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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

OFFICE: MIAMI, FL

DATE:

DEC 11 2007

IN RE:

PETITIONER:

BENEFICIARY:

[REDACTED]

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:

[REDACTED]

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 District Director, Miami, Florida, denied the immigrant visa petition. 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 to Classify Orphan as an Immediate Relative (I-600 Petition) on September 21, 2004. The petitioner is a sixty-three-year-old naturalized citizen of the United States. The beneficiary was born in Jamaica on October 23, 1990, and she is presently seventeen years old.

The district director denied the I-600 petition on January 29, 2007, based on: 1) the petitioner's failure to comply with requests for a valid home study from a licensed agency; and 2) the petitioner's failure to provide evidence of the beneficiary's father's inability to provide proper care to the beneficiary and his relinquishment of parental rights.

On appeal, the applicant submits a new home study and a letter from the beneficiary's father addressing his inability to provide proper care to the beneficiary, and releasing his parental rights over the beneficiary.

The regulation provides in pertinent part at 8 CFR 204.3(a)(2) that:

[P]etitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan. The second determination concerns the orphan petition which focuses on whether the child is an orphan under section 101(b)(1)(F) of the Act An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

The regulation provides in pertinent part at 8 C.F.R. § 204.3(h)(5) that:

[I]f the home study is not submitted within one year of the filing date of the advanced processing application, the application shall be denied. This action shall be without prejudice to a new filing at any time with fee.

The regulation provides in pertinent part at 204.3(b) that:

Home study preparer means any party licensed or otherwise authorized under the law of the State of the orphan's proposed residence to conduct the research and preparation for a home study, including the required personal interview(s). This term includes a public agency with authority under that State's law in adoption matters, public or private adoption agencies licensed or otherwise authorized by the laws of that State to place children for adoption, and organizations or individuals licensed or otherwise authorized to conduct the research and preparation for a home study, including the required personal interview(s), under the laws of the State of the orphan's proposed residence. . . .

In the present matter, the petitioner filed a concurrently filed I-600 petition and I-600A, Application for Advance Processing of Orphan Petition (I-600A application) on September 21, 2004. The record reflects that the petitioner attempted to submit home studies dated October 5, 2006, and November 20, 2006, prepared by The Parent's Information and Resource Center, Inc., Outpatient Mental Health Clinic. The district director found the home studies to be invalid, however, because the applicant failed to establish that 1) the person who signed the home study was authorized to do so; and 2) The Parent's Information and [REDACTED] Outpatient Mental Health Clinic, was authorized to place children for adoption as required by 8 C.F.R. § 204.3(b). On appeal, the petitioner submits a third home study, dated March 30, 2007, prepared by [REDACTED] of Parent's Information and Resource Center, Inc.

Upon review of the record, the AAO finds that the petitioner failed to establish that she submitted a valid home study report within one year of the September 21, 2004, concurrent filing of her I-600 petition and I-600A application. The petitioner therefore failed to meet the home study filing requirement set forth in 8 C.F.R. § 204.3(h)(5), and the petition must be denied. The AAO notes further that the petitioner also failed to establish that the October 2006, and November 2006, home studies were signed by a party licensed, or otherwise authorized in Florida, to prepare a home study report. The petitioner additionally failed to provide evidence establishing that The Parent's Information and Resource Center, Inc. is a public agency with authority under Florida law, in adoption matters and placement of children for adoption, or that the agency is otherwise authorized to conduct the research and preparation for a home study in Florida. The petitioner thus also failed to meet the requirements set forth in 8 C.F.R. § 204.3(b). Accordingly, the petitioner's I-600 petition was correctly denied by the district director.

It is noted that the district director also found that the petitioner failed to establish that the beneficiary met the definition of an orphan because the petitioner did not establish the beneficiary's biological father was incapable of providing proper care to the beneficiary, or that he had released his parental rights over the beneficiary.

Section 101(b)(1)(F)(i) of the Act, defines the term, "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: Provided, That the Attorney General [now Secretary, Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States. . . .

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

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

On appeal the petitioner submits a copy of a faxed letter from the beneficiary's biological father stating that he has never lived with, or supported the beneficiary; that he is incapable of providing her with support; and that he releases his parental rights over the beneficiary. The record contains no corroborative or detailed evidence relating to the beneficiary's father's inability to provide proper care to the beneficiary, and the AAO finds, upon review of the evidence, that the petitioner failed to establish that the beneficiary's father is incapable of caring for the beneficiary, or that she has irrevocably released his parental rights over the beneficiary. Accordingly, the AAO finds that the district director's determination that the beneficiary does not meet the definition of an orphan is correct.

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 petitioner has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed, and the petition will be denied.¹

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

¹An I-600 petition was also filed on behalf of the applicant's sibling [REDACTED], [REDACTED]. It was denied for the same reasons. Though no separate appeal was filed related to that petition, the AAO notes that the reasoning in this decision applies equally to the decision in his case.