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U.S. Citizenship
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Services

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FI

FILE:

Office: DALLAS

Date:

FEB 28 2007

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Dallas. 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 November 7, 2005. The district director concluded that the beneficiary, _____ 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 is not considered an orphan because he was sixteen years old at the time the I-600 Petition was filed. *District Director Decision*, July 26, 2006.

On appeal, the petitioner asserts that “[a] sibling who is considered a child under the Act has been adopted by the same adoptive parent; in this type of case the petition must be filed before the child reaches age 18,” and that the petitioner has adopted three children, including the beneficiary. *Notice of Appeal to the Administrative Appeals Office (AAO)(Form I-290B)*, filed August 8, 2006. In support of her appeal, the petitioner submits (1) a Certificate of Adoption from the Republic of Cameroon stating that “on the 29th day of August 2001 the minor: _____ has been adopted by _____; and (2) the adopted child’s birth certificate indicating that _____ was born on November 11, 1994 in the Republic of Cameroon and that her parents are _____ and _____. The record also contains a Court Order, issued on or about June 11, 2004 by the High Court of Buea, Republic of Cameroon, “[t]hat the Minor, to wit, _____, be adopted by the applicant, _____. The beneficiary’s birth certificate is also included in the record indicating that _____ was born on July 13, 1989 in the Republic of Cameroon and that his parents are _____ and _____.”

The AAO emphasizes that the issue on appeal is not whether the beneficiary has been adopted according to the law of the Republic of Cameroon, but whether the beneficiary meets the definition of an “orphan” for purposes of classification as an immediate relative under U.S. law. If the beneficiary has been legally adopted in the Republic of Cameroon, and the adoptive parent has had legal custody of the child and 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 his 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 Republic of Cameroon on July 13, 1989, and the I-600 Petition filed on his behalf on November 7, 2005. The beneficiary was thus not under 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 petitioner's adopted daughter, [REDACTED] indicating that she was adopted when she was under the age of 16. However, birth certificates for the beneficiary and for [REDACTED] show that they do not have the same biological parents. They are thus not natural siblings. The beneficiary is not therefore the natural sibling of an "orphan" (as described in section 101(b)(1)(F)(i) of the Act) or a "child" (as described in section 101(b)(1)(E)(ii) of the Act) so that an I-600 Petition on his behalf may be filed before he reaches the age of 18.

The beneficiary was not under the age of 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 her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.