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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: EL PASO, TEXAS Date: MAY 19 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Elizabeth O'Brien

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the El Paso, Texas, district office denied the application for advance processing of an orphan petition. The matter is now before the Office of Administrative Appeals (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on July 18, 2002. At the time of filing, the applicant was a 42 year-old married citizen of the United States, who together with her spouse, sought to adopt a Guatemalan child.

The district director denied the application because the applicant had failed to establish the legal immigration status of her spouse. The district director specifically noted that the spouse entered the United States without inspection. The district director further noted that the applicant's petition to classify her spouse as an immediate relative, as well as the spouse's application for permanent residence, were both pending before Citizenship and Immigration Services.

The applicant files a timely appeal with no evidence.

The regulation at 8 C.F.R. § 204.3(b) defines "prospective adoptive parent" as:

> A married United States citizen of any age and his or her spouse of any age . . . [t]he spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

On appeal, the applicant claims that her spouse is no longer residing in the United States. However, the applicant has not submitted any evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.