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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

F₁

PUBLIC COPY

[REDACTED]

FILE:

Office: HONOLULU, HAWAII

Date: **SEP 27 2006**

IN RE: Petitioner:
Beneficiaries:

[REDACTED]

PETITION: Petitions 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Honolulu, Hawaii, denied the Petitions to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO notes that though there are two separate petitions and two separate files for the beneficiaries, both petitions were addressed in a single decision by the district director. As there is a single appeal, the AAO will also address both petitions in this decision.

The petitioner filed Petitions to Classify Orphan as an Immediate Relative (I-600 Petition) on December 15, 2000 on behalf of the beneficiaries, [REDACTED] and [REDACTED]. The petitioner is a 54-year-old married U.S. citizen. The district director concluded that the beneficiaries, 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 I-600 petitions were denied accordingly.

The decision of the district director included the relevant provision of the Act pertaining to the adoption of orphans, noting that a child who meets the definition of "orphan" under section 101(b)(F) of the Act must be under 16 at the time the I-600 Petition is filed in his behalf, or under 18 if he is the natural sibling of an orphan. The beneficiaries' birth certificates indicate that they were born in the Philippines on February 15, 1977 [REDACTED] and March 4, 1981 [REDACTED]. They were 29 years old and 25 years old respectively when the I-600 Petitions were filed. The district director determined that the beneficiaries did not therefore meet the definition of "orphan" under the Act and were ineligible for classification as immediate relatives on that basis.

On appeal, the petitioner states, "[P]etitions were presented to INS while the [o]rphans [were] still under the age of sixteen. Attached is a copy of your acknowledgment letter dated March 15, 1995." The acknowledgment letter submitted by the petitioner is a Receipt Notice (Form I-797C) from the Immigration and Naturalization Service (legacy INS) indicating that the INS had received her Petition for Immigrant Relative (Form I-130) on behalf of [REDACTED] on March 15, 1995. The AAO notes that the beneficiary turned 18 years old in 1995. No other evidence or information was submitted on appeal.

Section 101(b)(1)(F) of the Act 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; 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. (emphasis added)

The record indicates that the petitioner filed Forms I-130 on May 21, 1992 and March 14, 1995 in order to have the beneficiaries, her adopted sons, classified as her immediate relatives, and that these petitions were denied. *Director's Decision*, February 27, 1997; *Director's Decision*, June 28, 1995. The *orphan petitions filed in their behalf to accord a classification as an immediate relative* are the I-600 Petitions. See 8 U.S. Code of Federal Regulations (C.F.R.) § 204.3 In this case, after receiving a denial of the I-130 petitions, the petitioner filed the I-600 Petitions in order to have the same beneficiaries, then referred to as orphans, classified as immediate relatives. The I-600 Petitions were filed when the beneficiaries were over the age of 16. Although Form I-130 was filed before the beneficiary turned 16 in the case of [REDACTED] and after the beneficiary turned 16 in the case of [REDACTED], the dates of the I-130 filings are irrelevant to the determination of whether the beneficiaries are orphans. They are not orphan petitions and they were subsequently denied. The fact remains that the beneficiaries are not orphans under the Act, as they were over 16 when the I-600 Petitions were filed. Accordingly, the AAO finds that the beneficiaries do 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 her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.