



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

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

In Re: 22717692

Date: NOV. 2, 2022

Motion on Administrative Appeals Office 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 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 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, and we dismissed the Petitioner's appeal. The matter is now before us on a motion to reconsider. 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 review, we will dismiss the motion.

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, in relevant part, as a child under the age of 16 at the time a petition is filed on their behalf. 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). 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>.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

As we discussed in our decision on appeal, which is incorporated here by reference, 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 because 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 did not dispute that the orphan petition was untimely filed, but requested that we make an exception to the filing deadline because the delay was related to circumstances out of her control and related to the COVID-19 pandemic.

In our decision on appeal, we acknowledged the Petitioner's arguments but concluded that the record did 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). Further, we noted that although USCIS has provided limited flexibilities in response to COVID-19, there are "no changes to eligibility requirements for adoption applications or petitions" USCIS Response to COVID-19 (Jan. 25, 2022), <https://www.uscis.gov/about-us/uscis-response-to-covid-19>. We recognized the hardship the Petitioner and Beneficiary may experience as a result, but explained that the Petitioner has not met her burden of demonstrating the orphan petition was timely filed and that 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).

On motion, the Petitioner again requests that we consider the untimely filed orphan petition because the delay was due to reasons beyond her control. She states that she began the adoption process in Ethiopia right after the Form I-600A was approved but that COVID-19 interrupted the process and caused the court in Ethiopia to take a longer time than usual to decide on her adoption petition. She states that the Beneficiary's parents died when he was an infant and she has raised him, and that leaving him alone in Ethiopia may endanger him. We acknowledge the Petitioner's claims about her efforts to complete the adoption process and the hardship she and the Beneficiary may experience if the orphan petition is not approved. However, as we explained on appeal, USCIS has not extended any filing flexibilities due to COVID-19 for applications and petitions relating to adoption, and we lack authority to waive the requirement that at the time of orphan petition filing, the Beneficiary be under 16 years old or the sibling of an individual who qualifies as a child under the Act. Section 101(b)(1)(F) of the Act. The Petitioner does not provide any evidence or argument to show that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision, as required for a motion to reopen. 8 C.F.R. § 103.5(a)(3). Accordingly, the Petitioner has not established the Beneficiary's eligibility for orphan classification.

ORDER: The motion to reconsider is dismissed.