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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PHOTOCOPY

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FILE:



Office: OKLAHOMA CITY

Date: FEB 25 2010

IN RE:

Applicant:

Beneficiary:



APPLICATION:

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

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The district director, Dallas, Texas, denied the Form I-600A, Application for Advance Processing of Orphan Petition, on February 20, 2004. The applicant appealed the director's decision, and the Administrative Appeals Office (AAO) withdrew such decision on January 21, 2005. The AAO remanded the matter to the 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 director's August 23, 2006 request for additional evidence, and the field office director, Oklahoma City, denied the petition, again, on January 2, 2009. Although the 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 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 director issued a newly-dated denial of the application on December 3, 2009, and certified his decision to the AAO for review. The 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 director's August 23, 2006 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 provide evidence of rehabilitation after his arrest for domestic violence. Accordingly, the applicant has failed to overcome the ground for denial of the application. 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 December 3, 2009 decision is affirmed. The petition is denied.

¹ The director notified the applicant, incorrectly, in his December 3, 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 applicant 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 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 director, therefore, should not have included that discussion in his decision. However, as the 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 director's inclusion of the discussion relating to motions in his decision to have been a harmless error.