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

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[redacted]

FILE: [redacted] OFFICE: BALTIMORE, MD DATE: APR 2 2 2008

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:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on August 20, 2007. The petitioner is a 46-year-old citizen of the United States. The beneficiary was born in Cameroon on September 11, 1992 and currently resides with the petitioner and his wife in Maryland.

The I-600 petition was denied based on a finding that the beneficiary is present in the United States but not pursuant to a parole and is therefore ineligible for classification as an orphan under the regulations at 8 C.F.R. § 204.3(k). *District Director Decision,* November 12, 2007.

Counsel asserts on appeal that the beneficiary is in the United States legally, given her admission as a B-2 Nonimmigrant Visitor and subsequent extensions of status. *See* Attachment accompanying appeal.

Section 101(b)(1)(F) of the Act , 8 U.S.C. § 1101(b)(1)(F), 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).

8 C.F.R. § 204.3(k)(3) states:

> *Child in the United States.* A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

The record contains the beneficiary's I-94s evidencing that she was admitted as a B-2 Nonimmigrant Visitor and that her status has been extended through November 2007. A further extension application is currently pending.

The definition of "orphan" in the Act clearly provides that the child must be released for emigration and adoption, whether he has been adopted abroad or is coming to the United States for adoption. Section 101(b)(1)(F) of the Act, *supra.* The regulations recognize these requirements and clarify that a child who is in the

United States illegally or on a nonimmigrant visa does not fall within the definition of "orphan" under the Act. 8 C.F.R. § 204.3(k)(3), *supra.* The U.S. Department of State has further explained that "the issuance of an NIV [nonimmigrant visa] to an orphan to effect a child's immigration violates the law, places the child in an untenable immigration predicament, and circumvents the scrutiny intended to protect the orphan and the adoptive parents." Department of State (DOS) Cable (no. 96-State-28152) (February 13, 1996), *reprinted in* 73 Interpreter Releases 231 (February 26, 1996). Similarly, in the case of a child who entered the United States unlawfully, the procedures and safeguards that are designed to protect an orphan and the adoptive parents would be circumvented. In processing an Immigrant Visa on the basis of an I-600 Petition, "the required I-604 investigation establishes the child's eligibility as an orphan by verifying the adoption or custody and deters a great deal of child stealing and trafficking." *See, Id.* In light of these concerns and in accordance with the language and intent of the law, since August 1994 INS [now DHS] regulations prohibit the approval of an I-600 Petition to Classify Orphan as an Immediate Relative for a child who is in the United States in a nonimmigrant status.

Accordingly, the AAO finds that the district director properly determined that the beneficiary is ineligible for the benefits of an orphan petition pursuant to 8 C.F.R. § 204.3(k)(3).

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 his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.