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



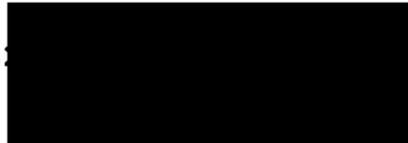
U.S. Citizenship
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Services



F1

DATE: OFFICE: NATIONAL BENEFITS CENTER

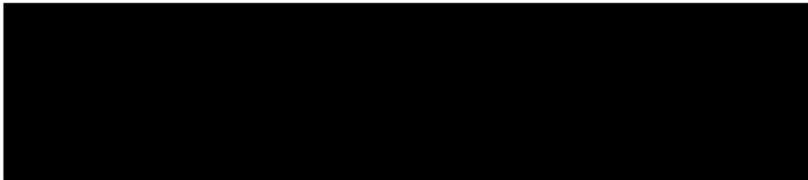
FEB 13 2012

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:

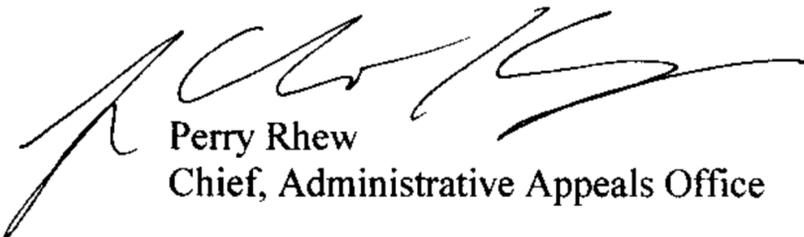


INSTRUCTIONS:

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 Director of the National Benefits Center (“the director”) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

Applicable Law

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 beneficiary of the instant petition is the natural sibling of two children who have been found to be orphans under section 101(b)(1)(F)(i) of the Act based upon Form I-600 petitions filed on their behalf by the petitioner in the instant matter. Section 101(b)(1)(F) defines the term “orphan,” in pertinent part, as:

(i) 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[.]

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . ; (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]

Factual and Procedural History

The petitioner is a 51-year-old U.S. citizen, and the beneficiary, who was born on [REDACTED] 1992, is currently 19 years old. According to U.S. Citizenship and Immigration Services (USCIS) records, the petitioner filed Form I-600 petitions on behalf of the beneficiary and his two younger siblings on [REDACTED] 2011 when the beneficiary was 19 years old. The Form I-600 petitions of the beneficiary’s two younger siblings were approved on August 2, 2011. On the same date, the director denied the instant Form I-600 because the beneficiary was over the age of 18 when the petition was filed on his behalf and he, therefore, no longer met the age requirement at section 101(b)(1)(F)(ii) of the Act.

On appeal, counsel states that the Form I-600 petitions for the beneficiary and his younger siblings were placed in the mail in March 2010, they were never returned as undeliverable, and therefore, the filing should be construed as March 2010, which is prior to the beneficiary's eighteenth birthday.

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan.

The filing date of a petition is not the date that it is placed in the mail, as counsel contends, but the date that the petition is accepted by USCIS as properly filed. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states: "an application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached . . ." (Emphasis added). Counsel states on appeal that the Form I-600 petitions for the beneficiary and his siblings were initially filed in March 2010 and were never returned; however, he submits no evidence that the National Benefits Center received the petitions and any associated filing fees.¹ The petitioner submitted a copy of a Form I-600 for the beneficiary signed by the petitioner and his spouse on March 21, 2010, but the form contains no receipt stamp or other indication that it was properly filed and the record lacks any evidence that USCIS ever received this petition. In his April 22, 2011 letter to USCIS, counsel stated that the money orders accompanying the alleged March 2010 petition filings were never cashed, and USCIS records do not show the filing of any petitions for the beneficiary and his younger siblings at any time prior to April 2011.

Conclusion

The instant petition to classify the beneficiary as an orphan was not properly filed until April 25, 2011 when the beneficiary was 19 years old. Although he is the older, natural sibling of two children who are the beneficiaries of approved Form I-600 petitions filed by the same petitioner, the beneficiary is ineligible to be classified as an orphan because he does not meet the age requirement specified at section 101(b)(1)(F)(ii) of the Act. Accordingly, the appeal must be dismissed. 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. Here, that burden has not been met.

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

¹ Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).