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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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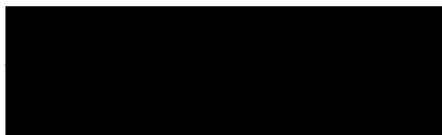
DATE **DEC 20 2011**

OFFICE: GUATEMALA CITY, GUATEMALA

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary:



PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

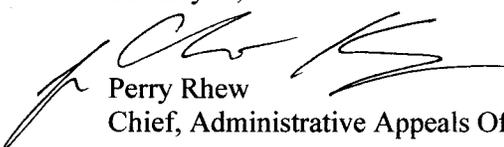
SELF-REPRESENTED¹

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

¹ The petitioner has again submitted a Notice of Entry of Appearance of Attorney in Matters Outside the Geographic Confines of the United States (Form G-28I), signed by an individual claiming to be an attorney licensed to practice law in Guatemala. As stated in our June 22, 2011 decision, pursuant to 8 C.F.R. § 292.1(a)(6) and the instructions to the Form G-28I, the individual who signed the G-28I has not established that he is eligible to represent the petitioner in this proceeding, and we consider the petitioner self-represented.

DISCUSSION: The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision to deny the petition on seven separate occasions in response to subsequent motions to reopen or reconsider. The matter is again before the AAO on an eighth motion to reopen or reconsider. The motion will be dismissed. The petition will remain denied.

The petitioner seeks classification of the beneficiary as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). As the facts and procedural history of this case have been adequately documented in our previous decisions, we will only address the petitioner's current submission on motion, which consists of a letter outlining the petitioner's pursuit of the adoption in the Guatemalan court system. The petitioner also asserts that his repeated filing of motions is to preserve his eligibility as a "grandfathered" case pursuant to U.S. Citizenship and Immigration Services (USCIS) policies and procedures.

The petitioner's submission does not qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part the following:

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 on the evidence of record at the time of the initial decision.

Because the petitioner's motion is dependent upon evidence not yet in existence at the time the decision he seeks to have reconsidered was issued, it does not establish that our prior decisions were incorrect based upon the record before us at the time we issued them. Nor does the petitioner cite any pertinent precedent decisions to establish that our prior decisions were based on an incorrect application of law or USCIS policy. Accordingly, his submission does not qualify as a motion to reconsider.

The petitioner's submission also does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2), which must consist of "new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence." Here, nothing in the petitioner's statement contains new facts, only allegations of corruption in the Guatemalan court system and the petitioner's retelling of why he believes that the beneficiary should be classified as an orphan at section 101(b)(1)(F) of the Act. The petitioner also does not submit any supporting documentation. Accordingly, his submission does not qualify as a motion to reopen.

The petitioner asserts that he is filing this eighth motion as a means to preserve the June 2, 2008 filing date of the petition, and again asks USCIS to hold adjudication of the petition in abeyance until he is able to "fully document our case." As stated in our June 22, 2011 decision, we will not delay adjudication of this matter. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible

under a new set of facts. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that eligibility must be established at the time a petition is filed). Additionally, as we noted in our prior decision, the petitioner's allegations regarding acts of corruption in the Guatemalan legal system are not properly before the AAO, as we have no authority to review Guatemalan court procedures.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's present submission fails to meet the requirements of a motion to reopen or reconsider, and the motion shall be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

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

ORDER: The motion is dismissed. The petition remains denied.