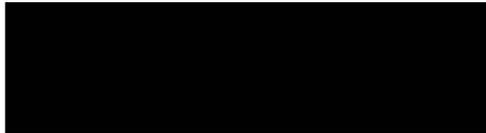


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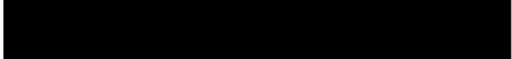
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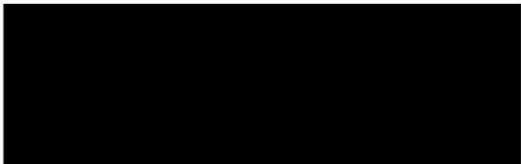


F1

FILE: OFFICE: PHILADELPHIA, PA DATE: **NOV 27 2007**

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 Field Office Director, Philadelphia, Pennsylvania denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on March 6, 2005. The petitioner is a fifty-one-year-old married U.S. citizen. The beneficiary was born in Jamaica on September 15, 1989, and she is presently eighteen years old.

The field office director determined that the petitioner had failed to submit a valid home study report within one year of submission of his I-600 petition, as required in 8 C.F.R. §§ 204.3 (c) and (h). The field office director noted further that the petitioner had failed to establish that the beneficiary's natural mother was incapable of providing proper care to the beneficiary, or that she had unconditionally released her parental rights over the beneficiary. In addition, the field office director noted that the record contained no evidence to establish that the petitioner and his wife had adopted the beneficiary in accordance with the laws in Jamaica. The field office director concluded that the petitioner had thus failed to establish that the beneficiary satisfied the requirements for classification as an orphan under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The I-600 petition was denied accordingly.

On appeal the petitioner concedes, through counsel, that he did not submit a valid home study within one year of filing the I-600 petition. Counsel asserts on behalf of the petitioner, however, that the home study filing requirements contained in 8 C.F.R. § 204.3 of the Act, apply only to the adjudication of a Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application.) The petitioner asserts that the filing deadline requirements do not apply to cases where only a Form I-600 has been filed. The petitioner indicates further, through counsel, that evidence submitted on appeal demonstrates that the beneficiary has not lived with her biological mother, that the beneficiary's biological mother has relinquished her parental rights over the beneficiary, and that an authorized Jamaican adoption agency was involved in the beneficiary's adoption process.

Section 101(b)(1)(F)(i) of the Act, defines the term, "orphan" in pertinent part 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: Provided, That the Attorney General [now Secretary, Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States. . . .

The petitioner indicates, through counsel that regulatory provisions contained at 8 C.F.R. §§ 204.3(c) and 204.3(h) do not apply to the petitioner's case because he filed only an I-600 petition, and he was not required to file an I-600A application. Through counsel, the petitioner indicates that the cited regulatory provisions apply only to the adjudication of an I-600A application, and that the home study deadline provisions do not

apply if an actual I-600A application has not been separately filed. In support of his assertion, counsel submits a March 2005, AAO decision (found at 2005 WL 2211550) which states, in pertinent part:

[T]hough we agree that the petitioner failed to submit a home study, because the petitioner filed Form I-600 and not Form I-600A, the pertinent regulations do not impose a one-year deadline for the filing of a home study in this instance.

The AAO notes that the regulation at 8 C.F.R. § 103.3(c), provides in pertinent part that:

[T]he Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in § 1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue (s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in § 103.9(a) of this part.¹

It is noted that the AAO decision referred to by counsel states that it is, "for educational use only." The decision is not a precedent decision, as discussed in 8 C.F.R. § 103.3(c). While 8 C.F.R. § 103.3(c) provides that precedent decisions of the Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary, with concurrence of the Attorney General, are binding on all US Citizenship and Immigration Services employees in the administration of the Act, decisions that are not are not similarly binding. The AAO decision referred to by counsel therefore has no precedential value in the present matter, and the present case will be decided based on its compliance with applicable statutory and regulatory provisions.

