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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [Redacted]

Office: OKLAHOMA CITY Date:

**MAR 31 2009**

IN RE: Applicant: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Dallas, Texas, district office denied the Application for Advance Processing of Orphan Petition. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the application to the director for further consideration and entry of a new decision, which, if adverse to the petitioner, was to be certified to the AAO for review. Upon remand, the director issued a new decision, which has been forwarded to the AAO. The director's decision will again be withdrawn and the application will be remanded for further action.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on January 31, 2002. The director denied the application on February 20, 2004 after determining that the applicant failed to establish that he and his spouse were able to provide proper care to an orphan. Specifically, the district director found the petitioner failed to provide evidence of rehabilitation after his arrest for domestic violence. Further, the district director noted that the applicant and his spouse had brought a child into the United States and adopted him without approval or authorization from U.S. Citizenship and Immigration Services (USCIS).

On appeal, the AAO withdrew the decision of the director and remanded the case to the director to request the home study preparer to submit a new home study in which the preparer addressed the requirements of 8 C.F.R. §§ 204.3(e)(2)(iii)(B) and (C), and 8 C.F.R. § 204.3(e)(6), specifically, the preparer's decision to approve the applicant and his spouse despite the applicant's admitted history of domestic violence.

The AAO further noted that although the child was in the United States and was apparently now ineligible for an orphan petition pursuant to the regulation at 8 C.F.R. § 204.3(k)(3), that issue was not relevant to the instant case, an advanced processing application, which focuses on the ability of the prospective adoptive parents to provide a proper home and on their suitability as parents. Nonetheless, the AAO stated that the petitioner should be advised that even if the Form I-600A application was approved, the child would be ineligible for classification as an orphan under section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F).

The AAO directed that if the subsequent decision was adverse to the petitioner, the decision had to be certified to the AAO for review.

Upon remand, the director issued a Request for Evidence (RFE) on August 23, 2006 pursuant to the AAO's January 21, 2005 decision. No response was received. On January 2, 2009, the director of the Oklahoma City field office denied the application as abandoned. The director forwarded the case to the AAO for "certification of denial," but did not provide the applicant and counsel with notice of the certification, as required by the regulation at 8 C.F.R. § 103.4(a)(2). Pursuant to the regulation, the director must notify the applicant that he has 30 days after service of the decision to submit a brief to the AAO.

Accordingly, the application is remanded for issuance of a newly dated decision and corresponding Notice of Certification in compliance with the regulation at C.F.R. § 103.4(a)(2).

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