

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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<sub>1</sub>

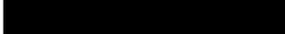
Date: OCT 18 2011

Office: NATIONAL BENEFITS CENTER

File: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION: 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)

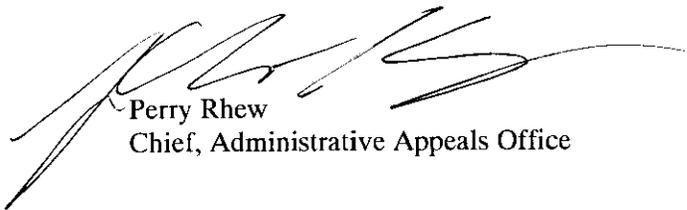
ON BEHALF OF PETITIONER:



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 Director, National Benefits Center (the director), denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner seeks to classify the beneficiary as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The director denied the petition because the petitioner failed to submit a home study that met all the requirements of 8 C.F.R. § 204.3(e). On appeal, counsel submits a brief and copies of documents previously provided.

### *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 . . . .

A home study "is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country." 8 C.F.R. § 204.3(e). The regulation at 8 C.F.R. § 204.3(e) specifies who is authorized to perform a home study and what issues a home study must cover.

### *Factual and Procedural History*

The petitioner filed the instant Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on November 26, 2007, when the beneficiary was eight years old. The director issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) the petition before denying the Form I-600 on July 12, 2011. According to the director, the initial and amended home studies that the petitioner submitted were deficient because: (1) the petitioner's income as listed on the initial home study was less than his income as listed on the amended home study; (2) the home study did not address whether the living accommodations met the State of New York's suitability requirements; (3) there was no "clear assessment" that the petitioner and his spouse were physically, mentally and emotionally capable of parenting the beneficiary; and (4) neither home study mentioned the required pre-adoption counseling and the plans for post-placement counseling. On appeal, counsel argues that the two home studies did address the areas that the director found deficient, stating that the petitioner has complied with all of the home study requirements requested of him.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We are withdrawing the director's stated reasons for denying the petition and remanding the matter for entry of a new decision.

### *Analysis*

Our review of the two home studies does not reveal the deficiencies noted by the director, or any other deficiencies that would make them insufficient pursuant to 8 C.F.R. § 204.3(e). As noted at 8 C.F.R. § 204.3(e), “the home study should be tailored to the particular situation of the prospective adoptive parents.” Here, the petitioner is seeking to adopt his grandchild due to the death of the child’s mother, who was the petitioner’s daughter. The petitioner has adequately explained that the difference in income as reported in the two home studies was due to the fact that he was the only household member working during the year considered in the first home study, but that in the subsequent year considered in the amended home study, he worked more overtime and his wife became employed. This change in income is documented by the petitioner’s tax records. We also find that the home studies contain sufficient information concerning the prospective living accommodations, an assessment of the petitioner’s capabilities to parent the beneficiary, as well as adoption counseling. Specifically, page 15 of the original home study described the petitioner’s home, living conditions and neighborhood in probative detail and page 10 of the amended home study confirmed that the petitioner’s home met all state guidelines for health and safety. The original home study discussed the petitioner’s and his wife’s parenting capabilities in substantive detail and noted that the couple “have child rearing knowledge and experience raising their own nine children and helping to raise their twenty grandchildren.” The original and amended home studies also confirmed that the petitioner and his wife were counseled on the international adoption process and had agreed to receive post-adoption counseling, if needed. When viewed in their entirety along with the supporting evidence in the record, the petitioner has met the home study requirements at 8 C.F.R. § 204.3(e) and the director’s decision to the contrary shall be withdrawn.

### *Conclusion*

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. Based upon the above discussion, we withdraw the director’s decision and remand the matter for entry of a new decision so that the director may determine whether: (1) the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act; and (2) the petitioner has complied with all other applicable eligibility criteria at 8 C.F.R. § 204.3.

**ORDER:** The director’s decision, dated July 12, 2011, is withdrawn. The matter is remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.