

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



F1

FILE:



OFFICE: PHILADELPHIA, PA

DATE:

**FEB 10 2009**

IN RE:

APPLICANT:  
BENEFICIARY:



PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. 204.3(c)

ON BEHALF OF APPLICANT:

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.

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 Field Office Director, Philadelphia, denied the Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application) on August 13, 2008. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the I-600A Application on March 31, 2008. The applicant is a 68-year-old married citizen of the United States, who together with her spouse, who is 81 years old, seeks to adopt her grandchild from the Dominican Republic.

The director determined that the applicant had failed to establish that she and her husband were able to provide proper financial 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). *Director's Decision*, August 13, 2008. Upon review of the home study submitted in support of the I-600A Application, the director noted that the retirement income of the couple (approximately \$5,600 per year in social Security benefits) is below the amount specified in the 2008 Poverty Guidelines for a family of three, and that their household income does not include the income of their adult daughter, [REDACTED], who resides in the same building and will reportedly share in caring for the beneficiary. The director also determined that they couple did not meet the Dominican requirement that prospective adoptive parents be between the ages of 30 and 60. The Form I-600A was denied accordingly.

While a Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) has not been filed in this case, the AAO notes that an I-600 Petition was previously filed by the applicant on behalf of the beneficiary, along with a prior I-600A Application, and denied on April 3, 2007. The 2007 denial was also based, in part, on failure to establish that the couple could provide proper financial care to the beneficiary.

On appeal the applicant submits a statement asserting that she and her husband have been exceptionally accepted in the Dominican Republic as adoptive parents and that her daughter, [REDACTED], has been providing and will provide financial support for the beneficiary. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed September 15, 2008. In support of her claim she submits three additional documents: A letter from the legal counsel of the Dominican National Council for Children and Adolescents, dated August 27, 2008 (CONANI Letter), regarding residence requirements for parents adopting in the Dominican Republic; and copies of the Last Will and Testament of the applicant and her husband.

The issue on appeal is whether the applicant has established that she and her husband can provide proper care to the beneficiary if admitted to the United States.

U.S. Citizenship and Immigration Services (USCIS) may not approve an I-600A Application unless satisfied that the applicant will provide proper parental care to an adopted orphan. Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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) [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: *Provided, That the Attorney General [now Secretary, Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States. . . .* (emphasis added).

The regulation at 8 C.F.R. § 204.3(a)(1) provides that a child is eligible for classification as the immediate relative of a U.S. citizen if the child meets the definition of orphan contained in section 101(b)(1)(F) of the Act and if the U.S. citizen seeking the child's immigration can document that the citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for the child. In this regard, the regulations set forth the requirements of a home study, a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan, including an assessment of their finances, which must describe their income, financial resources, debts, and expenses. 8 C.F.R. § 204.3(e)(2)(ii).

The regulation at 8 C.F.R. § 204.3(h)(2) addresses the "Director's responsibility to make an independent decision in an advanced processing application," providing that "[n]o advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan."

While a determination on an I-600A Application, in cases where the I-600 Petition has not yet been filed, does not require an assessment of whether the beneficiary meets all of the requirements of the definition of "orphan" under the Act, in this case both the director and the applicant have addressed the issue of whether the applicant and her spouse are legally eligible to adopt in the Dominican Republic. As this issue has been raised and will be an essential consideration in the couple's continuing efforts to adopt the beneficiary, the AAO will also address it here. The applicant asserts that although Dominican law states that prospective parents need to be between 30 and 60, "the attached letter that clearly states that the adoption has been processed in the Dominican [Republic] which it leads me to believe[sic] that they made an exception to the law because of the family relationship." The attached letter she refers to is the CONANI letter, *supra*, indicating that the "commission of Allocation" has "proceeded to assign" the beneficiary to the applicant and her husband; and that "any demand in adoption must be preceded [by] a stage of coexistence of the adoptive parents with the adopted child by [an]established term," which the parties must comply with. Contrary to the applicant's claim, this document does not state that an adoption has been processed in the Dominican Republic or address any exception to the legal age limits for adoptions. The applicant has mischaracterized the evidence. 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)). The other two documents submitted on appeal are the Last Will and Testament of the applicant and her husband. These documents have no relevance to the issues on appeal.

Regarding the director's finding that the applicant had failed to establish that she and her husband would be able to provide proper financial care to the beneficiary, the applicant does not claim that the retirement income of the couple is sufficient. Instead, she cites to the regulation that allows for joint sponsorship (8 C.F.R. § 213a.2(c)(2)) of certain immigrants and the instructions for filing a Form I-864, Affidavit of Support, noting that her daughter [REDACTED] has the required income and "currently sends monthly support for food, shelter and school to [the beneficiary . . . Carlixa is a joint sponsor." This claim, however, is not supported by any evidence; no Form I-864 has been submitted. Again, assertions that lack supporting documentary evidence are not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

As noted above, the Act and the regulations require Form I-600A applicants to establish that they can provide proper care for an adopted orphan. In order to establish that they can provide proper care, the applicants must establish that they have sufficient financial resources to provide for an orphan child.<sup>1</sup> No evidence of such financial resources is included in the record in this case. Moreover, the home study reports that the beneficiary will sleep in the apartment of the applicant's daughter [REDACTED], as the applicant's apartment lacks sufficient space; [REDACTED] will share in caring for the beneficiary, and she and the applicant's other children will help support the beneficiary financially if needed; that [REDACTED] has sufficient income to provide support and housing to her parents and the beneficiary; and that the beneficiary would be able to be placed on [REDACTED]'s Blue Cross/Blue Shield medical insurance. While the AAO recognizes that the support of family members is helpful, it does not appear from the record that the applicant can provide proper care for the beneficiary without such support.

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989) If the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

The applicant must establish that she and her spouse are capable of providing, and will provide, proper care for the beneficiary as required under section 101(b)(1)(F) of the Act. In this case, there is no evidence of the couple's capacity to provide such care, and the home study indicates that both financially and otherwise, the couple will depend on other family members in parenting the beneficiary.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. Upon review of all of the evidence contained in the record, and for the reasons noted above, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that proper care will be furnished the child if admitted to the United States. The beneficiary, therefore,

---

<sup>1</sup> No Form I-864 is required for certain children of a U.S. citizen, including orphans legally adopted abroad before the orphan's acquisition of permanent residence. *See* 8 C.F.R. § 213a.2(ii)(E).

does not meet the definition of “orphan” as set forth in section 101(b)(1)(F)(i) of the Act, and the appeal will be dismissed

**ORDER:** The appeal is dismissed.