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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

F1

[redacted]

FILE: [redacted] Office: BALTIMORE DISTRICT OFFICE Date: AUG 2 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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)

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, Director
Administrative Appeals Office

DISCUSSION: The District Director of the Baltimore, Maryland District Office denied the immigrant visa petition and the petitioner appealed the decision to the Administrative Appeals Office (AAO). On May 2, 2002, the AAO remanded the case to the district director for further action. The district director issued a Notice of Intent to Deny the Petition to Classify Orphan as an Immediate Relative. The petitioner responded to the Notice of Intent to Deny. The district director denied the petition, finding the petitioner had failed to establish the beneficiary's eligibility for classification as an orphan. The matter is now before the AAO on appeal. The appeal will be dismissed.

In his decision dated February 26, 2004, the district director outlined the reasons for denying the petition.

First, the petitioner and his spouse did not file a joint petition as required by the pertinent regulations. The district director noted that the Form I-600 petition was signed by the petitioner alone even though the petitioner is married. According to the pertinent regulations, if a married individual is filing the Form I-600 petition, the petition must be signed by both the petitioner and his or her spouse.

Second, the petitioner had failed to sufficiently explain several discrepancies in the documentary evidence that he had submitted to Citizenship and Immigration Services (CIS).

The petitioner initially submitted an adoption decree dated December 16, 1999, indicating that he alone adopted the beneficiary. The initial adoption decree stated that the beneficiary's birth parents were both deceased. Subsequently, the petitioner submitted an adoption decree dated August 22, 2002, stating that the petitioner together with his wife adopted the beneficiary. This order stated that the beneficiary's natural parents consented to the adoption. The district director noted the discrepancy between the first order indicating that the natural parents were deceased and the subsequent order indicating that the natural parents consented to the adoption. On appeal, the petitioner submitted an amended adoption decree along with a letter from counsel in Ghana to the Ghana court noting the error, i.e., that the natural parents consented to the adoption. In review, the petitioner has resolved this discrepancy.

The petitioner stated on the Form I-600 that he had custody of the beneficiary since October 4, 1999; however, the adoption decree issued in December 1999 indicates that the beneficiary was in the custody of the director of social welfare in Ghana until the date of the adoption in December 16, 1999. The initial adoption decree also indicates that the beneficiary's guardian consented to the adoption. In response to a notice of intent to deny, the petitioner's counsel stated that the question of custody of the beneficiary is resolved by the amended adoption decree. In his decision, the district director notes that the petitioner had not explained who has had custody of the beneficiary since the death of his natural parents. On appeal, counsel for the petitioner indicates that the beneficiary resided with an uncle, James Obeng, following his mother's death and currently resides with adult siblings.

It is incumbent upon the petitioner to establish that the adoption abroad was "full and final" and that the prospective adoptive parents saw the beneficiary either before or during the adoption proceedings, or in the alternative, that either the prospective adoptive parents or entity working in their behalf has custody of the beneficiary in accordance with the laws of the foreign-sending country (Ghana).

The regulation at 8 CFR § 204.3(d) states in pertinent part:

> *Supporting documentation for an identified orphan.*
>
> (1)(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 . . . and evidence that the . . . 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 . . . [the] married petitioner and spouse did not personally see the orphan prior to or during the adoption proceeding abroad:
> >
> > > (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; and
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> > > (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.

In review, the evidence does not establish that the petitioner's spouse personally saw the beneficiary prior to or during the adoption proceeding; therefore, the petitioner is required to show that either he and his wife had legal custody of the beneficiary or a person or an entity working on their behalf secured custody of the orphan. The petitioner established that he and his wife gained legal custody of the beneficiary when their adoption petition was approved. However, the petitioner failed to establish that the State of the beneficiary's proposed residence allows readoption or provides for judicial recognition of the adoption abroad. Further, the petitioner and his spouse did not file a joint petition as required.

In visa petition proceedings, the burden of proof rests solely 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.