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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**



F₁

DATE: JUN 03 2011

OFFICE: ATLANTA

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

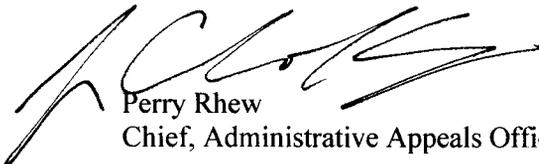
SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i).

The field office director denied the petition on the basis of her determination that the beneficiary is statutorily ineligible for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act because the instant petition was filed after the beneficiary reached the age of sixteen. On appeal, the petitioner submits a letter reasserting the beneficiary's eligibility.

Applicable Law

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 regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign-sending country*.

* * *

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are

considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

The regulation at 8 C.F.R. § 204.3(d) states, in pertinent part, the following:

Supporting documentation for a petition for an identified orphan . . . An orphan petition must be accompanied by full documentation as follows:

* * *

- (1)(iii) Evidence that the child is an orphan as appropriate to the case:
 - (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or
 - (B) The death certificate(s) of the orphan's parent(s), if applicable;
 - (C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. . . .
- (iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:
 - (A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad. . . .

Pertinent Facts and Procedural History

The petitioner is a forty-two-year-old citizen of the United States. The beneficiary, who is the petitioner's biological sister, was born in Jamaica on August 29, 1993. The petitioner stated on the Form I-600 that she and her husband have already adopted the beneficiary abroad.

Although the petitioner attempted to file the petition on August 25, 2009, she did so improperly: according to the field office director's Notice of Rejection, she (1) submitted an improper filing fee; and (2) submitted the filing fee in an improper format of payment. She properly filed the petition on

September 3, 2009. As the beneficiary reached the age of sixteen prior to September 3, 2009, she is statutorily ineligible for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, and the field office director denied the petition on that basis.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, the petition may not be approved for two additional reasons discussed below.

Beneficiary's age on the date the petition was filed precludes its approval

On appeal, the petitioner does not dispute that petitions seeking classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act must be filed before the beneficiary reaches the age of sixteen. Instead she indicates that she timely submitted the Form I-600 with a personal check, which she thought was acceptable because the instructions to the Form I-600 specify that payment should be in the form of a "check" or money order.

Even if the instructions regarding acceptable forms of payment are unclear, the petitioner still does not explain on appeal her submission of an incorrect filing fee amount. The regulation at 8 C.F.R. § 103.2(a)(7)(i) specifically states that a petition shall be stamped with the time and date of actual receipt, and that it will be considered properly filed when so stamped, if it is signed and executed and the required filing fee is attached. In this case, the petitioner did not submit the proper filing fee until September 3, 2009, after the beneficiary had already reached sixteen years of age.

The beneficiary was sixteen years of age on the date the petition was filed. The beneficiary, therefore, is statutorily ineligible for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act.

Petitioner has not established that the beneficiary meets the definition of an orphan

Beyond the decision of the director, the petition may not be approved because the petitioner has failed to establish that the beneficiary meets the definition of an "orphan" as that term is defined at section 101(b)(1)(F)(i) of the Act.

On the Form I-600, the petitioner stated that the beneficiary "has only one parent who is the sole or surviving parent." However, the record fails to establish that the beneficiary is an orphan under either circumstance. Although the petitioner stated on the Form I-600 that the beneficiary's birthmother is no longer living, the record does not contain a copy of her death certificate, as required by 8 C.F.R. § 204.3(d)(1)(iii)(B). Accordingly, the record does not establish that her birthfather is her sole or surviving parent. In addition, the regulations require evidence that a sole or surviving parent is incapable of providing the orphan with proper care and that the sole or surviving parent has irrevocably released the orphan for emigration and adoption. 8 C.F.R. § 204.3(b) (definitions of sole and surviving parent), (d)(1)(iii)(C) (irrevocable release requirement). The record in this case contains no such evidence.

No certified copy of the adoption decree

Beyond the decision of the director, the record also lacks a legible, certified copy of the adoption decree, as required by 8 C.F.R. § 204.3(d)(1)(iv)(A). As noted, the petitioner stated on the Form I-600 that she and her husband adopted the beneficiary abroad. However, she did not submit a certified copy of the adoption decree. For this additional reason, the petition may not be approved.

Conclusion

The instant petition was not properly filed prior to the beneficiary's sixteenth birthday, which renders her statutorily ineligible for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act. Beyond the decision of the director, the petitioner also failed to establish that the beneficiary meets the definition of an "orphan" as defined at section 101(b)(1)(F)(i) of the Act and the petitioner did not submit a legible, certified copy of the foreign adoption decree.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.¹ In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).