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

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FILE:

Office: CHICAGO DISTRICT (MILWAUKEE)

Date: MAY 23. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Chicago. 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 January 8, 2007. The District Director concluded that the beneficiary was over the age of sixteen when the I-600 Petition was filed and therefore did not meet the requirements of the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F). *District Director Decision*, February 15, 2007. The petition was denied accordingly.

On appeal, the petitioner asserts that he mailed the I-600 Petition in a timely manner with the required fee, but that it was returned with a notation indicating that no fee was enclosed. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed March 13, 2007. He states that this was an error by an employee who failed to look inside the envelope. In support of this assertion he submits a copy of a registered mail receipt for his mailing to the Department of Homeland Security (DHS) on December 9, 2006, and his check for \$685 made out to DHS, dated December 7, 2006 and returned to him. He also states that once he became aware of the problem, he could not get an appointment with U.S. Citizenship and Immigration Services (CIS) until Friday January 5, 2007, the day before the beneficiary would turn 16; that he had planned to file the petition with the fee in person that day but that the employee with whom he met refused to accept the petition, stating that "there is a new policy in place which requires that all applications be mailed." He then mailed the petition with the appropriate fee, but as the beneficiary turned 16 that day, the petition was not timely filed.

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).

Title 8 of the U.S. Code of Federal Regulations (8 C.F.R.) § 103.2 provides in pertinent part:

(a) *Filing—(1) General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form . . .

Form I-600 Instructions (Rev. 10/26/05), Page 3, provide in pertinent part:

[Item] 7. Filing the Petition.

A petitioner residing in the United States should send the completed petition to the USCIS office having jurisdiction over his or her place of residence. . . .

Regardless of the specific circumstances in this case that may have prevented the I-600 Petition from being filed in a timely manner despite the best efforts of the petitioner, it is clear that the instructions on Form I-600 indicate that the I-600 Petition should be **sent** to USCIS, and the Milwaukee official provided this information during a meeting with the petitioner.

The record reflects that the beneficiary was born in Nigeria on January 6, 1991; he turned 16 on January 6, 2007. The I-600 Petition was filed on January 8, 2007. As he was over 16 when the I-600 Petition was filed, 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 this burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.