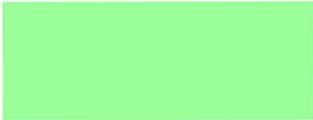




U.S. Citizenship
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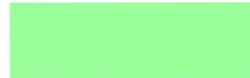


MAY 30 2013

DATE:

OFFICE: NATIONAL BENEFITS CENTER

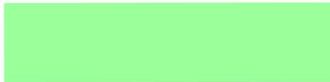
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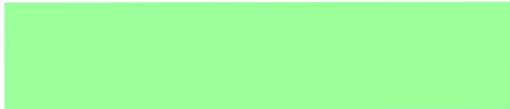
Petitioner:

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:

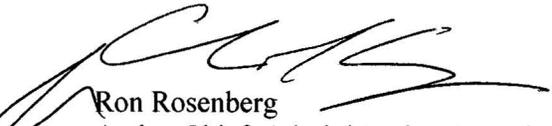


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting 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)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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. . . . *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

Facts and Procedural History

The petitioner is a 49-year-old unmarried U.S. citizen. The beneficiary was born on July 27, 1995 in Guyana, and the petitioner adopted him in that country on July 21, 2011, when the beneficiary was fifteen years old. On June 27, 2012, when the beneficiary was sixteen years old, the petitioner submitted the instant Form I-600 on his behalf, seeking to classify him as an orphan pursuant to section 101(b)(1)(F)(i) of the Act.

The director denied the Form I-600 because the beneficiary was not under the age of sixteen when the petition was filed on his behalf. On appeal, counsel states that a filing date is merely a procedural rule and that the petitioner was not a fault for the Guyanese court's delay in conducting the adoption hearing that resulted in an adoption order that became effective after the beneficiary turned sixteen. Counsel cites to several court decisions involving alien relative petitions (Form I-130) to support his assertion that family unity should prevail over a filing date technicality.

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 to be classified as an orphan.

Counsel's citations to several court decisions involving alien relative petitions are not relevant to the instant Form I-600. Section 101(b)(1)(F) of the Act specifically requires the filing of an orphan petition prior to a child's sixteenth birthday. The statutory and regulatory requirements for Form I-130 and Form I-600 benefits are distinct. *Compare* 8 U.S.C. § 1101(b)(1)(E)(i) *with*

1101(b)(1)(F)(i); 8 C.F.R. §§ 204.2(d)(2)(vii) *with* 204.3(a). The AAO has no authority to waive the requirements of section 101(b)(1)(F) of the Act.

The procedures for filing benefit requests with U.S. Citizenship and Immigration Services (USCIS) are outlined at 8 C.F.R. § 103.2(a), with the term *receipt date* defined at 8 C.F.R. § 103.2(a)(7)(i). Although the beneficiary was adopted when he was fifteen years old, the instant Form I-600 was not receipted by USCIS until June 27, 2012, after he turned sixteen. Consequently, 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)(i) of the Act.

Conclusion

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.