U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: JACKSONVILLE, FL Date: DEC 08 2009

AAO 10 033 50013

IN RE: Petitioner: [redacted]
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:

[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(b)(1)(F). The field office director denied the petition on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan, as the term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

Section 101(b)(1)(F)(i) 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) of this title, 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; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States[.]

The petitioner, a sixty-three-year-old citizen of the United States, filed the instant petition on March 30, 2009. The beneficiary was born in Zaire on August 11, 1993. In his September 30, 2009 decision, the field office director found that because the beneficiary had reached the age of sixteen, he no longer qualified for classification as an orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

The AAO disagrees with the analysis of the field office director. The statute at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), states that the child for whom a petition is filed must be under the age of sixteen at the time the petition was filed in order to establish eligibility for classification as an orphan. The beneficiary's age at the time of adjudication, therefore, is not relevant: his age at the time of filing governs. As the beneficiary was born on August 11, 1993, and this petition was filed on March 30, 2009, the beneficiary had not yet reached the age of sixteen by the time the petition was filed. The field office director, therefore, denied this petition in error.

Accordingly, the field office director's decision will be withdrawn, and the matter remanded for continued processing.[1] The field office director may afford the petitioner reasonable time to provide evidence pertinent to the resolution of any remaining issues. The field office director shall then render a new decision based on the evidence of record as it relates to the relevant statutory and regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The field office director's September 30, 2009 decision is withdrawn. The petition is remanded to the field office director for continued processing and eventual entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

[1] The AAO acknowledges counsel's request for an extension of the period during which to submit a brief in support of her contention that the field office erred in denying the petition. However, as the AAO agrees with counsel's contention, and disagrees with the analysis of the field office director, it finds such an extension of time unnecessary. The AAO, therefore, will not delay its adjudication of this case.