



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

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

In Re: 24187271

Date: JAN. 20, 2023

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 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. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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.

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 years at the time an orphan petition is filed on their behalf. Section 101(b)(1)(F)(i) of the Act. A petitioner may file an orphan petition after the 16th birthday of the child they seek to adopt only if they filed Form I-600A, Application for Advance Processing of an Orphan Petition, after the child's 15th birthday but before their 16th birthday and then file the orphan petition 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 "[e]very form, benefit request, or other document must be submitted . . . in accordance with the form instructions" and incorporating the form instructions "into the regulations requiring its submission").

The Petitioner filed Form I-600A in 2021, a few days before the Beneficiary's 16th birthday, and it was approved on August 10, 2021. The Petitioner later filed the orphan petition on April 11, 2022, 244 days after approval of the Form I-600A. The Director denied the orphan petition because it was not filed within 180 days of the date of approval of the Form I-600A and the Beneficiary had already reached 16 years of age. We agree with the Director that because more than 180 days elapsed between the approval of the Form I-600A and the filing of the orphan petition, the orphan petition cannot be considered to share a filing date with the Form I-600A and is therefore untimely.

On appeal, the Petitioner asserts that she hired an agency to file the forms on her behalf and that her case manager called her in April 2022 to state that she had “overlooked the deadline” for filing her orphan petition and there was nothing else the agency could do. She states that she had previously relied on her case manager for filing instructions and would have submitted the orphan petition on time if she had been aware of the deadline. She provides copies of her email communications with the agency about this issue and the filing of the orphan petition in general.

The orphan petition was not timely filed and the Petitioner has not met her burden of demonstrating the Beneficiary’s eligibility as an orphan. We acknowledge the hardship this may cause to the Petitioner and the Beneficiary, but we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See U.S. v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

ORDER: The appeal is dismissed.