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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: PHILADELPHIA, PA Date: AUG 14 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, denied the visa petition to classify the beneficiary as an immediate relative, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on July 10, 2000. The petitioner is a 52-year-old married citizen of the United States. The beneficiary is 18 years old at the present time and was born in Ahmebabad, Gujarat, India on August 4, 1982. The record reflects that the petitioner adopted the beneficiary in January of 1993 in India.

The director denied the petition pursuant to section 101 (b)(1)(F) of the Immigration and Nationality Act because the beneficiary was not under the age of sixteen at the time the petitioner filed the petition.

On appeal, the petitioner states that she wants to submit a Petition for Immediate Relative (Form I-130) to classify the beneficiary as her child. The petitioner states that the beneficiary resided with the petitioner for three months prior to the petitioner's immigration to the United States and that she has been financially responsible for the beneficiary, who still lives in India.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

> a child, **under the age of sixteen at the time a petition is filed** in his behalf to accord a classification as an immediate relative under section 201(b), 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. [emphasis added]

As stated by the director in his decision, the beneficiary is ineligible to be classified as an orphan because the petitioner filed the Form I-600 on July 10, 2000 when the beneficiary, who was born on August 4, 1982, was 17 years old. Therefore, the beneficiary does not meet the definition of orphan noted above.

Regarding the petitioner's desire to submit a Petition for Alien Relative (Form I-130) in the beneficiary's behalf, the petitioner may file a Form I-130 and any supporting documents with the Service for consideration. We note, however, that the petitioner seeks classification of the beneficiary as a child, which is

defined in section 101(b)(1)(E) of the Act as:

> a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

According to the record, the petitioner adopted the beneficiary in 1993, when the beneficiary was 10 years old. Nevertheless, it does not appear that the beneficiary is eligible to be classified as the petitioner's child because the beneficiary has not resided with the petitioner for at least two years. The petitioner states on appeal that the beneficiary resided with her for only three months before the petitioner left India to live in the United States as a permanent resident, while the beneficiary remained in India.

Therefore, if the petitioner submits a Form I-130 in the beneficiary's behalf, the petitioner should submit evidence along with the petition that shows that the beneficiary and the petitioner resided together for at least two years.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.