U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042,
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: PHILADELPHIA, PENNSYLVANIA Date: OCT 29 2004

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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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

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DISCUSSION: The District Director of the Citizenship and Immigration Services (CIS) Philadelphia, Pennsylvania, district office denied the immigrant visa petition. The matter was subsequently appealed to the Administrative Appeals Office (AAO). The AAO remanded the decision to the District Director for entry of a new decision, which, if adverse to the petitioner, was to be certified to the AAO for review. The matter has now been certified by the district director for review by the AAO. The appeal will be dismissed.

The district director received the petitioner's original Form I-600, Petition to Classify Orphan as an Immediate Relative, on August 19, 2002. The petition was rejected by the district director because of an overpayment of the filing fee. The petitioner submitted a second petition on August 30, 2002, and requested that the district director afford the petitioner the original receipt date of August 19, 2002. As the beneficiary turned 18 years old on August 21, 2002, the date the petition was considered filed was of critical importance, as the beneficiary is not eligible for classification under Section 101(b)(1)(F)(i)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i)(ii), if the beneficiary is not "under the age of 18" at the time the petition is filed. The district director determined the petition was not properly filed until August 30, 2002, and thus, that the beneficiary was ineligible for classification as an orphan.

On appeal, the AAO determined that the district director erred in interpreting the regulations too narrowly and found the petitioner "should not be penalized because [CIS] does not refund an overpayment of monies." However, the AAO also found that the petitioner failed to provide a home study as required and remanded the case to the district director to request the home study from the petitioner. The AAO instructed the district director to "request" and "consider" the additional evidence and enter a new decision. The AAO's decision is dated January 10, 2003.

On August 23, 2004, the district director entered his new decision in this case and certified the decision to the AAO. Specifically, the district director found that as the petitioner had not submitted the home study within the time prescribed by regulation, the regulation mandates denial of the petition.

The record reflects the following:

On June 5, 2003, the district director stated in a letter, written in response to counsel's status inquiry[1] that, " a review of [CIS] records reveals that this office is still awaiting the submission of the petitioner's home study." In the letter, the district director noted that failure to submit the home study within one year of the filing date would result in a denial of the petition.

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[1] As counsel submitted a letter dated September 27, 2002, advising CIS of the petitioner's request for appeal of the decision dated September 13, 2002, it is unclear why counsel would request an updated status on December 30, 2002, stating that he has "not received any further notice as to the acceptance of the I-600 petitions after resubmission." We further note that prior to the AAO's decision, counsel for the petitioner acknowledged in a letter dated December 30, 2002, that the record lacked a home study. In this letter counsel also requests that CIS "provide the case numbers for these petitions so that we can forward the home studies to the appropriate files." It in unclear why counsel would make such a request given that he had already submitted an appeal to CIS in which he referenced the petitioner's file number.

A letter dated, August 18, 2003, from a Certified Social Worker for es. In her letter, Ms. indicates that she is "writing to request an extension for Ms. ." Ms. further states:

> Ms. has completed all of the requirements for her home study and is currently waiting for the results of her fingerprints taken at the Delaware State Police Barracks. When the results of the fingerprints are received by this agency, the home study process will be complete.

A letter from counsel, also dated August 18, 2003, in which counsel requests an extension of 30 to 60 days in order to complete the petitioner's home study.

The home study was received by CIS on October 10, 2003. The home study, dated October 7, 2003, indicates that the petitioner was seen in her home on "August 2, 2003" and that there were "seven telephone contacts with [the petitioner] prior to the home visit." As counsel was aware, at least as early as December 2002, that the record lacked a home study, there is no explanation as to why the home study was not completed until October 2003, over 10 months later. Regardless, the regulations do not allow for either an extension of the home study's submission or waiver of the deadline for good cause. Instead, the regulations are clear in requiring the home study to be submitted at the time of the concurrent filing.

The regulation at 8 C.F.R. § 204.3(d)(3) allows for the concurrent filing of the Form I-600A, Application for Advance Processing of Orphan Processing, and the Form I-600. The regulation states:

> A petition filed concurrently with the advance processing application must be submitted on Form I-600, completed and signed in accordance with the form's instructions. (Under this concurrent procedure, Form I-600 serves as both the Forms I-600A and I-600, and the prospective adoptive parents should not file a separate Form I-600A). The following supporting documentation *must accompany a petition filed concurrently* with the application under this provision:
>
> (i) The *supporting documentation for an advanced processing application* required in paragraph(c) of this section; and
>
> (ii) The supporting documentation for an orphan petition required in paragraph (d)(1) of this section, except for paragraph (d)(1)(i) of this section.

[Emphasis added.]

As indicated in the above-cited regulation, the regulation at 8 C.F.R. § 204.3(c) lists the supporting documentation required to accompany an advanced processing application. The home study is considered

one of the supporting documents required with the advanced processing application, and therefore, required at the time of the concurrent filing submission.[2]

Though a petitioner may be afforded one year from the time of filing the *advanced processing application* to submit a home study, there is no similar provision for the concurrent filing of the orphan petition and the advanced processing application. Therefore, though we agree with the district director's ultimate decision in denying the petition for lack of a home study, we do not agree with the district director's reasoning. In his decision, the district director determined the petition was not approvable because the home study was not submitted within a year of the concurrent filing. It is noted that even under the district director's generous interpretation of the regulation, the petitioner did not submit the home study within one year of the filing.

As the regulation clearly requires the home study to be submitted at the time of the concurrent filing, and because there is no remedy for a petitioner's failure to submit a home study at the time of filing a concurrent filing, the application may not be approved.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[2] *See* 8 C.F.R. § 204.3(c)(2).