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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: [redacted] Office: MIAMI DISTRICT OFFICE Date: SEP 17 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: 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:

[redacted]

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The District Director, Miami, denied the visa petition to classify the beneficiary as an immediate relative, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion. The motion will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on March 22, 2000. The petitioner is a 49 year-old married citizen of the United States. The beneficiary, who at this time is 12 years old, was born in Esperanza, Dominican Republic, on November 19, 1988. The beneficiary's biological mother, [redacted] has been identified in the record of proceeding, and is living. The beneficiary's biological father, [redacted] has been identified in the record of proceeding, and is living. He is the brother of the petitioner.

The district director denied the petition after determining that the beneficiary did not meet the statutory definition of "orphan" because the submitted evidence failed to establish that the biological parents abandoned the beneficiary. The Associate Commissioner affirmed the director's decision.

On motion, counsel states that he did not submit additional evidence on appeal because he was waiting to hear from the Administrative Appeals Office (AAO) regarding whether the office granted him the 90 days he requested in which to submit additional evidence. Counsel further states that he has additional evidence regarding the beneficiary's eligibility as an orphan; however, counsel is waiting to receive a decision on the motion before requesting 30 days to present the additional evidence.

8 C.F.R. 103.5(a) states, in pertinent part:

> (2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
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> (3) *Requirements for motion to reconsider.* 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.

Counsel's statement on motion does not meet the requirements of either a motion to reopen or a motion to reconsider.

Counsel's statement does not fit the requirements of a motion to reopen because he fails to state the new facts to be proved. Additionally, although counsel states that he now has additional evidence, counsel does not present this evidence on motion. It is noted that there is no provision in the regulations to allow a petitioner 30 days to submit additional evidence after the filing of a motion; the regulations specify that any new facts or evidence must be submitted as part of the motion.

Counsel's statement also does not fit the requirements of a motion to reconsider because counsel does not establish that either the director or the Associate Commissioner incorrectly applied the law to the facts in the record of proceeding. Counsel also fails to support his argument with pertinent precedent decisions.

Pursuant to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed. Accordingly, the petitioner's June 11, 2001 motion is dismissed for failure to meet applicable requirements.

As always, the burden of proving eligibility for the benefit sought remains entirely 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.