



U.S. Citizenship  
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Services

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FILE:

Office: NEW ORLEANS

Date:

NOV 21 2006

IN RE: Petitioner:  
Beneficiary:

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, New Orleans. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on February 10, 2006. The district director concluded that the beneficiary, [REDACTED] did not meet the requirements of the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101(b)(1)(F). The petition was denied accordingly.

The decision of the district director noted that based on the definition of "orphan" under the Act, the beneficiary was not considered an orphan because she was over the age of sixteen at the time the I-600 Petition was filed. *District Director Decision*, July 18, 2006.

On appeal, the petitioner asserts that the beneficiary is a "child" under section 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(E), as the natural sibling of an adopted child, and is an "orphan" under the Act because she was under the age of eighteen when the I-600 Petition was filed. *Appellant's Brief*, dated August 12, 2006 (attachment to petitioner's Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B) submitted August 18, 2006). The petitioner also asserts that the U.S. Citizenship and Immigration Service (CIS) erred in "finding that [the beneficiary] failed to qualify as a child for purposes of adoption, as she has competently qualified [under the law] (citing to section 101(b)(1)(G) of the Act, 8 U.S.C. 1101(b)(1)(G), and the Intercountry Adoption Act of 2000, which "permits the adoption of some children who do not qualify as 'orphans' under the Act"). *Id.* The petitioner further contends that the beneficiary was abandoned by her biological parents when they voluntarily gave custody of her to her maternal grandmother at a time when they were involved in drugs; and that the beneficiary was separated from her parents because they are both incarcerated for life without any possibility of parole, and the law of the Philippines terminates parental authority of felons who receive a maximum jail sentence. *Id.* The petitioner finally points out, citing to section 204(d)(2) of the Act, 8 U.S.C. 1154(d)(2), that in compliance with the 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Convention), all of the documentary requirements for adoption have been met and the adoption of the beneficiary by the petitioner has been approved by the central authority of the Philippines, the Intercountry Adoption Board (ICAB). *Id.*

The AAO emphasizes that the issue on appeal is not whether the beneficiary has been adopted according to the law of the Philippines, but whether the beneficiary meets the definition of an "orphan" for purposes of classification as an immediate relative under U.S. law. The petitioner correctly states that not all inter-country adoptions are of children who are "orphans." If the beneficiary has been legally adopted in the Philippines, and the adoptive parent has lived with the child for two years as the child's primary caregiver, then the adoptive parent may be eligible to file an Immediate Relative Petition (Form I-130) on her behalf as the child of a U.S. citizen. There is no requirement in such circumstances that the child be classified as an "orphan." However, in this case, the petitioner filed an I-600 Petition to classify an "orphan" as an immediate relative, and that is the subject of this decision.

Section 101(b)(1)(E) of the Act defines "child" in pertinent part as an unmarried person under twenty-one who is:

- (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . . ;**

or a child who (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), **except that the child was adopted while under the age of 18 years** (emphasis added.)

Section 101(b)(1)(F) of the Act, defines "orphan" in pertinent part as:

(i) [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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence . . . ; or (ii) . . . a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), **except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)** (emphasis added).

The record contains the beneficiary's birth certificate, showing birth in the Philippines on September 22, 1988, and the I-600 Petition filed on her behalf on February 10, 2006. The beneficiary was thus over the age of 16 but under the age of 18 at the time the petition was filed. The record also contains the birth certificate of the beneficiary's natural sibling, [REDACTED] who was born on June 6, 1990, and the I-600 Petition filed on her behalf on February 10, 2006, showing that she was under the age of 16 on the date of filing.

There is no evidence in the record that either the beneficiary or her sibling meet the definition of an adopted child under section 101(b)(1)(E) of the Act, or that either sister was adopted under the law of the Philippines. Documents for each sibling are included in the record that show authorization by the Philippines ICAB for Crossroads Adoption Services in Minneapolis, Minnesota to entrust the beneficiary and her sister to [REDACTED] (the petitioner and her husband). *ICAB Placement Authority Documents*, June 1, 2006. For each sister, a separate document states that "the transfer of the child to the prospective adoptive parents shall only be carried out" if certain Hague Convention requirements are met and that "the above agency shall be responsible for the care, health and social well-being of the child . . . from the date of placement until the issuance of a Decree of Full Adoption in favor of the above-mentioned adoptive parents. *Id.* Contrary to the assertions of the petitioner, these documents do not indicate that either sibling has been adopted, but rather that their adoption is contemplated in the future by the prospective adoptive parents.

The preliminary issue before the AAO is therefore whether the beneficiary is the natural sibling of an "orphan" as described in section 101(b)(1)(F)(i) and (ii) of the Act so that a petition on her behalf may be filed before she reaches the age of 18.

The record indicates that the district director concluded that the beneficiary's sister, [REDACTED] did not meet the requirements of the definition of "orphan" under section 101(b)(1)(F) of the Act, and the petition was denied accordingly. The AAO agrees with the district director and has dismissed the appeal in that case. The beneficiary's sibling is not an "orphan" under the Act, and the beneficiary must therefore be under the age of 16 at the time an I-600 Petition is filed on her behalf. The beneficiary was over 16 when the I-600 Petition was filed. Given the evidence in the record, the AAO finds that the beneficiary therefore does not meet the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

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 his burden in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.