For the reasons stated below, the AAO finds that the filing of an I-600 petition, where an orphan has already been identified, is, for all immigration processing and adjudicative purposes, a concurrent filing of an I-600A application and an I-600 petition. The AAO finds further that the regulations pertaining to home study filing requirements for I-600A applications thus apply with equal force to the individual filing of an I-600A application or the concurrent filing (through submission of a sole I-600 petition) of an I-600 petition and I-600A application.

The regulation provides in pertinent part at 8 CFR 204.3(a)(2) that:

¹ The regulation provides at 8 C.F.R. § 103.9(a):

Precedent decisions. There may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, bound volumes of designated precedent decisions entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States," each containing a cumulative index. Prior to publication in volume from current precedent decisions, known as interim decisions, are obtainable from the Superintendent of Documents on a single copy or yearly subscription basis. Bound volumes and current precedent decisions may be read at principal Service offices.

[P]etitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan. The second determination concerns the orphan petition which focuses on whether the child is an orphan under section 101(b)(1)(F) of the Act **An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.**

(Emphasis added.) The regulation states at 8 C.F.R. § 204.3(g)(4):

Where to file an orphan petition concurrently with the advanced processing application. **When the petition is filed concurrently with the advanced processing application, it must be filed in accordance with the instructions for filing an advanced processing application** in paragraphs (g)(1)(i) through (g)(1)(iii) of this section.

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

[P]rospective adoptive parents who do not have an advanced processing application approved or pending may file the application and petition concurrently on one Form I-600 if they have identified an orphan for adoption. . . .

(3) Filing an orphan petition concurrently with the advanced processing application. A petition filed concurrently with the advanced processing application must be submitted on Form I-600, completed and signed in accordance with the form's instructions. **(Under this concurrent procedure, Form I-600 serves as both the Forms I-600A and I-600, and the prospective adoptive parents should not file a separate Form I-600A.) The following supporting documentation must accompany a petition filed concurrently with the application under this provision:**

(i) The supporting documentation for an advanced processing application required in paragraph (c) of this section; and

(ii) The supporting documentation for an orphan petition required in paragraph (d)(1) of this section, except for paragraph (d)(1)(i) of this section.

(Emphasis added.) The regulation at 8 C.F.R. § 204.3(c), provides in pertinent part that:

[T]he prospective adoptive parents may file an advanced processing application before an orphan is identified in order to secure the necessary clearance to file the orphan petition. Any document not in the English language must be accompanied by a certified English translation.

(1) Required supporting documentation that must accompany the advanced processing application. The following supporting documentation must accompany an advanced processing application at the time of filing. . . .

....

(2) Home study. The home study must comply with the requirements contained in paragraph (e) of this section. If the home study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application, or the application will be denied pursuant to paragraph (h)(5) of this section.

(Emphasis added.) The regulation provides in pertinent part at 8 C.F.R. § 204.3(h)(5) that:

[I]f the home study is not submitted within one year of the filing date of the advanced processing application, the application shall be denied. This action shall be without prejudice to a new filing at any time with fee.

(Emphasis added.) The AAO finds that the regulations discussed above clearly demonstrate that the filing of an I-600 petition in a case, such as the petitioner's, where the orphan has already been identified, is, for all immigration processing and adjudicative purposes considered to be a *concurrent* filing of an I-600A application and an I-600 petition. The regulations pertaining to home study filing requirements for I-600A applications therefore apply with equal force to the petitioner's concurrently-filed I-600 petition and I-600A application.

In the present matter, the petitioner filed the I-600 petition on March 6, 2005. The record reflects that the petitioner submitted a home study report prepared by Adoptions From the Heart, in July 2005. The home study report did not recommend the petitioner and his wife as potential adoptive parents based on a finding that the petitioner's one bedroom apartment was too small for the petitioner's family and an adopted child. The record reflects that the petitioner and his family subsequently moved. A second home study report was prepared on September 5, 2006. The second home study report approved the petitioner and his wife as adoptive parents, and was received by the field office director on October 3, 2006. It is uncontested that the valid (2nd) home study report was submitted to CIS more than a year after the petitioner submitted his concurrently filed I-600 petition. The I-600 petition was thus correctly denied by the field office director under 8 C.F.R. § 204.3(h)(5).

