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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: New York, New York Date: MAY 7 - 2002

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:

[redacted]

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 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 that 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 District Director, New York, New York, denied the visa petition to classify the beneficiary as an immediate relative. The Associate Commissioner for Examinations dismissed a subsequent appeal. After the Associate Commissioner affirmed his decision on motion, the petitioner filed suit against the Immigration and Naturalization Service (the Service) in the United States District Court for the Eastern District of New York. The Court granted the plaintiff's complaint and ordered the Service to approve the petition. Accordingly, the previous decisions of the Associate Commissioner and the District Director will be withdrawn. The petition will be approved.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the Director on April 1, 1998. The petitioner is a 55-year-old unmarried citizen of the United States. The beneficiary was born in Maniche, Haiti on August 20, 1982, and was 15 years old at the time of the petition's filing. The record reflects that the petitioner adopted the beneficiary on May 6, 1991, in Haiti.

On December 3, 2001, the United States District Court entered a written judgment in the matter of Dupont v. INS, CV-00-7282 (E.D.N.Y. December 3, 2001). The Court declared that the petitioner is entitled to have the beneficiary classified as her orphan adopted child within the meaning of section 101(b)(1)(F) of the Immigration and Nationality Act. The Court ordered the Service to approve the plaintiff's petition. Pursuant to the Court's judgment and order, the petition will be approved.

ORDER: The previous decisions of the Associate Commissioner, dated May 17 and November 9, 2000, are withdrawn. The decision of the District Director dated August 16, 1999 is withdrawn. The petition is approved.