

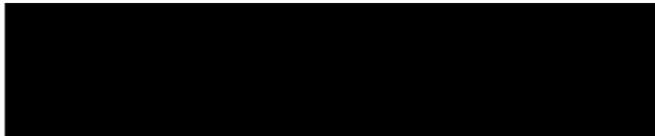
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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Services

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FILE: [Redacted]
AAO 09 224 50001

Office: NEW DELHI

Date: **OCT 19 2009**

IN RE: Petitioner: [Redacted]
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)

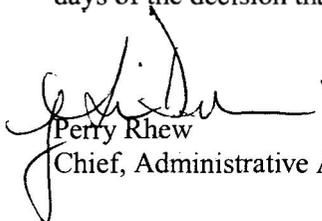
ON BEHALF OF PETITIONER:

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).


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 appeal will be dismissed.

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 her determination that the petitioner’s adoption of the beneficiary in India satisfies the requirements of neither the Hindu Adoptions and Maintenance Act of 1956 nor the Juvenile Justice Act of 2000. As such, the petitioner had failed to demonstrate that his adoption of the beneficiary was in accordance with applicable law in India and, thus, the petitioner had failed to establish that the beneficiary meets the definition of an orphan, as the term is defined at section 101(b)(1)(F)(i) of the Act.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), 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 filed the Form I-600 on December 16, 2008 in New Delhi, India. The beneficiary, who was born on September 12, 1991, was therefore over the age of sixteen at the time this petition was filed, which precludes her classification as an orphan under the Act. This petition, therefore, may not be approved, regardless of the AAO’s findings with regard to the field office director’s January 13, 2009 decision.¹

Accordingly, even if the AAO were to find that the field office director’s analysis was incorrect, the petition could still not be approved as, again, the beneficiary’s age at the time the petition was filed precludes approval of the petition.² The substantive issues raised by the field office director in her

¹ Given that the beneficiary is statutorily ineligible for classification as an orphan, it is unclear to the AAO why the field office director conducted the substantive analysis contained in her January 13, 2009 decision.

² Even if the AAO were to find that the field office director had denied the petition on erroneous grounds, and remanded the petition for entry of a new decision, the field office director would be compelled to deny

January 13, 2009 decision are therefore immaterial, as the petition must be denied due to the beneficiary's age.

The statutory limitation contained in section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), regarding children over the age of sixteen precludes approval of this petition, and the field office director erred in not denying the petition on that ground. The beneficiary does not meet the definition of "orphan" as set forth at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

the petition on the basis of the beneficiary having reached the age of sixteen before this petition was filed. Therefore, remand of this petition for entry of a new decision would therefore serve no purpose.