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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: BLOOMINGTON, MN

Date:

FEB 10 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Bloomington, Minnesota, denied the Petition to Classify Orphan as an Immediate Relative (Form I-600). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed; however, we remand the record to the director to reopen the petitioner's initial Form I-600, filed in 2006 before the beneficiary turned 18. The initial Form I-600 was denied on October 16, 2007 and timely appealed; the appeal was rejected in error; the petitioner shall, therefore, be allowed to submit an appeal of the October 16, 2007 denial to provide evidence of the beneficiary's eligibility as of the original filing date. The appeal shall be forwarded to the AAO.¹

The petitioner filed a Petition to Classify Orphan as an Immediate Relative on June 30, 2008 (2008 I-600 Petition). The beneficiary was born in Laos on March 3, 1990. The director correctly noted that the beneficiary was not under the age of eighteen at the time the 2008 I-600 Petition was filed and thus 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). *Director's Decision*, October 8, 2008. The petition was denied accordingly.

On appeal, the petitioner asserts that he initially filed an I-600 Petition on behalf of the beneficiary and two of the beneficiary's younger siblings on November 8, 2006 (2006 I-600 Petition) when the beneficiary was sixteen years old; that the petitioner was working with Lao authorities to get all necessary paperwork, but there were delays in getting the adoption decrees because two families were adopting the sibling group of five (their uncle filed I-600 Petitions for two siblings, and the petitioner filed I-600 Petitions for the beneficiary and two siblings); that, because of these delays, the 2006 I-600 Petitions for the five children were denied on October 16, 2007. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, dated October 31, 2008. He also states that appeals of the 2006 I-600 Petitions were timely filed, but rejected for failure to include a fee for each beneficiary; that on June 30, 2008 "Renewal I-600" Petitions were, therefore, filed for all of the children, with adoption decrees; and that the four younger children were approved, while the beneficiary was denied due to his age. *Id.* The petitioner added that it would be devastating for the beneficiary to be left alone in Laos when his siblings go to the United States, and that, as he was sixteen when the I-600 Petition was initially filed, he qualifies to be issued a visa with his siblings. *Id.*

Section 101(b)(1)(F) of the Act defines "orphan" in pertinent part as:

- (i) 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 the Act], 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

¹ If the director determines that favorable action is warranted based on the evidence submitted on appeal, the director may treat the appeal as a motion to reopen or reconsider and make a new decision favorable to the petitioner. 8 C.F.R. § 103.3(a)(2)(iii).

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 . . . or **(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i) [regarding an adopted child, other than an orphan]; (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) (emphasis added).**

A petition shall be denied if evidence submitted in response to a request for evidence does not establish filing eligibility at the time the petition was filed. 8 C.F.R. § 103.2(b)(12).

In the present case, the evidence submitted on appeal and other evidence in the record have been reviewed and taken into consideration. The record reflects that, as stated by the petitioner, the original 2006 I-600 Petitions filed on behalf of the beneficiary and his siblings were denied on October 16, 2007 for failure to submit all of the evidence requested to show that the beneficiaries were “orphans” under the Act. The record also shows that on November 16, 2007, the Form (or Forms) I-290B Notice of Appeal filed by the petitioner was rejected for failure to include a fee for each sibling. The AAO notes that the Form I-290B was rejected in error. Multiple I-600 petitions filed for siblings require only one fee. 8 C.F.R. § 103.7(b); *see also* Instructions to Form I-600. Therefore, multiple I-290B appeals of those I-600 petitions similarly require only one fee.

In light of the erroneous rejection of Form I-290B Notice of Appeal (filed in November 2007), the underlying I-600 Petition will be reopened for consideration and to allow the petitioner an opportunity to file a new appeal. The petitioner must show that at the time the 2006 I-600 Petition was filed the beneficiary met the definition of “orphan” in that the petitioner had adopted (or had custody for purposes of emigration to and adoption in the United States) both the beneficiary’s natural sibling, under the age of 16, and the beneficiary, who would have been under 18 at that time. It is not clear from the evidence available to the AAO what the Lao adoption rules require and whether, or when, such requirements may have been fulfilled.

For the reasons noted above, the October 8, 2008 decision of the director denying the 2008 I-600 Petition is affirmed; however, the initial 2006 I-600 Petition will be reopened to allow the petitioner to file an appeal.

ORDER: The director’s decision of October 8, 2008 is affirmed; however the case is remanded to allow the petitioner to file an appeal of the denial of the 2006 I-600 Petition. Once that appeal is received, if no favorable action is taken by the director, it shall be forwarded to the AAO for a decision.