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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: FAIRFAX, VA Date:

MAY 26 2009

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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Fairfax, Virginia, denied the petitioner's Form I-600, Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act (I-600 Petition), on February 3, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed two I-600 Petitions on December 10, 2007, one for the beneficiary in this case and one for another child. The petitioner had previously filed a Form I-600A, Application for Advance Processing of Orphan Petition, on March 30, 2007, along with the appropriate filing fees to cover the planned adoption of two children. U.S. Citizenship and Immigration Services (USCIS) returned one fee to the petitioner on March 30, 2007, however, as it was assumed that the petitioner planned to adopt two siblings who would be covered by a single processing fee. *See* 8 C.F.R. 204.3(h)(3)(i). The I-600A Application was subsequently approved. When the I-600 Petitions were later filed, indicating that the beneficiaries had different biological parents, it became clear that the beneficiaries were not siblings. Accordingly, on March 24, 2008, the petitioner was notified that an additional fee was required for the I-600 Petition to be adjudicated in the instant case. The petitioner re-submitted the fee on April 4, 2008. The director concluded that the filing date of the instant I-600 Petition was the date of receipt of the newly submitted fee, April 4, 2008; and noted that the beneficiary, who was over the age of 16 at the time the I-600 Petition was filed, did not, therefore, 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). The petition was denied accordingly.

While we find that the filing date of the I-600 Petition should not be based on the date the fee was re-submitted in this case, we find that the error in assigning that date was harmless in this case. The actual filing date was December 10, 2007. The director's decision 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 the age of 16 at the time the I-600 Petition is filed in her behalf; or a sibling, who is under the age of 18, of such an "orphan." The beneficiary's birth certificate indicates that she was born in Ethiopia on October 31, 1991. She was 16 years old when the I-600 Petition was filed. The district director determined that the beneficiary did not meet the definition of "orphan" under the Act and was ineligible for classification as an immediate relative on that basis. We agree, taking into consideration the correct filing date.

On appeal, the petitioner, through counsel, accurately points out that the petitioner filed the appropriate fees for two beneficiaries along with the I-600A Application on March 30, 2007; the fee for the beneficiary in this case was mistakenly returned to the petitioner; and a new fee was later submitted on April 4, 2008. Counsel also claims, however, that the petitioner filed the I-600 Petition on October 23, 2007, stating that it was signed by the petitioner on October 22, 2007 and mailed the next day. Counsel provides no evidence in support of this assertion other than the signed I-600 Petition. In fact, the record indicates that counsel submitted a cover letter dated December 1, 2007 along with the I-600 Petition in this case; it was received by USCIS on December 10, 2007; and a notice was later sent to the petitioner indicating that it was received on that date and that a fee was required.

The I-600 Petition was filed on December 10, 2007, 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 the date of filing was initially incorrectly calculated; we find that error to be harmless upon recognition of the

correct filing date. The fact remains that the I-600 Petition was filed after October 31, 2007, the date the beneficiary turned 16. 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 his burden in the present matter.

ORDER: The appeal is dismissed.