U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: PHILADELPHIA, PA Date: MAR 17 2003

IN RE: Applicant:
Beneficiaries: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

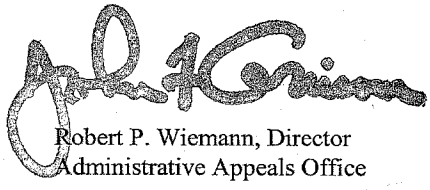
PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania district office denied the petition to classify orphan as an immediate relative. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on October 31, 2000. The applicant is a 49-year-old married naturalized citizen of the United States, who together with his spouse, seeks to adopt two of the petitioner's spouse's nephews.

The district director denied the petition because the petitioner and his spouse failed to provide initial evidence to substantiate that the children may be classified as orphans and failed to provide a home study report.

On appeal, the petitioner provides a home study report.

On the Form I-600, the petitioner stated that the beneficiary has no parents because they (his parents) are deceased. This statement, by itself, is insufficient evidence in a determination of whether the beneficiary meets the definition of an orphan. As previously stated, an orphan is defined in section 101(b)(1)(F) of the Act as:

> a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

The record does not contain any evidence that the beneficiary is an orphan due to the death, disappearance of, abandonment or desertion by, or separation or loss from, both parents. The record also does not contain any evidence that the beneficiary is an orphan because he is the child of a sole or surviving parent who is incapable of providing for the beneficiary's proper care and who has in writing irrevocably released the beneficiary for emigration and adoption. Without such evidence, the Service cannot determine whether the beneficiary can be classified as an orphan.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.