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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

[redacted]

F1

DATE: JUN 23 2011

Office: NATIONAL BENEFITS CENTER

FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: 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 APPLICANT:

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 Director, National Benefits Center, 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 AAO conducts appellate review on a *de novo* basis, *see Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and will dismiss the appeal.

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 determined that the petitioner failed to submit evidence that she adopted the child abroad, or that she secured custody of the child in accordance with Georgian law. The petition was denied accordingly. On appeal, the petitioner states that she did not adopt the child in Georgia because she intended to adopt her in the United States. *See Form I-290B, Notice of Appeal*, filed Jan. 10, 2011; *Letter in Support of Appeal*, dated Jan. 6, 2011. Further, the petitioner states that she has now initiated the adoption process in Georgia, and she requests additional time to complete that process. *Letter in Support of Appeal, supra.*

Section 101(b)(1)(F)(i) of the Act defines an orphan,[1] 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[.]

An orphan petition filed concurrently with an advanced processing application, as is the case here, must contain the advanced processing documentation required by 8 C.F.R. § 204.3(c), as well as the orphan petition documentation required by 8 C.F.R. § 204.3(d)(1) (except for evidence of approval of the advanced processing application). 8 C.F.R. § 204.3(d)(3).

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[1] is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 ("Convention"). However, because the petitioner filed this Form I-600 before the April 1, 2008 U.S. Convention effective date, this proceeding is governed by the orphan adoption regulations. *See* 8 C.F.R. § 204.300(b).

Supporting documentation required for a petition for an identified orphan includes:

Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married

> petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

8 C.F.R. § 204.3(d)(1)(iv).

The record reflects that the petitioner and her husband are U.S. citizens residing in Utah. The beneficiary was born in , on October 8, 1993, to , and an unnamed father. The beneficiary's mother died on December 29, 2007.

The petitioner and her husband filed the instant Form I-600 on March 19, 2008, when the beneficiary was 14 years old. On July 2, 2009, the director issued a Notice of Intent to Deny and a request for evidence. The petitioner filed responsive evidence on August 27, 2009. The director reviewed the petitioner's response and determined that the petitioner failed to provide evidence of adoption or proof that the prospective adoptive parent had secured custody of the beneficiary in accordance with the laws of Georgia. The director denied the petition on December 8, 2010, and the petitioner timely appealed.

On appeal, the petitioner indicated that a brief or additional evidence would be submitted to the AAO within 30 days. *See Form I-290B, Notice of Appeal, supra.* The petitioner also requested more time to complete the adoption in Georgia. *Letter in Support of Appeal, supra.* More than five months have passed since the appeal was filed, and the AAO has received nothing further from the petitioner. Accordingly, the appeal will be adjudicated on the present record.

Here, the evidence is insufficient to overcome the director's denial of the petition. Specifically, although the petitioner states that she has initiated the adoption process in Georgia, she does not claim that the beneficiary is the subject of a full and final adoption abroad. Nor has the petitioner provided proof that she or anyone working on her behalf has "custody of the orphan for emigration and adoption in accordance with the laws of" Georgia, as required by 8 C.F.R. § 204.3(d)(1)(iv). Accordingly, the petitioner has not met all of the requirements for an orphan petition under 8 C.F.R. § 204.3(d)(1).

Beyond the director's decision, the home study submitted by the petitioner does not meet all of the requirements set forth in 8 C.F.R. § 204.3(e). Specifically, the home study does not satisfy the abuse and violence screening requirements for each "adult member of the prospective adoptive parents' household," as defined at 8 C.F.R. § 204.3(b). According to the regulations, the home study preparer must ensure that a check of each adult member of the household has been made with available child abuse registries. *See* 8 C.F.R. § 204.3(e)(2)(iii). Additionally, the home study preparer must ask each adult member of the household whether he or she has a history of abuse and violence. *See id.* While the home study preparer stated that he spoke with all four of the petitioner's children, the required abuse and violence screening was not documented for the petitioner's daughter Ani, who was over 18 years old at the time the petitioner filed the Form I-

600. *See* 8 C.F.R. § 204.3(b) (defining who is considered an "adult member of the prospective adoptive parents' household").

Conclusion

Here, the petitioner has failed to satisfy all of the requirements for an orphan petition set forth in 8 C.F.R. § 204.3(d)(1), and she has not met the requirements for advanced processing in 8 C.F.R. § 204.3(c). 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 and the petition will remain denied.

ORDER: The appeal is dismissed.