

permitting a child under the age of eighteen to qualify if he or she is the birth sibling of a child under sixteen who is or will be adopted by the same parents. 8 U.S.C. §1101 (b)(F). To qualify as siblings, the adoptees must share at least one biological parent. Thus non-biological siblings adopted in the country of origin by the same adoptive parent do not qualify for the sibling exception.<sup>31</sup>

Because the "orphan" must satisfy the definition of "child" under 8 U.S.C. §1101 (b)(1),

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after the initial approval of the Form I-800A.

Even though the orphan visa regulations do not contain such a provision, the AAA determined that if Form I-600A is filed after a child's 15th birthday but before the 16th birthday, and Form I-600 is filed no more than 180 days after the initial approval of the Form I-600A, USCIS will deem the I-600A filing date to be the I-600 filing date. Applying this policy, the AAO determined a child met the age requirement in a case in which the I-600 was filed after his 16th birthday, because the Form I-600A was filed between his 15th and 16th birthdays and his I-600 was filed 135 days after initial approval of the I-600A..

The AAO has refused to apply the doctrine of "equitable tolling" to the statutory cut-off at age 16, however, finding that there is no discretion over a statute of repose. *E.g., In re A-C-N*, 2019 WL 2881303 (DHS) (despite military conflicts in Camaroon that closed courts and delayed finalization of adoption, petition filed when child was 17 must be denied, because "there is no exception or waiver to the statutory filing requirements."); *In re [Name Redacted]*, 2009 WL 4982016 (AAO Aug. 4, 2009) (untimely I-600 cannot be saved by previous I-600 filed before 16th birthday and denied); *In re [Name Redacted]*, 2009 WL 4982038 (AAO Aug. 4, 2009)(attempt to timely file at National Visa Center did not satisfy the regulations, which require filing at overseas site or USCIS office having jurisdiction over place of residence of prospective adopters, and later filing in correct office, after 16th birthday, would not suffice); *In re [Name Redacted]*, 2007 WL 5319032 (INS) (AAO March 15, 2007). In the same action, the AAO found that refusal to accept the I-600 without full documentation when petitioner attempted to file it before the 16th birthday was also not an abuse of discretion, and that a post-filing adoption decree would not have sufficed in any case, because it would not be evidence of eligibility at the time of filing. *Id.*

<sup>31</sup> See Sarah Ignatius and Elisabeth Stickney *Immigration Law and the Family* § 13:17 (2019 ed.), citing Memorandum from Michael Pearson, Exec. Assoc. Comm'r, INS, HQADN 70/8.3 (entitled: "Guidance on Processing Petitions for Adopted Alien Children Less Than 18 Years of Age Considered a Child Under the Immigration and Nationality Act through Public Law 106-139" (Nov. 13, 2000), reprinted in 78 Interpreter Releases 353 (Feb. 5, 2001).