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FILE:



OFFICE: ST. PAUL (BLOOMINGTON), MN Date: **FEB 14 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, St. Paul, Minnesota revoked the approval of the petitioner's Form I-600, Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act visa petition (I-600 Petition) on August 25, 2005. The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the district director's decision will be affirmed.

The petitioner is a fifty-seven year old naturalized citizen of the United States. The beneficiary was born in Vietnam on April 10, 1993, and she is presently fourteen years old. The record reflects that the district director approved the petitioner's I-600 petition on September 29, 2002. The I-600 petition was subsequently forwarded to the U.S. Consular office in Ho Chi Minh City, Vietnam for an I-604 investigation.

The regulation provides in pertinent part at 8 C.F.R. § 204.3(k)(1), that:

An I-604 investigation must be completed in every orphan case. . . . An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. . . . In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. . . .

The regulation provides in pertinent part at 8 C.F.R. § 204.3(h)(14) that:

[T]he approval of . . . an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

The record reflects that the district director issued a Notice of Intent to Revoke (NOIR) the petitioner's I-600 petition approval on April 28, 2005, based on information obtained during the consular office investigation conducted in Vietnam. The NOIR reflects that the consular investigation officer interviewed the beneficiary's natural mother (the petitioner's sister) at her home, and found that she lives with her five children in a comfortable home, that she has been gainfully employed by [REDACTED] since 1998, and has a monthly income of 800,000 Vietnamese dollars – above the local or national living standard in Vietnam, and that she is able to provide proper care to the beneficiary in Vietnam. The consular investigation officer additionally found that statements made by the beneficiary's natural mother reflected she had no intention of placing the beneficiary into an orphanage due to an inability to provide proper care to her, as purportedly claimed by the petitioner. The petitioner was given 30 days to respond to the revocation grounds set forth in the NOIR.

In a decision dated August 25, 2005, the district director found that assertions made in a letter received by counsel, [REDACTED] could not be addressed because [REDACTED] had failed to file a Form G-28, Notice of Entry of Appearance as Attorney in which the petitioner consented to his appearance on her behalf. The district director found that no other evidence was submitted on rebuttal, and the district director revoked the I-600 petition approval on the grounds set forth in the NOIR.

On appeal the petitioner indicates, through counsel, that the beneficiary's natural mother did not intend to place the beneficiary into an orphanage, but rather that she always intended for her daughter to be adopted by the petitioner. The petitioner asserts that this intent appears in an August 19, 2002, Vietnamese agreement allowing for the adoption. The petitioner indicates further, through counsel, that the consular investigation officer did not ask the beneficiary's natural mother any questions about her intent to relinquish her parental rights, and that the investigator made erroneous assumptions about her intent based on the fact that the beneficiary's natural mother had family pictures in her house. The petitioner asserts that the consular investigation officer exaggerated the beneficiary's mother's financial status, and failed to recognize that the petitioner provides substantial support to the beneficiary's natural mother, thus allowing her to meet basic living standards in Vietnam. The petitioner additionally states, through counsel, that she and the beneficiary's natural mother have retained counsel in Vietnam, and that they intend to present new and correct information to U.S. Citizenship and Immigration Services (CIS) and to the U.S. Consulate in Vietnam.

Counsel for the petitioner also requests oral argument before the AAO. The AAO notes that under 8 C.F.R. § 103.3(b), counsel must explain in writing why oral argument is necessary. CIS has sole authority to grant or deny a request for oral argument, and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In the present matter, the AAO finds that no cause for oral argument has been stated or shown. The request for oral argument before the AAO will therefore be denied.

Section 101(b)(1)(F) of the Act defines the term, "orphan" 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. (Emphasis added.)

The regulation provides in pertinent part at 8 CFR 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*.

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.

In the present matter the record reflects that the beneficiary's natural father is deceased, and the issue is whether the petitioner has overcome the district director's finding that the beneficiary's natural mother is capable of providing proper care to the beneficiary in Vietnam. The AAO finds that the petitioner has failed to overcome the district director's finding.

The record contains no evidence or documentation to corroborate the assertions made on appeal by the petitioner, through counsel. The petitioner presented no financial or other corroborative evidence to rebut the consular officer's finding that the beneficiary's natural mother lives with her five children in a comfortable home, and that she has been gainfully employed by [REDACTED] since 1998, and has a monthly income of 800,000 Vietnamese dollars – above the local or national living standard in Vietnam. The petitioner also presented no first-hand or other credible evidence to rebut the consular officer's findings regarding the beneficiary's mother's lack of intent to relinquish her parental rights over the beneficiary. The record also fails to demonstrate that any new information was submitted to CIS or the U.S. Consulate in Vietnam, subsequent to the filing of the petitioner's appeal.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO finds that the record lacks evidence to support assertions that the consular investigation conclusions are erroneous and that beneficiary's natural mother is incapable to providing proper care to the beneficiary. The petitioner therefore failed to establish that the beneficiary is an orphan as set forth in section 101(b)(1)(F) of the Act.

Because the petitioner has not met her burden in the present matter, the appeal will be dismissed and the district director's decision to revoke the I-600 petition approval will be affirmed.

ORDER: The appeal is dismissed. The district director's decision is affirmed.