a decision certified to the AAO on December 12, 2005, the district director found that the petitioner had failed to submit evidence establishing he had been granted legal custody over the beneficiary under Indian law, as required by section 101(b)(1)(F) of the Act. The district director found further that the petitioner had failed to establish that the beneficiary's natural father was incapable of providing proper care to the beneficiary, as set forth in 8 C.F.R. § 204.3(b). The district director determined that the petitioner had therefore failed to establish that the beneficiary met the definition of an "orphan" as set forth in section 101(b)(1)(F) of the Act, and the I-600 petition was denied.

On notice of certification, the applicant was provided with thirty days to submit evidence in opposition to the district director's findings. It is noted that counsel requested an additional ninety days to submit a brief and evidence. However, no additional evidence was received by the AAO. On April 28, 2006, the AAO notified counsel via fax that no further evidence or brief had been received. Counsel responded to the AAO's faxed notification, and stated that no additional brief or evidence was filed, and that the petitioner was unable to get a timely guardianship order in India. Counsel provided no new evidence and counsel made no other assertions relating to the basis of the district director's denial of the petitioner's I-600 petition.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The AAO finds that the petitioner has failed to provide any evidence to overcome the findings set forth in the district director's denial and Notice of Certification. The petitioner has therefore failed to meet his burden, and the petition will be denied.

ORDER: The district director's decision is affirmed and the petition denied.