(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: FEB 0 6 2014 Office: NATIONAL BENEFITS CENTER File: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director), denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

Applicable Law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

> a child, under the age of sixteen at the time a petition is filed . . . 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 who is at least 25 years of age, at least 1 of whom personally saw and observed the child before 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. . . .[1]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent parts, the following:

> *Competent authority* means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.
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> *Foreign-sending country* means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.
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> * * *
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> *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.
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> * * *

[1] The Consolidate Appropriations Act, 2014, Public Law No. 113-73, amended section 101(b)(1)(F)(i) of the Act and eliminated the requirement that both adopting parents had to see or observe the child before or during the adoption proceedings.

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

(d) *Supporting documentation for a petition for an identified orphan* . . . An orphan petition must be accompanied by full documentation as follows:

* * *

(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, 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.

Factual and Procedural History

The petitioner is a 59-year-old U.S. citizen who seeks to classify the beneficiary, a citizen of Haiti, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on May 2, 2013. On the Form I-600, the petitioner stated that the beneficiary was an orphan because she has a sole parent (the biological mother) who is incapable of providing for her basic needs. The director subsequently issued a Request for Evidence for, among other things, an updated home study that meets the requirements of 8 C.F.R. § 204.3(e) and an irrevocable release of the beneficiary for emigration and adoption. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish eligibility. On August 20, 2013, the director denied the Form I-600, finding that the petitioner failed to provide evidence of a full and final adoption of the beneficiary completed in accordance with the laws of Haiti. Counsel timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed for the following reasons.

Analysis

The petitioner submitted below the following evidence: the beneficiary's official birth certificate, the Extract of Birth Certificate, from the Haitian National Archives; an updated Home Study; the beneficiary's entry form for placement in the orphanage; a license for from Haiti's Ministry of Social Services and Employment; an irrevocable release for the beneficiary's adoption and emigration from a transcript of the court proceedings for the beneficiary's biological mother's consent to the petitioner's adoption before a Justice of the Peace ; a court order from the Surrogate's Court of New York, County of certifying the petitioner as a qualified adoptive parent; and information on intercountry adoption from the U.S. Department of Health and Human Services.

The director correctly determined that the petitioner has not provided evidence of a full and final adoption of the beneficiary completed in accordance with the laws of Haiti, as required by 8 C.F.R. § 204.3(d)(1)(iv). The U.S. Department of State is this country's authority on foreign adoptions and advises that the process for finalizing an adoption in Haiti generally includes: (1) birth parent(s)' consent to the prospective adoptive parent(s)' adoption

before a Justice of the Peace as well as the Dean of the civil courts in the jurisdiction; (2) l'Institut du Bien Être Social et de Recherches (IBESR) approval of the adoption and issuance of an Authorization of Adoption (Autorisation d'Adoption); and (3) the issuance of an Adoption Act (Acte d'Adoption) from the civil court with jurisdiction over the child's residence to finalize the adoption.[2] Although the petitioner submitted the beneficiary's biological mother's consent to the adoption before a Justice of the Peace in the Lower Court of Section, she did not provide evidence of having obtained consent before the Dean of the Civil Courts. The record also does not show that the petitioner received approval of the adoption from IBESR, Haiti's adoption authority.[3] Nor does it reflect that the adoption was finalized in a civil court.

On appeal, counsel asserts that section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(d)(1)(iv) require either a foreign adoption, or if the child will be adopted in the United States, evidence that the petitioner has satisfied the pre-adoption requirements of the state of proposed residence. Counsel contends that the beneficiary meets the definition of an "orphan" and her Form I-600 should be approved even if she is refused an exit visa from Haiti or the U.S. Department of State determines that it cannot issue an immigrant visa. Counsel further asserts that the petitioner has custody over the beneficiary for the purpose of emigration and adoption. Counsel contends that the petitioner satisfied the "alternative regulatory criteria" at 8 C.F.R. § 204.3(d)(1)(iv)(B).

Counsel's interpretation of the relevant statute and corresponding regulations is misguided. The USCIS regulation at 8 C.F.R. § 204.3(d)(1)(iv) states that a petitioner must provide evidence of adoption abroad, or that the prospective adoptive parents have custody of the orphan for emigration and adoption *in accordance with the laws of the foreign-sending country,* in this case Haiti. (emphasis added). The regulation at 8 C.F.R. § 204.3(d)(1)(iv)(B) is not an "alternative regulatory criteria" as asserted by counsel, but instead it allows for an orphan to be adopted in the United States where there was no full and final adoption, 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. According to the U.S. Department of State, Haitian law does not allow for a Haitian child to travel to the United States to be adopted.[4] Therefore, in accordance with the laws of the foreign-sending country, the prospective adoptive parents must obtain a full and final adoption under Haitian law before the child can immigrate to the United States.[5]

Because Haitian law requires the full and final adoption of an orphan, the petitioner must provide a copy of the beneficiary's Haitian adoption decree as set forth in 8 C.F.R. § 204.3(d)(l)(iv)(A). The present record contains no adoption decree, and no indication that the beneficiary was adopted in Haiti. Even if Haitian law did not require a full and final adoption of an orphan, the petitioner

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[2] *See Intercountry Adoption, Haiti,* U.S. Department of State, http://adoption.state.gov/country_information/country_specific_info.php?country-select=haiti (last visited January 15, 2014).

[3] *Id.*

[4] *Id.*

[5] *Id.*

would nevertheless have failed to meet the requirements set forth in 8 C.F.R. § 204.3(d)(1)(iv)(B), in that she has not establish that she was awarded custody over the beneficiary in accordance with Haitian law.

Conclusion

As the petitioner has failed to provide evidence of her full and final adoption of the beneficiary under the laws of Haiti, the beneficiary is not eligible for classification as an "orphan" under section 101(b)(1)(F)(i) of the Act. Consequently, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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