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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: [redacted] Office: MIAMI, FLORIDA Date: DEC 21 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Miami, Florida, denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) in July of 1999. The petitioner is a 48-year-old married citizen of the United States. The beneficiary is 3 years old at the present time and was born in Lagonave, Haiti on June 23, 1998.

The director denied the petition after determining that documents submitted in support of the beneficiary's adoption did not establish eligibility at the time the petition was filed.

On appeal, the petitioner submits a brief statement on the Form I-290B. The petitioner asserts that the director's decision to deny the petition was unfair, as the documents initially submitted with the petition were not fraudulent, but merely improperly prepared.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part 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.

On March 16, 2000, the director issued to the petitioner a Notice of Intent to Deny the I-600 petition. According to the director, the documents that the petitioner submitted in support of the petition were determined by the Service's forensic document laboratory to be either counterfeit or fraudulent. The documents included a Certificate of Adoption, a National Archives Extract of the Certificate of Adoption, and the beneficiary's birth certificate.

On July 13, 2000, the petitioner responded to the director's Notice of Intent to Deny. The petitioner submitted new documents that included an Authorization of Adoption, dated June 21, 2000; a Judgement of Adoption, dated June 28, 2000; and another birth certificate for the beneficiary. The director did not question the authenticity of these documents; however, he denied the petition because the documents showed that the beneficiary was not eligible to be classified as an orphan when the initial petition was filed in July of 1999.

On appeal, the petitioner states the following:

> I think that the decision to deny the petition was unfair. At the time of filing, the documents that I submitted were not fraudulent but improperly done. I was not aware about this situation and this is why when your services [sic] were asking for other evidence I did not have no choice to have the original documents reexamined. I'm taking on this kid and I deeply believe you should give him the opportunity to be with me.

The petitioner's desire to take care of the beneficiary is admirable; however, the director's reasoning in denying the petition must stand.

The Service does not concur with the petitioner that the documents were not fraudulent, but simply improperly prepared. The report from the Service's forensic document laboratory clearly states that the documents submitted by the petitioner were either fraudulent or counterfeit. The director, therefore, determined that these documents could not be relied upon in a determination of whether the beneficiary met the definition of an orphan. The petitioner's diligence in obtaining new adoption documents subsequent to the director's notice evidences that the previously submitted documents were, indeed, fraudulent.

Based on the documents that the petitioner submitted in response to the director's Notice of Intent to Deny, it appears that the petitioner did not adopt the beneficiary until June of 2000, which is approximately eleven months after the petition filing. As stated in his denial notice, the director noted that:

8 C.F.R 103.2(b)(12) states:

> *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the petition was filed.

The Service may not approve the petition because at the time the petition was filed, the petitioner did not present credible evidence that the beneficiary was eligible to be classified as an orphan. Specifically, the petitioner failed to credibly establish that he had adopted the beneficiary as of the petition's filing date (July of 1999). Additionally, the petitioner also failed to establish that even if the adoption was not valid, he had, or an entity working on his behalf had, secured custody of the beneficiary for emigration and adoption in accordance with the laws of Haiti. See. 8 C.F.R. 204.3(d). Accordingly, as the petitioner relied upon documents that were found to be fraudulent and counterfeit in support of his claim

that the beneficiary was an orphan, the Service could not approve the petition.

The denial of this petition is without prejudice. Therefore, now that the petitioner has obtained new documents relating to his adoption of the beneficiary, the petitioner may file another I-600 petition in the beneficiary's behalf so that the Service may review the new documents and determine whether they establish the beneficiary's eligibility for classification as an orphan.

As always in these 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.