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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: ATLANTA, GEORGIA Date:

OCT 29 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The District Director, of the Atlanta, Georgia, Citizenship and Immigration Services (CIS) district office denied the Application for Advance Processing of Orphan Petition. 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 January 27, 2004. In that letter, the district director requested that the prospective adoptive parents provide a home study and certified dispositions for each of the prospective adoptive parents' arrests.

The prospective adoptive parents did not respond to the district director's request and the district director subsequently denied the petition on April 22, 2004. In her decision, the district director noted the applicants' failure to submit the certified arrest dispositions as requested. The district director further noted that the applicants' home study preparer gave an unfavorable recommendation to the applicant and his spouse. In her decision, the district director cited 8 C.F.R. § 103.2(b)(13) and noted that the effect of the prospective adoptive parents' failure to respond to the district director's request for evidence was that the application is considered abandoned and shall be denied.

On May 21, 2004, the prospective adoptive parents submitted their appeal. Concurrent with the appeal, the prospective adoptive parents submitted additional documentation, including the dispositions for the prospective adoptive mother's DUI arrest, and both prospective adoptive parents' arrests for simple battery.

On June 11, 2004, the prospective adoptive parents submitted additional documentation to supplement their appeal request, to include a new home study, the disposition for the prospective adoptive father's DUI arrest, and a reference letter. There is, however, no regulation that allows an applicant an open-ended or indefinite period in which to supplement an appeal once it has been filed. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." The prospective adoptive parents indicated additional "items [will] be coming under separate cover." They did not request, nor were they granted, additional time to submit additional documents, nor have they shown good cause to warrant repeated extensions. The regulations do not state or imply that the prospective adoptive parents may freely supplement the record up until the date of appellate adjudication.

We find this issue to be of little consequence, however, as the regulation at 8 C.F.R. §103.2(b)(15) states, in pertinent part, "a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5."

While the district director advised the petitioner that he could file an appeal, in accordance with 8 C.F.R. § 103.2(b)(15), this office has no jurisdiction over the instant appeal. Rather, 8 C.F.R. § 103.5(a)(2) provides that denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments.

ORDER: The appeal is rejected.