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U.S. Citizenship
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Services

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FI
AUG 29 2007

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date:

IN RE:

Petitioner:
Beneficiary:

[Redacted]

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, Miami, Florida denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner is a fifty-one-year-old, single citizen of the United States. The beneficiary was born in Haiti on October 5, 1987. She turned sixteen on October 5, 2003. The beneficiary was adopted by the petitioner in Haiti on December 27, 2003.

The district director noted that the petitioner filed the Form I600, Petition to Classify Orphan as an Immediate Relative (Form I600 petition) on March 7, 2006, after the beneficiary turned sixteen years old. Accordingly, the district director found that the beneficiary did not meet the statutory age requirement set forth in section 101(b)(1) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1101(b)(1), and the petition was denied.

The petitioner acknowledges on appeal that she filed the Form I600 petition after the beneficiary's sixteenth birthday, and the petitioner indicates that she would now like to file a Form I-130, Petition for Alien Relative on the beneficiary's behalf.

Section 101(b)(1)(F) of the Act defines an *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).

In the present matter, the Form I600 petition filed by the petitioner contains a March 7, 2006 receipt date, and it is uncontested that the beneficiary was over the age of sixteen when the Form I600 petition was filed on her behalf. The beneficiary therefore failed to satisfy the statutory age requirements for classification as an *orphan* under section 101(b)(1)(F) of the Act.

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 denied.

ORDER: The appeal is dismissed. The petition is denied.¹

¹ It is noted that the present decision is without prejudice to the petitioner's filing of an alternative immigrant visa petition on the beneficiary's behalf, if eligible to do so.