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U.S. Citizenship
and Immigration
Services

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FILE:

Office: BALTIMORE

Date:

DEC 02 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Baltimore, denied the Petition to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on February 12, 2008. The director noted that the beneficiary was not under the age of sixteen at the time the I-600 Petition was filed and thus did not meet the requirements of the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F). *District Director Decision*, July 31, 2008. The petition was denied accordingly.

On appeal, the petitioner, through counsel, asserts that she adopted the beneficiary's sister, [REDACTED] in 1993, and that a sibling of an adoptee is eligible for adoption until the age of 18, citing to section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E). *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, dated August 28, 2008. Counsel added that the beneficiary, [REDACTED], born on September 5, 1991 and under the age of 18 when the I-600 Petition was filed, was therefore eligible for benefits as an adoptee.

In support of this assertion, on appeal the petitioner submits several documents regarding [REDACTED] (1) a letter from the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services or USCIS) indicating that her application for adjustment of status to permanent resident, admissions code IR-7 (child of a U.S. citizen), was approved on September 7, 1995; (2) a request for a transit visa for [REDACTED] from the Ministry of Foreign Affairs of the Transitional Government of Ethiopia to the Embassy of Great Britain, dated in 1993, indicating that she "is proceeding to U.S.A. She is daughter [REDACTED] in Washington"; (3) a Petition for Name Change to the U.S. District Court in Washington, D.C., granted on January 8, 2002, from "[REDACTED]" to "[REDACTED]"; and (4) various pages of her Ethiopian passport, issued in [REDACTED] on October 19, 1993, and renewed in Washington, D.C. on June 21, 1999, showing that [REDACTED] was born in Ethiopia in 1979; page 11 of her passport shows that she was issued an A-1 multiple entry visa to the United States (for immediate family member of a diplomat) on November 10, 1993 and includes a handwritten notation, "adopted daughter of [REDACTED] the Spouse of [REDACTED], Ethiopia Embassy, WA": page 19 is stamped "Processed for I-551 Temporary Evidence of Lawful Admission for Permanent Residence valid until 6 Sep 1996."

To verify the sibling relationship between [REDACTED] and the beneficiary, counsel refers to a Home Study for the petitioner that is included in the record and submits two statements, from [REDACTED], dated September 24, 2008 and from [REDACTED], dated September 26, 2008, respectively. The statements are not notarized, but each includes a notary's stamp and signature. [REDACTED] states that she is the daughter of [REDACTED] and sister of "[REDACTED]" (sic; [REDACTED]'s name is misspelled throughout the statement). She states that she was adopted by her aunt, [REDACTED], in 1995, and offers to have a DNA test to establish their relationship if necessary. [REDACTED] states that she adopted her sister, [REDACTED] (the petitioner in the present case) in 1974, and that [REDACTED] adopted [REDACTED] in 1995. She adds, [REDACTED] and [REDACTED] (sic) are sisters. I know this because we are a close family, and I was told by family members when they were born."

The evidence submitted on appeal and other evidence in the record have been reviewed and taken into consideration in rendering this decision. There is no dispute as to the age of the beneficiary, [REDACTED], who was 17 years old when the I-600 Petition was filed in her behalf. The issue on appeal, therefore, is whether the

petitioner had adopted the beneficiary's sister before age 16. If so, the beneficiary would remain eligible for adoption as an orphan until she turned 18.

Section 101(b)(1)(F) of the Act defines "orphan" in pertinent part as:

(i) 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) [of the Act], 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 . . . or **(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i) [regarding an adopted child, other than an orphan]; (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) (emphasis added).**

In the present case, the petitioner must show that she adopted [REDACTED] before the age of 16 and that [REDACTED] is the natural sibling of [REDACTED]. Other than the evidence submitted on appeal, described above, the only evidence in the record regarding [REDACTED] is contained in the petitioner's Adoption Home Study, conducted on August 27, 2007. The Home Study lists [REDACTED] as the petitioner's child, with a date of birth of August 23, 1979. The narrative includes (1) a statement that the petitioner adopted [REDACTED] when she was 16 years old so that she could come to the United States for better opportunities; and (2) a statement that it was a natural decision to adopt [REDACTED] the beneficiary, in 1999 when the beneficiary's mother died, as the petitioner had already adopted the beneficiary's sister, [REDACTED]. There is no official documentary evidence, however, to support these statements. There is no official record of adoption for [REDACTED] in the record and no birth certificate or other official evidence that she is the natural sibling of [REDACTED]. In addition, if the claimed adoption was not until [REDACTED] turned 16, as stated in the Home Study, she would not be considered an adopted child under the Act, whether as an orphan or otherwise. Sections 101(b)(1)(E) and (F) of the Act.

In fact, the evidence supports a conclusion that [REDACTED] and [REDACTED] do not have parents in common. Evidence in the record regarding [REDACTED] includes (1) her birth certificate, which provides her father's name as [REDACTED] and her mother's name as [REDACTED] and (2) an adoption contract agreement between [REDACTED], the person offering the child for adoption, and [REDACTED], the person adopting the child (the petitioner in the present case). It was signed in Mekele City, Ethiopia, and dated August 22, 2005. The adoption contract agreement is comprised of a statement by [REDACTED] in which he states, in pertinent part:

My parents [REDACTED] and [REDACTED] who passed away earlier **has only two children me and my sister** [REDACTED] [sic] who is fourteen years old. . . . However, the sister of our mother [REDACTED] who understood this problem has willingly requested to adopt [REDACTED] [sic] to take her as her child and take care of her in every aspect. Believing that our aunt has all the means to rear my sister [REDACTED] [sic] properly, I have agreed and signed this contract willingly that my aunt to adopt my [sister] to rear my sister as her own daughter in accordance of the Family Law Number 33/99 Article 218.2 of Tigray Government (emphasis added).

My aunt [REDACTED] has also fully agreed and signed this contract at her free will to adopt [REDACTED] [sic] as her daughter . . .¹

[REDACTED] statement does not mention [REDACTED], but rather indicates that he and the beneficiary are two siblings and have no other siblings.

The record reflects that the beneficiary was born in Ethiopia on September 5, 1991. She was, therefore, not under the age of sixteen at the time the I-600 Petition was filed in her behalf. Despite the petitioner's assertion that she adopted the beneficiary's sister, thus extending the beneficiary's eligibility age up to 18, there is no documentary evidence of a sibling relationship or of a prior adoption. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has not provided evidence that she adopted the beneficiary's sibling. The beneficiary is over the age of 16. Accordingly, the AAO finds that the beneficiary does not meet the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

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 her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.

¹ While not at issue here, the AAO notes that there is no evidence that [REDACTED] had lawful custody of the beneficiary and there is no official adoption decree in the record. Moreover, also absent from the record is the required "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." 8 C.F.R. § 204.3(d)(1)(iv)(B)(2). Failure to comply with this provision and the other documentary requirements of 8 C.F.R. § 204.3(d) would also be grounds for denial of the I-600 Petition.