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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

F,

[Redacted]

FILE: [Redacted]

Office: NATIONAL BENEFITS CENTER

Date:

IN RE: Petitioner: [Redacted]

FEB 25 2011

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 New York City 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 Embassy in Georgetown, Guyana, the field office director issued a notice of intent to revoke, and the director of the National Benefits Center ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 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. Specifically, the director found the record absent of evidence that the beneficiary's surviving parent was incapable of providing proper care to the beneficiary, consistent with local standards in Guyana. On appeal, the petitioner submits a letter and additional evidence.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1¹ when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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

¹ None of the grounds specified at 8 C.F.R. § 205.1 apply here.

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:

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*.

* * *

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.

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)(iii) Evidence that the child is an orphan as appropriate to the case:

* * *

- (B) The death certificate(s) of the orphan's parent(s), if applicable;
- (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. . . .

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 sixty-year-old citizen of the United States. The record indicates that she adopted the beneficiary in Guyana in 2007. The petitioner filed the instant Form I-600 on July 9, 2007, and it was approved on December 3, 2008.

The petitioner stated on the Form I-600 that the beneficiary “has only one parent who is the sole or surviving parent,” that the other parent is “deceased,” and that the remaining parent is not capable of providing for the beneficiary’s support.² After conducting its I-604 investigation, the United States Embassy in Georgetown, Guyana, returned the petition for further review and possible revocation. The field office director issued a notice of intent to revoke (NOIR) approval of the petition on June 9, 2010 pursuant to the regulation at 8 C.F.R. § 205.2(b). In his NOIR, the field office director relayed the concerns of the U.S. Consulate in Georgetown to the petitioner, and afforded her 30 days during which to address those concerns. In the NOIR, the field office director noted that during the beneficiary’s visa interview, the beneficiary and her brother told the interviewing officer that twelve people live in the house, including their mother, their younger siblings, some cousins, and their grandmother, who is in poor health. The field office director also noted that the petitioner notified the interviewing officer that she was adopting the beneficiary and her twin brother because they “would be able to work soon and help support their younger siblings.” As noted further by the field office director, the I-604 investigation found that although the birthmother is Human Immunodeficiency Virus (HIV) positive, she takes medication for her condition and is employed as a teacher. The I-604 investigator determined that the home in which the family was living appeared to be of normal conditions from the outside, and the field office director found that although the family’s living situation as described by the petitioner,

² The petitioner later submitted a copy of the birthfather’s death certificate, and we do not question the petitioner’s assertion that he is no longer living.

the beneficiary, and her brother indicates a difficult living situation, it does not suggest that the birthmother is incapable of providing proper care to the beneficiary consistent with local standards in Guyana and, as such, the beneficiary could not be considered an orphan as a result of having a surviving parent incapable of providing proper care consistent with such standards.

The petitioner disputed that conclusion, and submitted a timely response to the NOIR. The director³ found the petitioner's response to the NOIR inadequate, and revoked approval of the Form I-600 on October 1, 2010, and the matter is now before the AAO on appeal. On appeal, the petitioner submits additional evidence in support of her contention that the beneficiary's surviving parent is incapable of providing proper care.

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. However, the current evidence of record does not establish the beneficiary's eligibility for the benefit sought, and the matter will be remanded to the director for further action.

Surviving parent incapable of providing proper care and who has, in writing, irrevocably released the child for emigration and adoption

The sole issue before the AAO on appeal is whether the petitioner has established that the beneficiary's birthmother is incapable of providing proper care to the beneficiary, consistent with local standards in Guyana. The I-604 investigation, which involved looking at the family home from the outside and speaking to two neighbors, found that although the birthmother is HIV-positive, she holds gainful employment as a teacher and, when viewed from the outside, the family home appears "to be of normal conditions."

