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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: GUATEMALA CITY SUB-OFFICE Date: MAR 17 2003

IN RE: Petitioner:
Beneficiary: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

 [redacted]

DISCUSSION: The Officer-in-Charge (OIC), Guatemala City, Guatemala denied the petition to classify orphan as an immediate relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the OIC on September 23, 2002. The petitioner is a 39-year-old married naturalized citizen of the United States. The beneficiary is 13 years old at the present time and was born in Guatemala City on November 26, 1989. The petitioner is the beneficiary's paternal aunt.

The record of proceeding contains the Form I-600 petition and accompanying documentation, the OIC's Notice of Intent to Deny, counsel for the petitioner's response to the OIC's Notice, the OIC's final denial dated December 2, 2002, and the Notice of Appeal dated February 3, 2003.

According to 8 C.F.R. § 103.3(a)(2)(i), an affected party must file an appeal within 30 days of service of the decision. In the instant case, the petitioner filed the appeal 63 days after the decision was issued. The appeal was untimely filed and will be rejected.

It is noted that the OIC asked the AAO to accept the appeal as timely because he had mistakenly granted them an extension of thirty days. The regulations do not allow the Bureau to extend the thirty-day appeal timeframe.

If an appeal is untimely, the appeal may still be treated as a motion to reopen or reconsider if it meets the requirements of a motion to reopen or a motion to reconsider.

8 C.F.R. § 103.5(a)(2)(i)(ii) requires that a motion to reopen state the new facts to be proved at the reopened proceeding; and be supported by documentary evidence.

8 C.F.R. § 103.5(a)(3)(i)(ii) requires that a motion for reconsideration state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

In the instant case, no new facts were offered and no reasons for reconsideration were offered. The untimely appeal does not meet the requirements of either a motion to reopen or a motion to reconsider.

Finally, the petitioner indicated on her appeal notice that she had ineffective counsel. A motion to reopen or reconsider based upon a claim of ineffective assistance of counsel requires (1) that the motion be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be

taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N. Dec. 637 (BIA 1988). In this instance, the petitioner failed to substantiate her claim of ineffective counsel.

This decision is without prejudice to the filing of a new petition.

ORDER: The appeal is rejected.