



U.S. Citizenship
and Immigration
Services

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AUG 29 2007

FILE:

OFFICE: NEW DELHI, INDIA

DATE:

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

PHOTOCOPY

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 Officer in Charge, New Delhi, India, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600.) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

In the present matter, the officer in charge issued the Form I-600, denial decision on November 6, 2006. The officer in charge properly gave notice to the petitioner that he had 30 (33) days to file a Notice of Appeal with fee. The petitioner attempted to appeal the Form I-600, denial decision by sending a letter to the officer in charge on December 3, 2006.

The regulation provides at 8 C.F.R. § 103.3(a)(2)(i) that:

[T]he 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.

The record reflects that the officer in charge informed the petitioner, via correspondence on January 18, 2006, that his December 3, 2003, letter failed to satisfy the requirement that he timely file an appeal of the denial decision on a Form I-290B, Notice of Appeal (Form I-290B) with the proper fee. Correspondence contained in the record reflects that on February 4, 2007, the petitioner requested the Form I-290B. The petitioner was informed by the officer in charge that the filing of a Form I-290B would be untimely. The petitioner was further informed that if he wished, he could file a motion to reopen or a motion to reconsider his case with the officer in charge, pursuant to 8 C.F.R. § 103.5. The record reflects that the petitioner subsequently attempted to file a Form I-290B with fee at the U.S. Embassy, New Delhi, on March 2, 2007. The Form I-290B was rejected by the Field Office Director, New Delhi, on March 9, 2007. The petitioner was advised that he had failed to file a timely appeal of his case, and that any further action and fee payment on the matter must clearly reflect that it was for New Delhi, Motion to Reopen purposes only. The petitioner reattempted to file the Form I-290B on March 21, 2007. The Form I-290B did not reflect that it was for New Delhi, motion to reopen purposes only.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the

evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On appeal, the petitioner submits a statement reiterating the mental status of the beneficiary's natural father, an issue that had been discussed in previous decisions.

In the present matter, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.