



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: ATLANTA, GA

Date:

JUN 12 2008

IN RE:

PETITIONER:

[REDACTED]

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:

[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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia initially approved the petitioner's Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600) on February 9, 2000. The Form I-600 approval was revoked on February 12, 2004. The matter was appealed to the Administrative Appeals Office (AAO), and the appeal was rejected as untimely filed on October 26, 2004. The district director reopened the matter and issued a new decision revoking the Form I-600 approval on November 14, 2005. The matter was subsequently certified to the AAO for review. The AAO affirmed the district director's decision on March 24, 2006. The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed, and the March 24, 2006 AAO decision will be affirmed.

The petitioner is a forty-six year-old married citizen of the United States. The beneficiary was born in India on November 2, 1989, and she is presently eighteen years old. The district director revoked the approval of the Form I-600 on November 14, 2005, based on the determination that the beneficiary did not meet the definition of an orphan, as set forth in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F) because: 1) the beneficiary's adoption did not conform to Indian, Hindu and Maintenance Act of 1956 (HAMA) requirements; 2) the beneficiary's natural father did not irrevocably abandon the beneficiary; and 3) the petitioner failed to establish that the beneficiary's natural father was incapable of providing proper care to the beneficiary. On certification, the AAO determined that the beneficiary's adoption complied with HAMA requirements, and that the petitioner had established that the beneficiary's natural father irrevocably released the beneficiary in writing for emigration and adoption. The AAO determined, however, that the petitioner had failed to establish that the beneficiary's natural father was incapable of providing proper care to the beneficiary, in accordance with the local standards in India. The beneficiary therefore did not qualify as an orphan, as set forth in section 101(b)(1)(F) of the Act. The district director's decision was affirmed accordingly, on March 24, 2006.

Through counsel, the petitioner filed a motion to reopen the AAO's decision on September 11, 2007. On motion, counsel indicates that the beneficiary's brother has died, and that her natural father now suffers from depression and is unable to care for the beneficiary. Counsel indicates that the new death certificate and medical evidence was not, and could not have been, available previously. On this basis, counsel asserts that a motion to reopen should be granted pursuant to 8 C.F.R. § 1003.2(a) and (c)(1).

It is noted that the 8 C.F.R. § 1103.2(a) and (c)(1), regulatory provisions referred to by counsel pertain to motions to reopen and motions to reconsider filed before the Board of Immigration Appeals (Board). The regulatory provision pertaining to motions to reopen or reconsider filed before the AAO are contained in 8 C.F.R. § 103.5(a)(1).

The regulation provides in pertinent part at 8 C.F.R. § 103.5(a)(1)(i) that:

[E]xcept where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. . . . Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. **Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.**

(Emphasis added.) In the present matter, the AAO decision was issued on March 24, 2006. The petitioner's motion to reopen was filed 1 ½ years later, on September 11, 2007. The motion to reopen was therefore not filed within the 30 day time period allowed under 8 C.F.R. § 103.5(a)(1)(i).

The AAO finds that the applicant failed to demonstrate that the delay in filing his motion to reopen was reasonable or beyond his control. The AAO notes the submission of death certificate evidence reflecting that the beneficiary's brother passed away on February 23, 2006. The petitioner also submitted two medical letters, dated August 14, 2007, indicating that the beneficiary's natural father now suffers from depression, and that he has been under treatment for a year. Counsel asserts that the new evidence was not, and could not have been available previously. Counsel does not otherwise describe how the delayed submission of the above evidence is reasonable or beyond the control of the petitioner. Moreover, the AAO notes that the death certificate reflects that the beneficiary's brother passed away prior to the issuance of the AAO's decision, and the medical letters are vague and reflect only that the beneficiary's father began treatment about five months after the issuance of the AAO's decision. The AAO finds, upon review of the totality of the evidence, that the petitioner failed to establish that a 1 ½ year delay in filing a motion to reopen was reasonable and beyond his control.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner's burden has not been met in the present matter because the motion to reopen was not filed within the required time period. Accordingly, the motion to reopen is dismissed and the previous March 24, 2006 AAO decision is affirmed.

ORDER: The motion to reopen is dismissed. The March 24, 2006 AAO decision is affirmed.