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JUL 13 2009

FILE:

Office: OKLAHOMA CITY

Date:

IN RE:

Applicant:
Beneficiary:

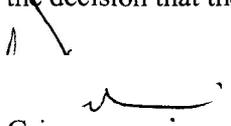
APPLICATION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3

ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600A, Application for Advance Processing of Orphan Petition, on February 22, 2008. The applicant appealed the field office director's decision, and the Administrative Appeals Office (AAO) withdrew the field office director's decision on August 20, 2008. The AAO remanded the matter to the field office director for further action and the entry of a new decision which, if adverse to the applicant, was to be certified to the AAO for review. The applicant did not respond to the field office director's August 27, 2008 request for additional evidence, and the field office director denied the application, again, on December 29, 2008. Although the field office director forwarded the file to the AAO, he did not provide counsel and the applicant with proper notice of the certification, as required by 8 C.F.R. § 103.4(a)(2). As such, the AAO again remanded the matter to the field office director for further action on March 31, 2009. Specifically, the AAO instructed the field office director to enter a new decision which would place counsel and the applicant on notice that he was certifying his decision to the AAO. The field office director issued a newly-dated denial of the application on April 16, 2009, and certified his decision to the AAO for review. The field office director provided proper notice of the certification to counsel and the applicant.¹ The contents of these decisions are part of the record of proceeding, and their contents need not be repeated here.

The applicant elected not to respond to the field office director's August 27, 2008 request for additional evidence, and has chosen not to submit additional evidence to the AAO to rebut the findings of the director's notice of certification. Accordingly, the record is considered to be complete as it now stands, and the applicant has failed to address the field office director's concerns regarding the arrests, previous marriages, and other children that were not addressed in his homestudy. Accordingly, the applicant has failed to overcome the grounds of denial. The director's decision to deny the application will therefore be affirmed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The director's April 16, 2009 decision is affirmed. The application is denied.

¹ The field office director notified the applicant, incorrectly, in his April 16, 2009 decision that he could file a motion to reopen, pursuant to 8 C.F.R. § 103.5(a)(2), and set forth the criteria for filing such a motion. However, as the director was certifying his decision to the AAO for review, the petitioner had the right to submit a brief and/or additional evidence directly to the AAO, regardless of whether his submission satisfied the substantive criteria to qualify as a motion to reopen. Furthermore, as the field office director was certifying his decision to the AAO for review, his decision was not final, and the filing of a motion by the applicant in response to the decision would have been improper. The field office director, therefore, should not have included that discussion in his decision. However, as the field office director properly notified the applicant in the notice of certification that he had the right to submit additional evidence to the AAO in response to the certification within 30 days, the AAO finds the field office director's inclusion of the discussion relating to motions in his decision to have been harmless error.