On appeal, the petitioner reasserts her contention that the birthmother is incapable of providing proper care consistent with local standards in Guyana. As evidence of such incapability of providing proper care, the petitioner submits two letters from the birthmother; a copy of the birthmother's paystub; a letter from [REDACTED] verifying the birthmother's employment; copies of utility bills; and evidence that she has made multiple wire transfers to the birthmother. In her June 24, 2010 letter submitted in response to the field office director's NOIR, the petitioner stated that the birthmother depends upon her own mother, the beneficiary's grandmother, who is also sick, for assistance; that the family had no electricity for nearly one year; and that "it is a known fact" that the beneficiary and her siblings "are not generally well cared for." She also stated that if the beneficiary and her twin brother are permitted to come to the United States, the birthmother will be better able to provide for her remaining children. On the Form I-290B, which she signed on October 12, 2010, the petitioner stated that she provides financial support for the beneficiary and her siblings on a regular basis; that the birthmother is incapable of providing proper care to the beneficiary consistent with local

³ Although the NOIR was issued by the field office director, the file was subsequently transferred to the National Benefits Center (NBC), and the NBC director issued the October 1, 2010 decision revoking approval of the petition.

standards in Guyana because she is HIV-positive and is very ill; and that although she is employed, the birthmother misses many days of work as a result of being HIV-positive. The petitioner also questioned the validity of the I-604 investigation, noting that it did not involve a visit to the inside of the family home and that no members of the family were interviewed. Although the investigator spoke with two neighbors, the petitioner argued that information from neighbors “can be unreliable and misleading.”

We agree that the information obtained during the I-604 investigation did not constitute “good and sufficient cause” for revoking the petition’s approval pursuant to section 205 of the Act. As noted by the petitioner, the I-604 investigator did not visit the inside of the family home and did not speak with any members of the family. Instead, the investigation was based on two observations of the family residence from outside and conversations with two unidentified neighbors, one of whom admitted that he was just stating his opinion and “was not privy to their actual living situation.” The fact that the family home appeared “normal” from the outside does not constitute good and sufficient cause for revoking an approved petition, absent further derogatory information. Nor do the opinions of two unidentified neighbors, absent further derogatory information, constitute good and sufficient cause for revocation.

However, the current evidence of record does warrant approval of the petition for two reasons. First, the current record contains no information regarding local conditions in Guyana, which is required to determine whether the beneficiary’s surviving parent is incapable of providing her with the proper care pursuant to the regulation at 8 C.F.R. § 204.3(b). Although the petitioner’s appellate submission included a detailed description of the birthmother’s finances, which supported her claim of financial distress, she did not submit evidence regarding local standards in Guyana to place the birthmother’s specific financial situation into context. Absent documentation regarding Guyanese living standards, we are unable to ascertain whether the birthmother is able to provide for the beneficiary consistent with local standards. Accordingly, the director should request information regarding local standards in Guyana. Second, although the birthmother’s HIV positive status is documented, the record contains no evidence or description of how being HIV positive impacts the birthmother’s life and prevents her from providing proper care to the beneficiary beyond the petitioner’s unsupported assertion on appeal that the birthmother misses many days of work. While we not discount the serious nature of an HIV infection, the petitioner in this case has not established a causal link between the birthmother’s HIV positive status and her purported inability to provide proper care to the beneficiary. For example, the record lacks evidence regarding both the state of health care for HIV-infected individuals in Guyana as well as information regarding the status of the birthmother’s infection. Accordingly, the director should request a more detailed description of how the birthmother’s HIV infection renders her incapable of providing proper care to the beneficiary.

Conclusion

We withdraw the director’s determination that the findings of the I-604 investigation were good and sufficient cause for revoking approval of the petition. However, the record as currently constituted does not establish that the beneficiary meets the definition of an orphan as a result of having a surviving parent who is incapable of providing proper care to the beneficiary consistent with local

standards and who has in writing irrevocably released the child for emigration and adoption because it contains no information regarding living standards in Guyana, and insufficient information regarding the birthmother's HIV infection. Accordingly, the present record does not establish that the beneficiary meets the definition of an orphan as defined at section 101(b)(1)(F)(i) of the Act. Because the director's decision did not address these two issues, the matter will be remanded for further action consistent with this decision and entry of a new decision. The director may afford the petitioner additional time during which to submit additional evidence and/or information prior to entering a new decision. The director shall then render a new decision based on the evidence of record as it relates to the relevant statutory and regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's October 1, 2010 decision revoking approval of the petition is withdrawn. The petition is remanded to the director for further action and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.