

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

FI
MAY 01 2007

FILE:

Office: MIAMI DISTRICT OFFICE

Date:

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, Miami, Florida, denied the Petition 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 petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on March 14, 2006. The petitioner is a 57-year-old married U.S. citizen. 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 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 her behalf. The beneficiary's birth certificate indicates that she was born in Haiti on June 19, 1986. She was 19 years old when the I-600 Petition was filed. The district director determined that the beneficiary did not therefore meet the definition of "orphan" under the Act and was ineligible for classification as an immediate relative on that basis.

On appeal, the petitioner states that she adopted her daughter, the beneficiary, when she was 14, and even though she filed the I-600 Petition when the beneficiary was 19, she thinks it is the adoption date that is significant. She adds that the beneficiary has been living with her since she was ten years old and that the petitioner has been responsible for all her expenses. The record includes an Adoption Certificate indicating that the petitioner and her husband adopted the beneficiary in Haiti on January 14, 2000. The AAO notes that the I-600 Petition indicates that the beneficiary was not adopted abroad.¹

The I-600 Petition was filed when the beneficiary was over the age of 16. The law clearly requires that the I-600 Petition be filed before the child turns 16. Although she may have been adopted before that age, the fact remains that the beneficiary is not an "orphan" under the Act, as she was over 16 when the I-600 Petition was filed. Accordingly, the AAO finds that the beneficiary 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.

¹ Although it is not an issue on appeal, the AAO notes that if the beneficiary has been legally adopted in Haiti and the relevant requirements of the Act have been met, her adoptive parents 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 that case that the child be classified as an "orphan." See section 101(b)(1)(E) of the Act; Title 8 of the U.S. Code of Federal Regulations (8 C.F.R.) § 204.2(d)(2)(vii).