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FILE:

OFFICE: NEW YORK, NY

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York 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 8, 2005. The petitioner is a fifty-three-year-old married citizen of the United States. The beneficiary was born in Pakistan on September 12, 2003, and she is four years old.

The district director determined that the petitioner had failed to establish that she and her husband were financially able to provide proper care to the beneficiary, as required by 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 indicates that the beneficiary meets the definition of an orphan, as set forth in section 101(b)(1)(F) of the Act, and she indicates that she and her husband will be able to provide proper care to the beneficiary because she will begin working once the beneficiary is in the United States, and her husband will return to work once he is medically able to do so. The petitioner additionally indicates that her uncle has signed an Affidavit of Support on behalf of the beneficiary.

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, Department, Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States.** . . . (Emphasis added.)

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

[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.

In the present matter, the petitioner did not file a Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application.) The regulation at 8 C.F.R. § 204.3(d) provides at pertinent part, however, 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) [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 regulation provides in pertinent part at 8 C.F.R. § 204.3(e)(2)(ii) that a home study must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan, and that the home study must include an:

[A]ssessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of . . . another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. . . .

On appeal, the petitioner submits an itemized statement of his family's income and expenses, in which he states that he receives \$733 a month in SSI/Disability income, and \$284 a month in Food Stamps (total \$1017/month.) The petitioner submits a copy of a March 1, 2007, Letter of Employment, from Air Sea Travel Tours, Inc., indicating that she has an open offer of employment with the travel agency upon her return from Pakistan. The petitioner indicates that her family's monthly income will include travel agency employment earnings of \$300 a month.

The petitioner indicates that her family's expenses consist of the following:

Rent - \$615.38 a month
Con Ed - \$32.24 a month
Telephone and cable - \$117 a month
Gas - about \$8.34 a month
(total \$772.96 a month.)

The Home Study Report completed by Catholic Home Bureau in February 2005, states that the petitioner does not work, and that she plans to remain at home to care for the beneficiary once the beneficiary arrives in the United States. The home study preparer states that the petitioner and her husband have a total monthly income of \$746.00, from the petitioner's husband's () Social Security disability income. The home study preparer indicates that the petitioner's monthly bills total \$1,297.12, and that the petitioner and ()

rely on Medicaid and food stamps, as well as financial help from family members to meet their monthly financial obligations. The home study preparer states that the couple has about \$3,740 in a checking account, and that [REDACTED] plans to return to work as soon as his physician allows him to do so.

The AAO finds, upon review of the evidence, that the petitioner has failed to overcome the district director's finding that she and her husband would be unable to provide proper care to an adopted orphan. The AAO notes that the home study report failed to corroborate or provide a detailed analysis of its approval of the petitioner's household given the petitioner's financial circumstances. The home study preparer noted that neither the petitioner nor her husband were employed, and that their monthly income of \$746 from SSI/Disability benefits was less than their monthly bills of \$1297.12. The home study preparer addressed the issue by stating simply that the petitioner and her husband receive Medicaid and food stamp aid; that they receive financial assistance from family members; and that [REDACTED] plans to return to work once he is medically able to do so. No other analysis or explanation is provided regarding the petitioner's ability to provide financially for the beneficiary. The AAO finds that the home study report failed to properly discuss its approval of the petitioner's household in light of her family's financial circumstances.

The AAO notes further that the expense information claims made by the petitioner on appeal differ significantly from the information contained in the home study report, in that the petitioner claims to have \$524.16 less in monthly expenses than those stated in the home study report. The petitioner does not address or clarify the inconsistency, and the record contains no evidence to corroborate the financial claims. The AAO additionally notes inconsistencies between: 1) the home study report statement that [REDACTED] plans to return to work once he is medically allowed to do so, and that the petitioner will not work and plans to provide full-time care to the beneficiary; and 2) the petitioner's claim on appeal that it is she who will work, once the beneficiary arrives in the United States. The inconsistency is not addressed or clarified on appeal. The AAO notes that the Letter of Employment submitted on appeal is not an employment contract, and that it is speculative and lacking in detail. Moreover, the issue of who will work and/or take care of the beneficiary is material because [REDACTED] would presumably no longer receive his SSI/Disability, or other federal benefit payments if he returned to work; it is unclear where he would work or what his income would be if he did return to work; and home study report statements relating to [REDACTED] medical condition reflect that his physician stated he would be able to parent emotionally – the home study report does not indicate whether Mr. Bari was medically deemed able to care for a young child physically.

The AAO notes that Federal Poverty Guidelines for 2007 reflect that the annual poverty threshold for a family of two is \$13,690. The annual poverty threshold for a family of three is \$17,170. See <http://aspe.hhs.gov/poverty/07poverty.shtml>. In the present matter, the record reflects that the petitioner does not work and that the petitioner's husband's income (through SSI/Disability benefits) is, at most \$8952.00 a year, significantly lower than the Federal Poverty Guideline amount for the family's size. Furthermore, 8 C.F.R. § 204.3(e)(2)(ii) provides in pertinent part that, "[a]ny income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan." Accordingly, the monthly SSI/Disability payments received by the petitioner's husband may not be counted towards the financial income available to support the beneficiary. The food stamps received by the petitioner and his wife shall also not be counted toward the petitioner's financial resources available to support the beneficiary. Additionally, the joint sponsor, Affidavit of Support signed by the petitioner's uncle does not constitute evidence towards the petitioner's ability to provide proper financial care to the beneficiary.

Because the AAO finds that the petitioner has failed to demonstrate that she and her husband would be able to provide proper care to the beneficiary, as set forth in section 101(b)(1)(F) of the Act, the AAO finds it unnecessary to determine whether the beneficiary otherwise meets the definition of an orphan as defined in section 101(b)(1)(F) of the Act.

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 petitioner has failed to meet her burden in the present matter. The appeal will therefore be dismissed, and the petition will be denied.

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