The AAO finds that the petitioner's failure to comply with the regulatory requirements set forth in 8 C.F.R. § 204.3(h)(5) is, in itself, a sufficient basis for denying the petitioner's petition. It is noted, however, that the field office director additionally found the petitioner had failed to establish that the beneficiary satisfied the definition of an orphan because: 1) the petitioner failed to establish that the beneficiary's biological mother was incapable of providing proper care to the beneficiary, or that she released her parental rights over the beneficiary, and 2) the record contained no evidence to establish that the petitioner and his wife adopted the beneficiary in accordance with Jamaican laws.

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

[T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

(iii)(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption; and

(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. . . .

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

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.

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*.

The beneficiary's birth certificate contains no paternal information, and the AAO finds that the record establishes the beneficiary is the child of sole parent. The petitioner has failed, however, to establish that the beneficiary's mother is incapable of providing proper care to the beneficiary, or that she irrevocably released her parental rights over the beneficiary.

The record contains a letter signed by the beneficiary's biological mother indicating that she cannot care for the beneficiary, and releasing her parental rights over the beneficiary. The record also contains an affidavit written by the applicant's wife, stating that she is the beneficiary's maternal aunt, and that the beneficiary's mother was emotionally unable to care for the beneficiary. The petitioner's wife states that she cared for and raised the beneficiary from infancy until the day the petitioner's wife married the petitioner and moved to the United States, at which time the beneficiary's grandmother took over care of the beneficiary. The I-600

petition filed by the petitioner states that the beneficiary presently lives with her maternal grandmother at: Palmers Cross, MayPen Clarendon, Jamaica. It is noted, however, that the release of parental rights letter signed by the beneficiary's biological mother reflects that her address is also at: Palmers Cross Dist., Palmers Cross P.A., May Pen, Clarendon. It thus appears that the beneficiary lives in the same household as her mother. The record contains no other corroborative or detailed evidence relating to the beneficiary's mother's inability to provide proper care to the beneficiary, or the release of her parental rights over the beneficiary. Upon review of the evidence contained in the record, the AAO finds that the petitioner failed to establish that the beneficiary's mother is incapable of caring for the beneficiary, or that she has irrevocably released her parental rights over the beneficiary.

The petitioner has additionally failed to establish that he adopted the beneficiary in accordance with the laws in Jamaica. United States Department of State (DOS) adoption procedure guidance for Jamaica, found at <http://www.travel.state.gov> reflects in pertinent part that an application for the adoption of a Jamaican child must be made to the Child Development Agency (CDA.) After a committee of the CDA approves the adoption, the case is referred to a Jamaican court for legal proceedings and issuance of either an adoption license or an adoption order.

In the present matter, the record contains an informal note addressed to the Adoption Board in Kingston, Jamaica, indicating the petitioner's intent to submit his initial, July 2005, home study report to the Adoption Board. On appeal, counsel provides United Nations evidence establishing that the Adoption Board is part of the CDA in Jamaica. On this basis, counsel asserts, on behalf of the petitioner, that the CDA was involved in processing the beneficiary's adoption. The AAO notes that the petitioner's initial July 2005, home study report did not approve the petitioner and his wife as adoptive parents. Moreover, the record contains no other evidence to indicate or establish that the petitioner actually initiated adoption proceedings for the beneficiary, or that the petitioner has, at any time, legally adopted the beneficiary. Accordingly, the AAO finds that the petitioner has failed to establish that he and his wife adopted the beneficiary in accordance with Jamaican law.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the petitioner has failed to meet his burden of establishing that: 1) he submitted a timely home study report in accordance with 8 C.F.R. § 204.3(h)(5); and 2) the beneficiary meets the definition of an orphan. The appeal will therefore be dismissed, and the petition will be denied.

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