



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

JUN 30 2015

FILE:

PETITION RECEIPT:

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (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 due to his age at the time of filing the Form I-600; one of the adult household members failed to appear for his fingerprint appointment on August 5, 2014; and the petitioner failed to submit a home study as required under 8 C.F.R. §204.3.

Applicable law

Section 101(b)(1)(F) of the Act defines an orphan, in pertinent part, as:

- (i) 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...or
- (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) or subparagraph (E)(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)....

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

- (b) *Orphan petition* means Form I-600 (Petition to Classify Orphan as an Immediate Relative). The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not an advanced processing application approved within the previous 18 months or pending, the fee as required in 8 CFR 103.7(b)(1). The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

....

- (e) *Home study requirements.* For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children. If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section. A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. The home study, or the most recent update to the home study, must not be more than six months old at the time the home study is submitted to the Service. Only one copy of the home study must be submitted to the Service.

Facts and Procedural History

The petitioner is a naturalized U.S. citizen. She filed a Form I-600 with U.S. Citizenship and Immigration Services on July 11, 2014, and seeks to classify the beneficiary, a citizen of Jamaica born on [REDACTED] as an orphan on the basis that the beneficiary's birth mother is a sole or surviving parent, pursuant to section 101(b)(1)(F)(i) of the Act. She previously filed a Form I-600 for the beneficiary on October 15, 2009, that was approved on September 8, 2010. The previous Form I-600 was subsequently revoked on July 12, 2011, because a Department of State investigation revealed that that beneficiary still lived with his biological mother and the investigator concluded that, given her reported employment and income, she was capable of caring for him.

The Director stated that the petitioner listed the beneficiary's date of birth as [REDACTED] on the Form I-600; and the beneficiary's birth certificate, Jamaican passport, U.S. visa and adopted children register also list that date of birth. The Director also stated that a petition was not filed for a sibling of the beneficiary under the age of 16; therefore, the expanded definition of adopted child does not apply to this petition. The Director also found that one of the petitioner's adult household members failed to appear for his fingerprint appointment on August 5, 2014, and the petitioner had not submitted a home study as required under 8 C.F.R. §204.3. The Director determined that the petitioner therefore did not establish that the beneficiary meets the definition of an orphan and did not establish eligibility for the benefit sought.

On appeal, the petitioner, through counsel, asserts that she filed the first Form I-600 on October 15, 2009, before the beneficiary became [REDACTED] years old; and therefore the requirements of section 101(b)(1)(F) of the Act have been met. She also asserts that [REDACTED] an adult household member, had his fingerprint appointment rescheduled for September 10, 2014, and he was fingerprinted on that date. Lastly, the petitioner also asserts she complied with the home study requirement, because her adult household member was fingerprinted.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 November 5, 2009, before the petitioner filed the Form I-600 being reviewed on appeal.

The record does not reflect that the petitioner adopted a natural born sibling of the beneficiary under the age of 16. Therefore the exception under section 101(b)(1)(F)(ii) of the Act, which allows for filing Form I-600 for siblings of adopted individuals before they become 18 years old, has not been met.

Notwithstanding the petitioner's assertions concerning the filing date applicable to the instant petition, the record supports the Director's finding that she did not submit a home study as required under 8 C.F.R. § 204.3(e). Although the petitioner states that she did comply with the home study requirement because [REDACTED] an adult household member, appeared for his fingerprint appointment, the petitioner appears to be combining two distinct requirements, thus conflating two reasons the Director listed in his decision for the petition's denial. On appeal the petitioner submits a Form I-797C, Notice of Action, with a stamp establishing that Mr. [REDACTED] fingerprints were reviewed on September 10, 2014. Therefore, the petitioner has overcome this ground of denial. However, this does not establish that the petitioner filed the required home study.

Based on the record, we find that the petitioner has not established that she has complied with the home study requirement outlined in 8 C.F.R. § 204.3(e). The Director's decision denying the petition therefore stands.

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.