



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 02 2015 OFFICE: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
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.

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 Director denied the petition on the basis that the petitioner failed to establish that the beneficiary qualifies for classification as an *orphan* as defined at section 101(b)(1)(F)(i) of the Act. Specifically, the petitioner did not provide proof that the beneficiary was under 16 years old when she filed her I-600 application or proof that the petitioner filed Form I-600 within 6 months of receiving approval of Form I-600A, Application for Advance Processing of Orphan Petition (Form I-600A).

*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 . . . 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[.]

Pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

...

- (1)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;
- (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[.]

The regulation at 8 C.F.R. § 204.3(d) also provides that the Forms I-600A and I-600 may be filed concurrently or separately. If filed separately, the Form I-600 must be filed within 18 months of approval of the advanced processing application.

While these regulations at 8 C.F.R. § 204.3 do not directly address the relationship between the separate filing of Form I-600A and the statutory requirement to file Form I-600 while the child is under 16 years of age (or under 18 years of age as permitted under section 101(b)(1)(F)(ii) of the Act), according to instructions for Form I-600, U.S. Citizenship and Immigration Services will deem the Form I-600A filing date to be the Form I-600 filing date consistent with the regulations governing Hague convention adoption cases, if two requirements are met:

- (1) Form I-600A was filed after the child's 15th birthday but before the child's 16th birthday and
- (2) Form I-600 is filed not more than 180 days after *initial* approval of Form I-600A.

#### *Facts and Procedural History*

The petitioner is a naturalized U.S. citizen. She filed the Form I-600A on May 13, 2013 and it was approved on July 9, 2013. She filed the Form I-600 with USCIS on April 28, 2014, and seeks to classify the beneficiary, a citizen of Nigeria born on [REDACTED] as an orphan on the basis that the beneficiary's birth father is a sole or surviving parent, pursuant to section 101(b)(1)(F)(i) of the Act.

The Director stated that the petitioner did not submit proof that the beneficiary was under the age of 16 years old at the time the Form I-600 was filed and that she also did not submit proof that the Form I-600 was filed within six months of receiving the Form I-600A approval. The Director determined that the petitioner therefore failed to establish that the beneficiary meets the definition of an orphan and did not establish eligibility for the benefit sought.

On appeal, the petitioner asserts that she encountered various obstacles during the process of obtaining an approved Form I-600A, including delays from the home study preparer, obtaining a divorce certificate and obtaining adoption documents from Nigeria. The petitioner requests that the petition be approved based on humanitarian reasons and to promote family unity.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed.

*Analysis*

Section 101(b)(1)(F)(i) of the Act specifically requires the filing of the Form I-600 orphan petition prior to the child's sixteenth birthday. The cutoff age of 16 years to meet the definition of *orphan* is thus a statutory condition for eligibility under section 101(b)(1)(F)(i) of the Act. Here, the beneficiary turned 16 on [REDACTED], which is before the petitioner filed the Form I-600 on April 28, 2014. The beneficiary therefore does not meet the definition of an *orphan*, as set forth in section 101(b)(1)(F)(i) of the Act.

The record reflects that the Form I-600A was filed on May 13, 2013, when the applicant was 16 years old. As the Form I-600A was not filed after the child's fifteenth birthday but before the child's sixteenth birthday, we may not deem the Form I-600A filing date to be the Form I-600 filing date on that basis. In addition, the Form I-600 was not filed until April 28, 2014, which is more than 180 days after the petitioner's Form I-600A was approved.

Lastly, we note that the Act does not include a humanitarian-based exception for Form I-600 filing requirements. Though the petitioner describes unfortunate circumstances that resulted in filing delays, the fact remains that the beneficiary is not an orphan under the Act, as he was over 16 years old when she filed Form I-600. Therefore, the petitioner's assertions do not overcome the grounds of denial.

*Conclusion*

The beneficiary is ineligible to be classified as an *orphan*, as that term is defined at section 101(b)(1)(F)(i) of the Act, because he does not meet the age requirement specified therein. Consequently, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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