U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FI

FILE: [redacted] Office: SEATTLE DISTRICT OFFICE (YAKIMA) Date JUL 28 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Application: 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Seattle District Office, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a married 52-year old citizen of the United States. The beneficiary is presently 17-years old and was born on May 8, 1987 in the Philippines. The petitioner and his wife adopted the beneficiary on May 27, 2002 in the Philippines. On October 9, 2002, the instant petition was filed. On October 23, 2002, the director requested additional evidence from the petitioner, i.e., the petitioner's birth certificate and evidence of his wife's immigration status. The petitioner responded to the request for additional evidence and provided the requested documentation.

The director denied the petition, finding that the petitioner had failed to provide a home study as requested.

The regulation at 8 C.F.R. § 204.3(d)(3) states that the petitioner must submit a home study report as supporting documentation for an orphan petition.

A review of the record shows that the director requested only two items in his request for additional evidence and not a home study. Nonetheless, the petitioner is required to submit a home study.

On appeal, the petitioner states that he believed that a reference to a home study in the adoption decision was sufficient to satisfy the home study requirement.

In review, a mere reference to a home study performed in the foreign sending country is not sufficient to satisfy the regulatory requirements.

The regulation at 8 C.F.R. § 103.2(b)(8) states, in pertinent part:

> [I]n other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Citizenship and Immigration Service [CIS] finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the CIS shall request the missing initial evidence . . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for additional evidence.

In this case, the district director should have requested a home study from the petitioner.

For the above stated reasons, the decision of the district director will be withdrawn and the petition will be remanded for further action and consideration. The director must afford the petitioner reasonable time to submit a home study. The district director shall then render a new decision based on the evidence of record.

ORDER: The district director's decision is withdrawn. The petition is remanded to the district director for action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.