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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



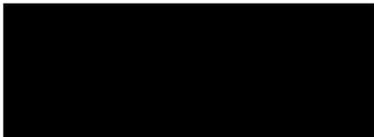
**U.S. Citizenship  
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Services**

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F<sub>1</sub>

DATE: **MAY 25 2011** Office: NATIONAL BENEFITS CENTER

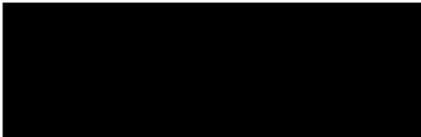
FILE: 

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:

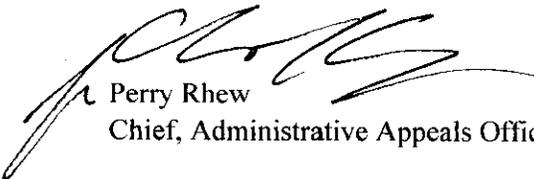


INSTRUCTIONS:

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 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 issued a request for additional evidence in support of the Form I-600. *See Request for Evidence*, dated Dec. 13, 2010. The petitioner failed to submit all of the requested evidence, and the petition was denied accordingly. *See Notice of Decision*, dated Jan. 3, 2011. The petitioner, through counsel, filed a timely appeal on January 28, 2011. On appeal, the petitioner states that he was not represented by counsel during the proceedings below, and he submits additional evidence. 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[.]

A "sole parent" is defined as:

the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

8 C.F.R. § 204.3(b). “*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*.” *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 and his wife are U.S. citizens. The beneficiary was born in Guyana on September 23, 2009, to unmarried parents. On October 29, 2010, the High Court of the Supreme Court of Judicature, in Georgetown, Guyana, granted the application of the petitioner and his wife to adopt the beneficiary. *See Adoption Order*, dated Oct. 29, 2010.

The petitioner and his wife, proceeding pro se, filed the instant Form I-600 on December 2, 2010. On December 13, 2010, the director issued a request for the following evidence in support of the Form I-600: an amended home study with additional financial information; birth and naturalization certificates, and a marriage certificate, for the petitioner and his wife; a divorce decree for [REDACTED] and additional evidence to show that the beneficiary meets the definition of an orphan. *See Request for Evidence (RFE)*, dated Dec. 13, 2010. The director reviewed the petitioner’s response to the RFE and determined that the petitioner failed to provide the beneficiary’s birth certificate, proof that the sole or surviving parent has, in writing, irrevocably released the child for emigration and adoption, and proof that the sole or surviving parent is unable to provide for the child’s basic needs consistent with the local standards of the foreign sending country. *See Notice of Decision*, dated Jan. 3, 2011. The petition was denied accordingly. *Id.* On appeal, the petitioner states through counsel that he represented himself during the proceedings below, and that he is still waiting for several documents. *See Form I-290B*, Notice of Appeal, filed Jan. 28, 2011. The petitioner supplemented the appeal with, among other things, an affidavit from the beneficiary’s birth mother, and the beneficiary’s birth certificate. *See Affidavit of [REDACTED]*, dated Mar. 4, 2011; *Birth Certificate of [REDACTED]*

Here, the evidence of record, as supplemented on appeal, is insufficient to overcome the director’s denial of the petition. First, pursuant to 8 C.F.R. § 204.3(e)(2)(ii), the required home study must include an assessment of the finances of the prospective adoptive parents. Additionally, “[a] statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included.” *Id.* Here, the petitioner submitted an amended home study detailing monthly income and expenses, as requested in the RFE. *See Adoptive Home Study Addendum*, dated Jan. 19, 2011. The home study preparer indicated that he had a telephone interview with the petitioner and his wife to amend the information about their monthly assets and liabilities. *Id.* However, the amended home study does not include a statement regarding the evidence that was considered to verify the source and amount of the couple’s income and financial resources, apart from unspecified “income tax returns.”

Second, the record does not establish that the beneficiary meets the definition of an orphan because he has a sole or surviving parent incapable of providing proper care as defined at 8 C.F.R. § 204.3(b). Here, the beneficiary's birth mother qualifies as a "sole parent" because the beneficiary was born out of wedlock, his birth parents never married, and the biological father has severed all parental ties. *See Affidavit in Support of Summons*, dated July 6, 2010 (affirming that the biological parents never married and the birth father has no relationship with the beneficiary); *see also* [REDACTED], 23 I&N Dec. 962, 967 (BIA 2006) (holding that marriage is required for the legitimation of children in Guyana).

However, "[i]n all cases, a sole parent must be *incapable of providing proper care* as that term is defined in" the regulation. 8 C.F.R. § 204.3(b). Here, in the birth mother's irrevocable release, she stated:

That I decided to give my child out for adoption because I am unable to properly care for and provide support of the said minor. That I did not arrive at my decision hastily, having given careful thought and having discussed it thoroughly with the family. That the whereabouts of the father of the said minor child has be[en] unknown prior to the birth of the child and the natural mother is the person entitled to the lawful custody of the child and is of the belief that the adoption of the minor child by the Petitioners is in the best interest of the said minor, and also in my own interest.

*Affidavit of* [REDACTED], dated Mar. 4, 2011. In the Affidavit in support of the adoption, the petitioner and his wife stated that the beneficiary's birth mother "is unable to provide for the said child's financial needs." *Affidavit in Support of Summons*. No evidence was submitted regarding local standards in Guyana, and no explanation was provided to support the birth mother's claim that she is unable to provide for the beneficiary's basic needs. Accordingly, the beneficiary does not meet the definition of an orphan as the child whose sole parent is incapable of providing proper care.

### *Conclusion*

Here, the petitioner has failed to submit a home study that meets the requirements at 8 C.F.R. § 204.3(e)(2)(ii), and he has not established that the beneficiary meets the definition of an "orphan," as that term is defined at section 101(b)(1)(F)(i) of the Act. 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. The petition remains denied.