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

U.S. Citizenship and Immigration Services

F2

[redacted]

File: [redacted] Office: ATLANTA, GEORGIA Date: NOV 05 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]

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

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 Citizenship and Immigration Services (CIS) Atlanta, Georgia, district office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to the district director for further consideration and entry of a new decision.

The copy of the notarial certificate contained in the record reflects the beneficiary was born on April 21, 1993, in Yanshan County of Hebei Province, China. The certificate lists the beneficiary's father as and her mother as

The record contains the district director's request for evidence, dated November 22, 2002. The petitioner responded to the request on January 13, 2004.

On March 24, 2003, the district director issued a notice of intent to deny. In this notice, the district director noted that the beneficiary remained in the custody of his natural father, despite the diagnosis that the natural father was suffering from Manic-depressive Schizophrenia. The district director then stated, "[i]f illness prevents [the natural father] from caring for his child, he must surrender the child to a competent autho[rity], such as an orphanage or government entity of that foreign sending country." The district director afforded the petitioner 60 days in which to submit additional documentation to establish the beneficiary was an orphan.

On May 7, 2003, counsel for the petitioner responded to the notice. The record reflects that the response was received by the district director on May 12, 2003. In the response, counsel claims that the natural father's "whereabouts are unknown and reasonable effort has been taken to locate him." In support of this claim, counsel submits a copy of a publication in the *Cangzou Daily Newspaper*. The translation of this publication indicates that the beneficiary's natural father left his home on January 10, 2003. The publication requests that any person who meets the description of the natural father, contact his family.

Despite receiving the petitioner's response to the notice of intent to deny within the 60-day time frame, the district director issued a denial on February 17, 2004, stating that the petitioner "failed to submit any evidence in response to the intent."

As the requested information was submitted to the district director in a timely manner, the case will be remanded to the district director for review and consideration of the additional evidence and entry of a new decision.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.