



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

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

In Re: 26641593

Date: JUL. 17, 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. *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 of the National Benefits Center denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600), concluding that the record did not establish that the Beneficiary qualified as an orphan under Section 101(b)(1)(F) of the Act at the time of filing the petition. 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 a petition is filed on their behalf. Section 101(b)(1)(F)(i) of the Act. A petitioner may file a Form I-600 after the 16th birthday of the beneficiary only if they filed Form I-600A, Application for Advance Processing of an Orphan Petition, after the beneficiary's 15th birthday but before their 16th birthday and then file the Form I-600 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>.

On appeal, the Petitioner argues the petition was erroneously denied and should be treated as timely filed prior to the Beneficiary's 16th birthday on   2021. The Petitioner initially filed a Form I-600A that arrived at the designated filing location on April 27, 2021 and was rejected on May 8, 2021,

for failure to provide the correct payment of the filing fee.<sup>1</sup> The Petitioner asserts, without providing any evidence in support of the assertion, that this rejection was erroneous because “the check was made out to cover the required amount.” Upon receipt of the rejection notice, the Petitioner filed a new Form I-600A with the correct filing fee, which was received on July 6, 2021 – over a month after the Beneficiary turned 16 years old. The Petitioner later filed the Form I-600 in July 2022. The Director denied the Form I-600 for failure to qualify as an orphan under section 101(b)(1)(F) of the Act.

Our review indicates that the Director did not err in that decision. A petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”). Under 8 C.F.R. § 103.2(a)(7)(ii)(D), a benefit request that is submitted without the correct fee must be rejected. Further, a benefit request that is rejected does not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii). Here, absent evidence to the contrary, the Form I-600A was properly rejected for failure to attach correct payment of the filing fee. The subsequent Forms I-600A and I-600 were both filed after the Beneficiary’s 16th birthday and did not retain the filing date of the original rejected Form I-600A. As such, the Director was correct in finding the Form I-600 that was filed after the Beneficiary turned 16 years old did not meet the requirements under section 101(b)(1)(F)(i) of the Act, and that petition was properly denied. Thus, the Petitioner’s appeal is dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The Petitioner also argues the Director erred in failing to send the rejection notice via a faster method than regular mail. No such requirement exists, and the Director did not err in serving the notice according to standard procedure.