



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

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

In Re: 20930601

Date: MAR. 28, 2022

Appeal of National Benefits Center Decision

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 under Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), because it was not timely filed. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief reasserting the Beneficiary's eligibility. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A child who meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act is eligible for classification as the immediate relative of a U.S. citizen. 8 C.F.R. § 204.3. An orphan is defined as a child, under the age of 16 at the time a petition is filed on his or her behalf, 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, or who is coming to the United States for adoption by a United States citizen; provided, that the Secretary of Homeland Security is satisfied that proper care will be furnished if the child is admitted to the United States. Section 101(b)(1)(F)(i) of the Act.

A foreign national who is younger than 18 years of age may be considered a child under the Act if adopted with or after a sibling who qualified as a child under the Act. Pub. Law 106-139, section 1(a) (December 7, 1999) (amended section 101(b) of the Act).

II. ANALYSIS

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Ethiopia, when he was 16 years old. The Director denied the orphan petition, finding the orphan petition was untimely filed. Specifically, the Director noted that the Petitioner filed the orphan petition after the Beneficiary turned 16 years old, and more than eighteen months after the approval date of the corresponding Form I-600A, Application for Advance Processing of an Orphan Petition (Form I-600A).

On appeal, the Petitioner does not dispute that the orphan petition was not timely filed. Instead, she asserts that the filing delay was due to circumstances beyond her control. Specifically, she asserts that “the process [took] so long mainly because of problem[s] related to [the] pandemic, which has forced all government agencies to close or work with fewer staff[.]” She asks that we consider how office closures and staffing shortages in Ethiopia due to the coronavirus (COVID-19) pandemic prohibited her from finalizing the adoption process prior to the expiration of the Form I-600A. The Petitioner submits affidavits from two friends, copies of the death certificates of the Beneficiary’s birth parents, and copies of various money transfers to the Beneficiary’s grandmother in Ethiopia.

The record shows that the Petitioner’s Form I-600A was filed in April 2019, when the Beneficiary was 15 years old, and subsequently approved in May 2019. The Petitioner’s orphan petition was filed in April 2021, when the Beneficiary was 16 years old. The Petitioner does not assert, and the record does not demonstrate, that at the time of orphan petition filing, the Beneficiary was under 16 years old or the sibling of an individual who qualifies as a child under the Act. *See* section 101(b)(1)(F) of the Act (defining orphan as a child under 16 at the time of orphan petition filing); Pub. Law 106-139, section 1(a) (December 7, 1999) (amended section 101(b) of the Act) (expanding the definition of child to include a foreign national under 18 adopted with or after a sibling who qualified as a child under the Act).

The Form I-600 instructions state that U.S. Citizenship and Immigration Services (USCIS) will consider the Form I-600A filing date to be the orphan petition filing date only if: 1) the Form I-600A is filed after the child’s 15th birthday and before the child’s 16th birthday, and 2) the orphan petition is filed no more than 180 days after the initial approval of the Form I-600A. Form I-600, Instructions for Petition to Classify Orphan as an Immediate Relative, at 2 (12/29/19 ed.), <https://www.uscis.gov/sites/default/files/document/forms/i-600instr.pdf>; *see also* 8 C.F.R. § 103.2(a)(1) (providing that every form, benefit request, or other document must be submitted in accordance with the relevant form instructions and incorporating the instructions into the regulations requiring its submission); *see also* 8 C.F.R. § 103.2(a)(1) (providing that “[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions” and that a “form’s instructions are . . . incorporated into the regulations requiring its submission”). The Petitioner’s Form I-600A was filed when the Beneficiary was 15 years old and approved in May 2019; however, the orphan petition was filed in April 2021, almost two years after the approval of the Form I-600A and when the Beneficiary was 16 years old. As over 180 days elapsed between Form I-600A approval and orphan petition filing, the Petitioner’s orphan petition cannot be considered to share a filing date with the Form I-600A.

The Petitioner asks us to consider the role COVID-19 played in her untimely orphan petition filing. USCIS has recognized that “prospective adoptive parents (PAPs) may have concerns about potential delays in completing certain requirements to allow for adjudication of their adoption applications or petitions because of COVID-19 restrictions or closures.” USCIS Response to COVID-19 (Jan. 25, 2022), <https://www.uscis.gov/about-us/uscis-response-to-covid-19>. However, while USCIS has extended limited and specified flexibilities in response to COVID-19, it has extended “no changes to eligibility requirements for adoption applications or petitions” *Id.* Therefore, the Petitioner has not met her burden of demonstrating the orphan petition was timely filed. While acknowledging the hardship to the Petitioner and the Beneficiary that this may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold “the force of law” and must be adhered to by government officials).

III. CONCLUSION

The Petitioner has not overcome the basis of the Director’s decision on appeal. The Beneficiary’s eligibility for orphan classification has not been established.

ORDER: The appeal is dismissed.