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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**



F₁

DATE:

Office: NATIONAL BENEFITS CENTER

FILE:



JUN 23 2011

IN RE:

Petitioner:

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, revoked approval of the immigrant visa petition, and dismissed a subsequent motion to reopen and to reconsider. 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 revoked approval of the Form I-600, Petition to Classify Orphan as an Immediate Relative, based on a determination that the beneficiary did not meet the definition of an orphan. The director treated the petitioner's untimely appeal as a motion to reopen and to reconsider the revocation, and dismissed the motion. The petitioner timely appealed. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 phrase “[s]urviving 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.” 8 C.F.R. § 204.3(b). Further, “[i]ncapable 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*.” *Id.*

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).

The record reflects that the petitioner is a divorced U.S. citizen residing in New Jersey. The beneficiary was born in Guyana on May 18, 1992, to [REDACTED]. The beneficiary’s mother died on March 20, 2008. The petitioner filed the instant Form

I-600 on April 16, 2008, when the beneficiary was 15 years old. U.S. Citizenship and Immigration Services approved the petition on November 6, 2008.

On April 27, 2010, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition because a field investigation revealed that the beneficiary's father is not incapable of providing proper care for him. Specifically, the director found that the beneficiary's father resides near the beneficiary, has an ongoing parental relationship with him, and provides \$300.00 per month in financial support. In response to the NOIR, the petitioner stated that the field investigator did not speak with the beneficiary; that the beneficiary's father, who works as a laborer, does not, and could not, provide \$300.00 a month to support to his son; and that the petitioner and her brother send money to Guyana to provide financial support for the beneficiary. The director determined that the petitioner failed to overcome the reasons for revocation, and approval of the petition was revoked on October 4, 2010.

The petitioner appealed from the revocation on October 27, 2010. Because the appeal was untimely, the director treated the filing as a motion to reopen and to reconsider the revocation. The director determined that the evidence failed to establish that the beneficiary met the definition of an orphan as a child of a surviving parent who is incapable of providing proper care consistent with the local standards of Guyana. The motion was denied accordingly. On appeal, the petitioner contends that the director erred in revoking approval of the visa petition because the field investigation was flawed, and the beneficiary is not supported by his father. The petitioner also submits several letters and receipts showing money transfers from the United States to Guyana.

The evidence of record, as supplement on appeal, is not sufficient to overcome the director's decision. Specifically, the petitioner has not established that the beneficiary is an orphan under any of the categories listed in section 101(b)(1)(F)(i) of the Act. Although the beneficiary's mother is deceased, the petitioner has not shown that the beneficiary's father is incapable of providing proper care as defined by the regulation at 8 C.F.R. § 204.3(b), and required to establish the beneficiary's eligibility as an orphan. Here, the beneficiary's father states that he is employed as a laborer, and he makes no claim that he is unable to provide for his son's basic needs consistent with the local standards in Guyana. *See Affidavit of Consent to Custody*, dated May 6, 2008. The petitioner contests the director's finding that the beneficiary's father provides \$300 per month in financial support, stating that that it would not be possible for him to provide that amount given his education and limited job skills. *See Form I-290B*, filed Jan. 10, 2011; *Response to NOIR*, dated May 10, 2010. The petitioner also states that she has provided financial support for the beneficiary after the death of his mother. *Id.*; *see also Letter from* [REDACTED], dated Jan. 5, 2010; *Documentation from Money Gram and Western Union* (showing remittances). However, the record contains no documentation of the beneficiary's father's income or other evidence showing that he is incapable of providing for his child's care. *See* 8 C.F.R. § 204.3(b); (d)(1)(iii)(C). Similarly, the record contains no evidence regarding local standards in Guyana. *See* 8 C.F.R. § 204.3(b). Accordingly, the petitioner has not shown that the beneficiary meets the definition of an orphan.

Beyond the director's decision, the petitioner has not provided proof that she or another person or entity working on her behalf has "custody of the orphan for emigration and adoption in accordance with the laws of" Guyana, as required by 8 C.F.R. § 204.3(d)(1)(iv). When relevant to the beneficiary's eligibility, the application of foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008). Here, the petitioner states that the beneficiary is in the legal custody of his father. *See Form I-600*, filed Apr. 16, 2008. The record contains an affidavit from the beneficiary's father stating that the beneficiary may reside permanently in the United States with the petitioner. *See Affidavit of Consent to Custody, supra*. However, the petitioner has not provided any evidence regarding the laws of emigration and adoption in Guyana. Nor has she shown that the father's affidavit meets the applicable requirements under Guyanese law. Accordingly, the petitioner has not met all of the requirements for an orphan petition under 8 C.F.R. § 204.3(d)(1).

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). 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. Approval of the petition will remain revoked.

ORDER: The appeal is dismissed.