



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-T-N-

DATE: AUG. 10, 2016

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE
RELATIVE

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Director, National Benefits Center, denied the petition. The Director concluded that the Beneficiary does not meet the definition of an orphan, as he was over the age of 16 at the time the petition was filed and did not have a qualifying sibling with a concurrently filed petition, which would have permitted filing a petition for the Beneficiary before he reaches the age of 18.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in denying his petition, as the Beneficiary meets the definition of an orphan, and he has a qualifying sibling with a concurrently filed petition.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. Section 101(b)(1)(F)(i) of the Act provides, in pertinent part:

[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 [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

Section 101(b)(1)(F)(ii) of the Act provides, in pertinent part:

[s]ubject 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)

8 C.F.R. § 204.3(d)(1) identifies the supporting documentation required to accompany orphan petitions, including:

- (i) Evidence of approval of the advanced processing application
- (ii) The orphan's birth certificate, or if such 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 parents, if applicable;
 - (C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section,

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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; and

II. ANALYSIS

The issue in the Petitioner's case is whether he may adopt the Beneficiary, when the Beneficiary was [REDACTED] years of age at the time the Petitioner filed the Form I-600. On appeal, the Petitioner indicates that the Beneficiary should be considered an orphan, as the first of two Forms I-600 was filed when the Beneficiary was under [REDACTED] years of age and, in the alternative, that the Beneficiary qualifies for the sibling exception in section 101(b)(1)(F)(ii) of the Act.

We find that the evidence in the record does not establish that the Beneficiary meets the statutory definition of an orphan, nor does the Beneficiary have a qualifying sibling with a concurrently filed petition.

A. Eligibility

As stated above, the Beneficiary has been found ineligible to be classified as an orphan for immediate relative status in accordance with section 101(b)(1)(F)(i) of the Act.

The Petitioner asserts that the Beneficiary meets the statutory definition of an orphan, as he qualifies for an exception to the definition. In his application, the Petitioner provided the approval letter for the Form I-600A, Application for Advance Processing of Orphan Petition, as well as an initial Form I-600 that was filed on July 7, 2014, when the Beneficiary was [REDACTED] years old. The Petitioner filed a second Form I-600 on June 11, 2015, when the Beneficiary was [REDACTED] years old, which is the basis for the instant appeal. The Petitioner claims that the second Form I-600 was filed in a timely manner after the first Form I-600 was denied. In support of his assertion, the Petitioner references the Form I-600 instructions, which provide an exception when the Form I-600A is filed when the Beneficiary is [REDACTED] years old. The instructions indicate that if the Form I-600A was filed "after the 15th birthday, but before the child's 16th birthday and the Form I-600 is filed not more than 180 days after the initial approval of Form I-600A," then the Beneficiary may be classified as an orphan under the Act.

Section 101(b)(1)(F)(i) of the Act requires a petitioner to file a Form I-600 prior to a beneficiary's 16th birthday. The Beneficiary's age is a statutory condition for eligibility to be classified as an orphan under this section of the Act. While the Form I-600A was filed after the Beneficiary's [REDACTED] birthday, the second Form I-600 was filed more than 14 months after the approval of the Form I-600A. The Petitioner has not provided legal authority to support his claim that he may apply the filing date of his first Form I-600 to the second Form I-600. The Petitioner filed the second Form I-600 more than one year after the approval of the Form I-600A, not within 180 days after its approval, as the instructions require. Therefore, the Beneficiary does not meet the statutory

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definition of an orphan, because the Beneficiary was not under [redacted] years of age when the Form I-600 was filed.

In the alternative, the Petitioner asserts that the Beneficiary has a qualifying sibling with a concurrently filed petition. The instructions indicate that “[y]ou may file Form I-600 after the child’s 16th birthday, but before the child’s 18th birthday only if the orphan is the birth sibling of another foreign child.” The Petitioner references the petition he filed for [redacted] a concurrent petition for a child [redacted] years old. The Petitioner indicates that the Beneficiary and [redacted] are being raised by their grandparents, although they are not biological brothers. The Petitioner indicates that [redacted] was under [redacted] years of age when he filed the second Form I-600 for the Beneficiary. In support of his assertion, the Petitioner references the Form I-600 instructions. However, as the Petitioner indicated, the siblings are not birth siblings and are thus ineligible for the sibling exception outlined in section 101(b)(1)(F)(ii) of the Act.

Had the Form I-600 been timely filed, the Petitioner asserts that the Beneficiary should be classified as an orphan under section 101(b)(F)(i) of the Act because he is a child who was abandoned by both of his parents. The regulation at 8 C.F.R. § 204.3(b) provides:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

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Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

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The Petitioner provided a notarized statement from the Beneficiary's mother, who states she is releasing all of her parental rights to her "child, irrevocably, for emigration and adoption." The Petitioner also provided a report from the [REDACTED] who spoke to the Beneficiary's father. The father acknowledged he does not play a role in the Beneficiary's life and that he has no intention to begin those duties. Finally, the Beneficiary's father indicated that the Beneficiary should continue living with his maternal grandparents.

Evaluating the evidence, we conclude that the Petitioner has not shown that the Beneficiary was abandoned. The Act provides that abandonment should not include a relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption. In the instant matter, the Beneficiary's mother specifically states in her statement that she is relinquishing custody of her son for adoption to the United States. The Beneficiary is not abandoned under the Act, as the Beneficiary's mother has given her son up for a specific adoption to the United States.

The Act provides that abandonment occurs when the parents have forsaken all parental rights, obligations, and claims to the child, without intending to transfer, or without transferring, these rights to any specific person. In the instant matter, the Beneficiary's father specifically states that the Beneficiary would best be served by living with his maternal grandparents. The Beneficiary's father is not raising his son, but he is transferring his rights to specific individuals, the Beneficiary's maternal grandparents. Thus, for purposes under the Act, the Beneficiary is not abandoned as an orphan under section 101(b)(F)(i).

Accordingly, the Petitioner has not established that the Beneficiary meets the definition of orphan, as that term is defined at section 101(b)(1)(F) of the Act.

III. CONCLUSION

In visa petition proceedings, the petitioner has the burden of establishing 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. The Petitioner has not established that the Beneficiary meets the statutory definition of an orphan.

ORDER: The appeal is dismissed.

Cite as *Matter of J-T-N-*, ID# 16694 (AAO Aug. 10, 2016)