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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

F1

[Redacted]

FILE:

[Redacted]

Office: WASHINGTON, DC

Date:

DEC 22 2010

IN RE:

Petitioner:
Beneficiary:

[Redacted]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

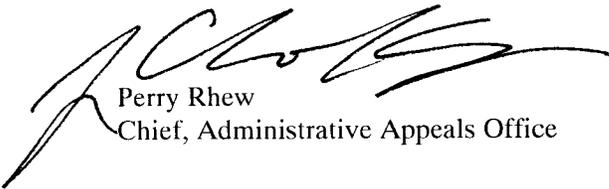
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative. However, upon receipt of correspondence from the United States Consulate in Addis Ababa, Ethiopia, the field office director issued a notice of intent to revoke, and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the matter remanded for further processing and adjudication of any remaining issues to ensure that all other grounds of eligibility are met.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The field office director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan as defined at section 101(b)(1)(F)(i) of the Act because the beneficiary reached the age of sixteen prior to the filing of the petition. On appeal, the petitioner submits a letter reasserting the beneficiary's eligibility and additional documentation including an amended birth certificate.

Applicable Law

Section 101(b)(1)(F)(i) of the Act defines an 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 this title, 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 is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

* * *

- (1)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age. . . .

The regulation at 8 C.F.R. § 204.3(k)(1) states, in pertinent part, the following:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. 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. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. 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. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

Pertinent Facts and Procedural History

The petitioner is a forty-eight-year-old citizen of the United States. The record indicates that the petitioner adopted the beneficiary in Ethiopia in 2006. The petitioner filed the instant Form I-600 on November 17, 2006.

The petitioner stated on the Form I-600 that the beneficiary was born in Ethiopia on "2/30/1992," and submitted a copy of a birth certificate issued by the City Council of Dilla, Ethiopia which also stated that the beneficiary had been born on that date. In later correspondence with the field office director, the petitioner stated that that date was the beneficiary's date of birth pursuant to the Ethiopian calendar, and that the beneficiary's proper date of birth pursuant to the Gregorian calendar was October 29, 1992.

The field office director approved the Form I-600 on January 25, 2008. The beneficiary appeared at the United States Embassy in Addis Ababa, Ethiopia on July 28, 2008. At her interview she presented, among other items, an updated birth certificate¹ naming the petitioner as her mother and an Ethiopian passport, both of which provided her date of birth as October 29, 1990.

After conducting its I-604 investigation, the Embassy returned the petition for further review and possible revocation, and the field office director issued a notice of intent to revoke (NOIR) approval of the petition on March 3, 2009. In his NOIR, the district director relayed the concerns of the U.S. Embassy in Addis Ababa to the petitioner, and afforded her thirty days during which to address those concerns. As noted by the director in the NOIR, because the evidence submitted by the beneficiary during her interview indicated she was born on October 29, 1990, and was therefore over the age of sixteen at the time the petition was filed, she was ineligible for classification under section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

In her letter submitted in response to the field office director's NOIR, the petitioner stated that the birth certificate stating the beneficiary's date of birth as October 29, 1990 was issued in error, and that the passport prepared on the basis of that birth certificate was therefore also issued in error. According to the petitioner, the representative she had used to obtain the birth certificate and passport in Ethiopia on behalf of her adoptive daughter provided the [REDACTED] the incorrect date of birth. The petitioner stated that upon learning of the problem she obtained a new representative who provided the [REDACTED] with the beneficiary's original birth certificate and explained the situation, and that the [REDACTED] agreed with her that an error had been made. As such, a new birth certificate and passport were requested. The new birth certificate was issued, and the Office of Security, Immigration, and Refugee Affairs (OSIRA) requested a letter from a court indicating the correct date of birth prior to issuing a new passport. According to the beneficiary, the court agreed that the second birth certificate had been issued in error, and that the beneficiary was not born on October 29, 1990. The petitioner, however, did not submit any of these documents; she stated that they were in the process of being translated into English, and that she would submit them as soon as possible. As the documents were not submitted, the director revoked approval of the petition on May 28, 2009.

The petitioner filed a timely appeal and submitted, among other items, a copy and translation of a judicial decision issued by the Addis Ababa City Government on December 26, 2008; an August 7, 2008 letter written from the MOWA to the Addis Ababa City Administration; and a new birth certificate. The judicial decision and new birth certificate state the beneficiary's date of birth as October 29, 1992.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's ground for revoking approval of this petition.

¹ This birth certificate had been issued on April 11, 2008.

Discussion

The sole issue on appeal is whether the beneficiary was over the age of sixteen at the time the petition was filed on November 17, 2006. If the beneficiary was born on October 29, 1990, she was over the age of sixteen at the time the petition was filed, and the age limitation contained in section 101(b)(1)(F)(i) of the Act precludes approval of this petition. If she was born on October 29, 1992, she was fourteen years of age at the time the petition was filed and its adjudication may continue.

Of the three birth certificates issued to the beneficiary, two indicate she was under the age of sixteen at the time the petition was filed, and one indicates she was over the age of sixteen at the time the petition was filed. The second birth certificate, which indicates that the beneficiary was over the age of sixteen at the time the petition was filed, was issued after the petitioner adopted the beneficiary, and names her as the beneficiary's mother. According to the petitioner, this birth certificate was issued in error after the representative she used to obtain the birth certificate in Ethiopia on behalf of the beneficiary provided the [REDACTED] with an incorrect date of birth. The third birth certificate, which indicates that the beneficiary was under the age of sixteen at the time the petition was filed, was issued pursuant to the judicial decision from the [REDACTED] and a letter from the [REDACTED] both of which indicate that the second birth certificate was issued in error, and that the beneficiary was in fact under the age of sixteen at the time the petition was filed.

The evidence submitted by the petitioner on appeal overcomes the field office director's ground for revocation. Absent any stated fraud concerns by the field office director, we find that the petitioner's submission on appeal establishes that the beneficiary was in fact under the age of sixteen at the time the petition was filed, and qualifies for classification as an orphan as defined at section 101(b)(1)(F)(i) of the Act.

Conclusion

The field office director's decision is hereby withdrawn. The petition will be remanded for further processing and adjudication of any remaining issues. The field office director must afford the petitioner reasonable time to provide evidence pertinent to the resolution of any remaining issues. The field office director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The field office director's May 28, 2009 decision is withdrawn. The matter is remanded for further processing and adjudication of any remaining issues to ensure that all other grounds of eligibility are met. The field office director shall then enter a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.