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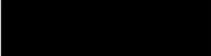
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: BALTIMORE, MD

DATE:

SEP 18 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600 Petition.) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the district director for consideration as a motion to reopen.

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).

The district director issued the Form I-600, denial decision on September 26, 2006. It is noted that the district director properly gave notice to the petitioner that he had 30 (33) days to file the appeal. The record reflects that the appeal was received by the district director on October 31, 2006, 35 days after the denial decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely filed and forwarded the matter to the AAO.

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).

In the present matter, the Form I-600 petition was denied because the petitioner failed to establish that the beneficiary's surviving parent was incapable of providing proper care to the beneficiary based on local standards in Nigeria. The petitioner's untimely appeal contains a letter addressing the poverty level in Nigeria and the beneficiary's present place of residence, and the untimely appeal contains eleven attachments, including articles relating to the Nigerian economy and poverty level, and affidavits relating to the beneficiary's place of residence, her father's ability to care for her, and her father's consent to the beneficiary's adoption. The AAO finds that the untimely appeal thus meets the requirements of a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the district director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the district director for consideration as a motion to reopen.