



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

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

In Re: 25767308

Date: JUN. 1, 2023

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 petition, concluding that the orphan petition was filed after the Beneficiary turned 16 and was thus not timely filed.¹ We dismissed a subsequent appeal and motion to reconsider. The matter is now before us on a second motion to reconsider.

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On second motion, the Petitioner again requests that we reconsider her case and grant her an extension of time to submit her orphan petition due to the COVID-19 pandemic. She notes that U.S. Citizenship and Immigration Services (USCIS) has granted an extension of time to submit additional evidence, such as DNA testing, and respond to agency requests for evidence. She argues that if USCIS is able to grant such extensions to submit DNA results and documents to complete the processing of other petitions, her petition should be accepted despite not being filed before the Beneficiary turned 16.

We acknowledge the Petitioner's arguments on second motion. However, they do not establish that our previous decision was based on an incorrect application of law or policy at the time we issued our

¹ The Director denied the orphan petition because the Petitioner filed the petition after the Beneficiary turned 16 years old, and more than eighteen months after the approval of the corresponding Form I-600A, Application for Advance Processing of an Orphan Petition. The filing date of a Form I-600A filed after the child's 15th birthday and before the child's 16th birthday may be considered the orphan petition filing date, but only if the orphan petition is filed no more than 180 days after the initial approval of the Form I-600A. See *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>.

decision. As we explained in our prior decision, USCIS has not extended any filing flexibilities due to COVID-19 for applications and petitions related to adoption. An orphan, defined in relevant part under section 101(b)(1)(F)(i) of the Act as a child under the age of 16 at the time a petition is filed on their behalf, is eligible for classification as the immediate relative of a U.S. citizen. 8 C.F.R. § 204.3. We lack the authority to waive the requirement that, at the time of orphan petition filing, the Beneficiary be under 16 years of age. *See* section 101(b)(1)(F) of the Act. Accordingly, as the Petitioner has not established that our prior decision was based on an incorrect application of law or policy, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.