

APPLICANT'S NAME: [REDACTED]  
APPLICANT'S CASE NO.: [REDACTED]  
APPLICANT'S AGENCY: [REDACTED]

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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[REDACTED]

FILE: [REDACTED] Office: ATLANTA, GA Date: MAY 16 2005

IN RE: Applicant: [REDACTED]  
Beneficiary: [REDACTED]

Application: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. 204.3(c)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED<sup>1</sup>

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

<sup>1</sup> The AAO notes that the appeal appears to have been filed by attorney, [REDACTED]. The record however, does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative.

**DISCUSSION:** The District Director, Atlanta, Georgia denied the application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Form I-600A, Application for Advance Processing of an Orphan Petition (I-600A application) on May 3, 2004. The applicant is a forty-one-year-old married citizen of the United States.

The district director found that the applicant's spouse did not qualify as a "prospective adoptive parent", as set forth in Title 8, Code of Federal Regulations (8 C.F.R.), section 204.3(b), because he resides in the United States without a lawful immigration status. The application was denied accordingly.

On appeal, the applicant asserts that her husband [REDACTED] is a former L1 visa holder and that a pending adjustment of status application, which allows [REDACTED] to live and work in the United States, establishes his lawful immigration status.

8 C.F.R. § 204.3(b) provides in pertinent part that for immigration purposes:

Prospective adoptive parents means a married United States citizen of any age and his or her spouse of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. *The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.*

8 C.F.R. § 245.1(d) defines the term, "lawful immigration status" by stating that:

- (1) [F]or purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:
  - (i) In lawful permanent resident status;
  - (ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 [Nonimmigrant visa classes] of this chapter.
  - (iii) In refugee status under section 207 of the Act, such status not having been revoked;
  - (iv) In asylee status under section 208 of the Act, such status not having been revoked;
  - (v) In parole status which has not expired, been revoked or terminated;  
or
  - (v) Eligible for the benefits of Public Law 101-238 (the Immigration

Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

The record reflects that the applicant married her husband, [REDACTED] on July 25, 2001, and that she resides with her husband in Alpharetta, Georgia. The applicant filed the present I-600A application on May 3, 2004. The record reflects that the applicant applied for adjustment of her husband's immigration status in June 2003, and that [REDACTED] held an unexpired L1 nonimmigrant visa status until March 14, 2004. [REDACTED] adjustment of status application has not been approved, and is presently pending adjudication.

Based on the above evidence, the AAO finds that the applicant has failed to establish that her husband resides in the U.S. pursuant to an unexpired nonimmigrant or parole status. The AAO finds further that the applicant has failed to provide any legal evidence to support the assertion that a pending adjustment of status application accords [REDACTED] lawful immigration status" as set forth in the regulations.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The petitioner in the present matter has not met her burden. The appeal will therefore be dismissed

**ORDER:** The appeal is dismissed.