U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

F1

[redacted]

File: [redacted] Office: TAMPA, FLORIDA Date: SEP 16 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:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The District Director of the Tampa, Florida sub-office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the district director issued a request for evidence on August 19, 2003. In that letter, the district director requested the petitioner to submit a complete copy of his divorce decree, the beneficiary's original birth certificate, certified copies of the beneficiary's parents' death certificates, the appropriate evidence to establish adoption under Haitian law, a home study, and evidence of the petitioner's current address.

The petitioner failed to respond to the request for evidence and on March 2, 2004, the district director issued a notice of intent to deny. The district director again noted the evidence necessary to render a decision on the petition. The petitioner was afforded 30 days in which to respond to the notice of intent to deny with the requested evidence.

On March 12, 2004, Citizenship and Immigration Services (CIS) responded by letter to the petitioner's phone call requesting additional time to submit documentation. In the letter, CIS acknowledged that conditions in Haiti made it difficult to obtain the necessary documentation and afforded the petitioner an extra month, until May 2, 2004, to obtain the documentation to support the petition.

On May 18, 2004, the petitioner submitted a bill showing his current address, the beneficiary's original birth certificate, and the petitioner's divorce decree. No further evidence was submitted.

On July 2, 2004, the district director denied the petition. In his decision, the district director noted that the petitioner had been afforded sufficient time and opportunity to submit the documentation needed to support the petition and concluded that the petitioner's failure to submit such documents, despite numerous and specific requests by CIS, resulted in the petitioner's abandonment of the petition.

The regulation at 8 C.F.R. §103.2(b)(15) states, in pertinent part, that "a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5."

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:
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> (i) The requested evidence was not material to the issue of eligibility;
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> (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

> (iii) The request for additional information or other appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised [CIS], in writing, of a change of address or change of representation subsequent to filing and before the [CIS'] request was sent, and the request did not go to the new address.

Further, the regulation at 8 C.F.R. § 103.5(a)(3) states:

> 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 upon the evidence in the record at the time of the initial decision.

The statement submitted by the petitioner states: "The office in Haiti was closed. There was a lateness." No other explanation is provided and no further documentation has been submitted to support the petition. As such, the petitioner has not met the requirements of a motion to reopen or reconsider.

As there is no appeal for a decision based on abandonment, the petitioner's appeal request is rejected. Moreover, as the petitioner's statement does not meet the requirements of a motion to reopen or reconsider, we will not remand the case to the district director to treat the appeal request as a motion.

ORDER: The appeal is rejected.