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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

**PUBLIC COPY**

F<sub>1</sub>

DATE:

OFFICE: NATIONAL BENEFITS CENTER

FILE:

JUL 29 2011

IN RE:

Petitioner:

Beneficiary:

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:

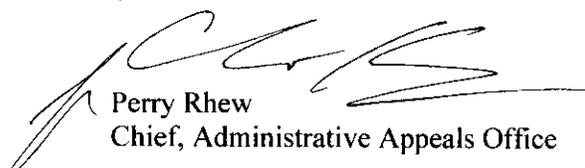
SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied 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 that the petitioner had failed to establish that the beneficiary has a surviving parent who is incapable of providing proper care to the beneficiary, consistent with local standards in Somalia. On appeal, the petitioner submits an argument made on the Form I-290B, Notice of Appeal or Motion and a document issued by the Darajada Koowaad Court in Somalia.

*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:

*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 regulation at 8 C.F.R. § 204.3(d) states, in pertinent part, 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.

*Pertinent Facts and Procedural History*

The petitioner is a forty-six-year-old citizen of the United States. The record contains a court decision stating that she adopted the beneficiary in Somalia on March 4, 2010. The petitioner filed the instant Form I-600 on June 7, 2010. The director issued a subsequent request for additional evidence, and the petitioner filed a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on December 3, 2010.

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 failed to overcome the director's ground for denying this petition.

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

As noted, the director found that the petitioner had failed to establish that the beneficiary has a surviving parent who is incapable of providing proper care to the beneficiary, consistent with local standards in Somalia. Although the director found that the petitioner had failed to demonstrate that the beneficiary's birthfather is incapable of providing the proper care to the beneficiary, he did not question the petitioner's assertion that his birthmother is no longer living. Upon review, we find that petitioner has failed to make either demonstration.

The evidence that the birthmother is no longer living consists of the assertions of the petitioner as well as the following documentary evidence: (1) the March 4, 2010 adoption decree; (2) the birthfather's July 25, 2010 release of the beneficiary; and (3) the December 27, 2010 "clarification" of the adoption decree submitted on appeal. However, this evidence does not establish that the birthmother is no longer living, as the regulation at 8 C.F.R. § 204.3(d)(1)(iii)(B) specifically

requires the petitioner to submit a copy of the birthmother's death certificate.<sup>1</sup> As the petitioner has not satisfied this threshold requirement she has not demonstrated that the birthmother is no longer living and has therefore not established that the beneficiary has one surviving parent. Beyond the decision of the director, the petitioner fails to establish that the beneficiary qualifies for classification as an orphan for this reason.<sup>2</sup>

However, even if we were to assume, *arguendo*, that the birthmother is no longer living, the petition would still be denied because the petitioner has also failed to demonstrate that the birthfather is incapable of providing proper care to the beneficiary, consistent with local standards in Somalia. First, the current record contains no information regarding local conditions in Somalia, which is required in order to determine whether the beneficiary's surviving parent is incapable of providing him with the proper care pursuant to the regulation at 8 C.F.R. § 204.3(b). Second, the relevant evidence states only, in general terms, that the birthfather is incapable of providing the proper care to the beneficiary, without sufficient explanation. For example, although the petitioner stated in her August 11, 2010 letter that the birthfather is unable to support the beneficiary financially and emotionally, she did not explain why. Although the December 27, 2010 "clarification" of the adoption decree states that the birthfather has no income, no home, and cannot care for himself, and that the court did not "see a change in the foreseeable future," it did not elaborate on any of these findings. Nor did the court discuss any of the evidence upon which it relied to make its determination. Although the petitioner states on appeal that the birthfather is homeless, she submitted no evidence to support her assertion.

As set forth above, the beneficiary does not meet the definition of an orphan as a child whose surviving parent is incapable of providing him with proper care consistent with local standards in Somalia.

### *Conclusion*

The petitioner has failed to overcome the director's ground for denial and has failed to establish that the beneficiary meets the definition of an orphan as defined at section 101(b)(1)(F)(i) of the Act as a child whose surviving parent is incapable of providing him with proper care consistent with local standards in Somalia and, accordingly, the petition must remain denied.

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<sup>1</sup> The U.S. Department of State (DOS), Bureau of Consular Affairs states on its website that, at the present time, "it is not generally possible to adopt Somali children for several reasons." The DOS states that it is difficult in Somalia to determine whether children who appear to be orphans are truly eligible for adoption, and that "[i]t can be very difficult to gather documents necessary to fulfill the legal requirements of U.S. immigration law." See [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=Somalia](http://adoption.state.gov/country_information/country_specific_info.php?country-select=Somalia) (accessed July 12, 2011).

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).



Page 5

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.