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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

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Date: **APR 05 2011**

Office: [Redacted]

FILE: [Redacted]

IN RE:           Petitioner: [Redacted]  
                  Beneficiary: [Redacted]

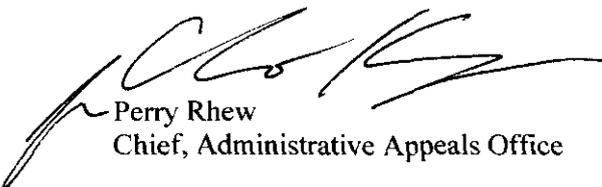
PETITION:    Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the  
                  Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, National Benefits Center, 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 The appeal will be sustained, the director's decision will be withdrawn, and the matter remanded for further action.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 director determined that the beneficiary did not meet the definition of an orphan because she was not under the age of sixteen at the time the petition was filed. On appeal, the petitioner contends through counsel that the beneficiary meets the definition of an orphan because she was under the age of sixteen at the time the Form I-600 was filed.

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 record reflects that the petitioner is a married U.S. citizen. The beneficiary is a native and citizen of Nigeria. The petitioner filed a Petition to Classify Orphan as an Immediate Relative (Form I-600), which the director denied on October 21, 2010. The petitioner timely appealed.

Here, the director correctly noted that the record contains at least two different dates of birth for the beneficiary. In the Form I-600, the petitioner indicated that the beneficiary was born on March 15, [REDACTED] which is consistent with the birth mother's July 1, 2008 Statutory Declaration of Age. On April 22, 2008, the beneficiary's birth mother executed an affidavit indicating that the beneficiary was born on February 29, [REDACTED].<sup>1</sup> See also *Correction to Statutory Declaration of Age*, dated Mar. 27, 2009 (explaining that the March 15, [REDACTED] date is wrong and that the beneficiary's actual date of birth is February 29, [REDACTED]); *Affidavit of [REDACTED]* dated Nov. 15, 2010 (same); *Statutory Declaration of Age*, dated Nov. 15, 2010 (same).

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<sup>1</sup> Counsel states that because [REDACTED] was not a leap year, February 29, [REDACTED], should be viewed as March 1, [REDACTED].

However, the director's determination that the petitioner was over the age of 16 at the time the Form I-600 was filed lacks support in the record. Specifically, the director's decision indicates that the petitioner's Form I-600 was filed on August 13, 2009. The record reflects, however, that the petitioner's Form I-600 was filed with U.S. Citizenship and Immigration Services on February 13, 2009.<sup>2</sup> Based on the February 13, 2009 filing date and a March 1, [REDACTED] birth date, the beneficiary was [REDACTED] years, [REDACTED] months, and [REDACTED] days old on the date of filing.<sup>3</sup>

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has met the burden of proving that the beneficiary was under the age of 16 years at the time the petition was filed, as required under section 101(b)(1)(F)(i) of the Act. Accordingly, the appeal will be sustained, the director's decision will be withdrawn, and the matter will be remanded for continued processing.

**ORDER:** The appeal is sustained, and the director's October 21, 2010 decision is withdrawn. The petition is remanded to the director for continued processing and entry of a new decision.

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<sup>2</sup> The record shows that the New York City Field Office received the petition and the appropriate fees on February 13, 2009. Although the Field Office issued a letter dated August 13, 2009 which requested additional evidence, the letter did not indicate that the petition had been rejected. Rather, the letter explained that adjudication would be withheld pending the submission of the additional evidence or the expiration of the time allowed for such submission.

<sup>3</sup> Under the initially claimed March 15, 1994 date of birth, the beneficiary would have been 14 years, ten months, and 29 days old at the time of filing.