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U.S. Citizenship
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FILE:

Office: BALTIMORE, MD

Date:

JUN 11 2008

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 District Director, Baltimore, Maryland, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the I-600 petition will be denied.

The petitioner filed the Form I-600 on December 7, 2007. The petitioner is forty-five-year-old single citizen of the United States. The beneficiary was born in Ethiopia on May 2, 1989, and he is nineteen years old.

The district director found that the beneficiary did not qualify as an orphan, as set forth in section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F) because he was eighteen years old at the time the Form I-600 was filed. The Form I-600 petition was denied accordingly.

On appeal the petitioner indicates that many delays occurred in the filing of the Form I-600A, Application for Advance Processing of Orphan Petition and the Form I-600 petition. She indicates that the beneficiary's younger siblings have been granted orphan status, and she requests that the beneficiary be granted orphan status as well.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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 reflects that the petitioner filed the Form I-600 on the beneficiary's behalf on December 7, 2007. The beneficiary was eighteen years old at the time the Form I-600 was filed. Accordingly, he does not qualify as an orphan under section 101(b)(1)(F) of the Act.¹

¹ The district director's decision indicates that a Form I-600 may be filed on behalf of a child under the age of eighteen, if it is established that a Form I-600 petition has also been filed on behalf of the child's sibling who is under the age of sixteen. The district director provides no regulatory or statutory basis for this statement, and it appears he is referring to the unrelated, adopted child provisions contained in section 101(b)(1)(E)(i) of the Act, which provide, in pertinent part, that the term "child" includes an unmarried person under twenty-one years of age who is-

[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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

The AAO notes that it maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) Upon review of the record, it is noted that the petitioner also failed to establish that the beneficiary was abandoned by both parents, or that he meets the definition of an orphan.

The regulation provides further at 8 C.F.R. § 204.3(b) that:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. . . .

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The record contains no evidence to establish that the beneficiary was a ward of a competent authority at the time of his adoption. Moreover, the adoption decree contained in the record indicates that the beneficiary's natural parents released the beneficiary for adoption with the specific intent of having the petitioner adopt the beneficiary. The AAO additionally notes that it appears that Ethiopian international adoption procedures may not have been complied with, as set forth by the U.S. Department of State at <http://travel.state.gov>, as the record contains no evidence that the Ethiopian Children and Youth Affairs Office, under the Ministry of Labor and Social Affairs, was involved in the beneficiary's adoption process.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met her burden of proof in the present matter. The appeal will therefore be dismissed and the petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.

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- (ii) Subject to the same proviso as in clause (i), 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.

Neither the statute nor the regulations provide for such an exception in orphan cases.