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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]

F1

Date: APR 0 5 2011 Office: NATIONAL BENEFITS CENTER File: [redacted]

IN RE: Petitioner:
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:

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 The appeal will be sustained, the director's decision will be withdrawn, and the matter remanded for further action.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 he was not under the age of 16 at the time the petition was filed. The petition was denied accordingly. On appeal, the petitioner states that she filed her Application for Advance Processing of Orphan Petition (Form I-600A) before the beneficiary's sixteenth birthday.

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 16-year-old native and citizen of Jamaica, who was born on May 21, 1994. *See Birth Certificate of* The petitioner filed an Application for Advance Processing of Orphan Petition on May 5, 2010, when the beneficiary was 15 years old. *See Form I-600A*. U.S. Citizenship and Immigration Services (USCIS) approved the Form I-600A on June 14, 2010. *Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition.* The petitioner filed the Petition to Classify Orphan as an Immediate Relative on October 27, 2010, when the beneficiary was 16 years old. *See Form I-600.* The director denied the Form I-600 on December 16, 2010, and the petitioner timely appealed.

For intercountry adoptions under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 ("Convention"), the regulations provide, in pertinent part:

> If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date

> of the Form I-800, provided the Form I-800 is filed not more than 180 days after the initial approval of the Form I-800A.

8 C.F.R. § 204.313(c)(3). The regulations governing orphan petitions at 8 C.F.R. § 204.3, do not directly address the relationship between the separate filing of a Form I-600A and the statutory requirement to file the "petition" while the child is under the age of 16.

To promote consistency with the regulations for Convention adoption cases, USCIS will deem the Form I-600A filing date to be the Form I-600 filing date if: (1) the Form I-600A was filed after the child's fifteenth birthday but before the child's sixteenth birthday; and (2) the Form I-600 is filed not more than 180 days after the initial approval of the Form I-600A.

Here, the petitioner filed the Form I-600A after the beneficiary's fifteenth birthday and before his sixteenth birthday. Further, the Form I-600 was filed 135 days after the initial approval of the Form I-600A. Accordingly, USCIS will deem the Form I-600A filing date to be the Form I-600 filing date. Because the beneficiary was under the age of 16 at the time the Form I-600A was filed, he meets the age requirement set forth in 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. 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 appeal is sustained, and the director's December 16, 2010 decision is withdrawn. The petition is remanded to the director for continued processing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.