



U.S. Citizenship
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FILE:



OFFICE: MIAMI, FL

DATE:

SEP 21 2007

IN RE:

PETITIONER:
BENEFICIARY:



PETITION:

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600 Petition) was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner filed the Form I-600 petition on August 31, 2000. The petitioner is a forty six year old citizen of the United States. The beneficiary was born in Honduras on June 4, 1990, and she is seventeen years old.

The record reflects that the district director sent several requests for evidence of the beneficiary's final adoption in Honduras. The petitioner's Form I-600 petition was denied as abandoned on November 21, 2006, because the evidence was not provided. Through counsel, the petitioner filed a motion to reopen/reconsider on December 21, 2006. On motion, the district director found that the petitioner had failed to provide evidence of the beneficiary's final adoption in Honduras. The district director found that the petitioner had therefore failed to establish that the beneficiary met the definition of an *orphan*, as set forth in section 101(b)(1)(F)(i) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), and the motion and petition were denied on March 9, 2007. The petitioner filed a Form I-290B, Notice of Appeal to the AAO appealing the district director's decision on April 10, 2007.

On appeal, the petitioner concedes, through counsel, that she did not adopt the beneficiary in Honduras. The petitioner asserts, however, that section 101(b)(1)(F)(i) of the Act does not require the adoption to take place in the beneficiary's home country of Honduras. The petitioner asserts further that section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(f)(2) allow for the beneficiary's adoption to take place either in Honduras or in the United States, and the petitioner indicates, through counsel, that the beneficiary therefore qualifies as an *orphan* for immigration purposes.

Section 101(b)(1)(F)(i) of the Act 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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

The regulation provides in pertinent part at 8 C.F.R. § 204.3(d) that:

(1) [T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

....

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

The provisions contained in 8 C.F.R. § 204.3(d)(1)(iv)(B) allow for an orphan to be adopted in the United States where a full and final adoption procedure is not available in the orphan's country, if, amongst other things, a petitioner shows that she or he has been awarded custody of the child in accordance with the laws of the foreign-sending country.

In the present matter, information provided by the U.S. Department of State (DOS) at <http://travel.state.gov> reflects that a full and final adoption process exists in Honduras in which the Instituto Hondureño de la Niñez y la Familia (IHNFA) (for children under 14) and Honduran Family Court (for children over 14) are involved

in the adoption petition and transfer of custody of a Honduran orphaned child. Because Honduran law allows for the full and final adoption of an orphan, the petitioner must provide a copy of the beneficiary's Honduran adoption decree as set forth in 8 C.F.R. § 204.3(d)(1)(iv)(A). The present record contains no adoption decree, and no indication that the beneficiary was adopted in Honduras. Accordingly, the petitioner failed to meet the requirements set forth in 8 C.F.R. § 204.3(d). The AAO notes further that, even if Honduran law did not allow for full and final adoption of an orphan, the petitioner would nevertheless have failed to meet the requirements set forth in 8 C.F.R. § 204.3(d)(1)(iv)(B), in that she failed to establish that she was awarded custody over the beneficiary in accordance with Honduran law.

The petitioner asserts, through counsel, that the regulation at 8 C.F.R. § 204.3(f)(2) allows her to elect to adopt the beneficiary in the United States. The AAO is unpersuaded by the petitioner's assertions. The regulation at 8 C.F.R. § 204.3(f)(2) addresses the requirements for orphans that are adopted in the United States, and provides in pertinent part:

(f) *State preadoption requirements.*

....

(2) *Child coming to be adopted in the United States.* An orphan is coming to be adopted in the United States if he or she will not be or has not been adopted abroad, or if the unmarried petitioner or both the married petitioner and spouse did not or will not personally see the orphan prior to or during the adoption proceeding abroad, and/or if the adoption abroad will not be, or was not, full and final. . . .

The AAO finds that the provisions contained in 8 C.F.R. § 204.3(f)(2) are not applicable to the present matter, as a full and final adoption process exists in Honduras, the foreign sending country, and the petitioner is thus required to submit evidence of the beneficiary's adoption abroad as set forth in 8 C.F.R. § 204.3(d)(1)(iv)(A) and (B).

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act; 8 U.S.C. § 1361. The AAO finds that the petitioner has failed to meet her burden in the present matter. The appeal will therefore be dismissed and the petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.