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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: SEP 23 2011 OFFICE: NATIONAL BENEFITS CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

Beneficiary: [redacted]

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 director of the National Benefits Center revoked approval of the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has again revoked approval of the petition and certified his decision to the AAO for review. The director's decision will be withdrawn and the matter remanded for further action.

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).

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1[1] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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[.]

[1] None of the grounds specified at 8 C.F.R. § 205.1 apply here.

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 pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

> (d) *Supporting documentation for a petition for an identified orphan* . . . An orphan petition must be accompanied by full documentation as follows:
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> * * *
>
> (1)(iii) Evidence that the child is an orphan as appropriate to the case:
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> * * *
>
> (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. . . .

The regulation at 8 C.F.R. § 204.3(k)(1) states, in pertinent part, the following:

> An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate

> Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

Pertinent Facts and Procedural History

The petitioner is a sixty-year-old citizen of the United States. The record indicates that she adopted the beneficiary in Guyana in 2007. The petitioner filed the instant Form I-600 on July 9, 2007, and it was approved on December 3, 2008.

The petitioner stated on the Form I-600 that the beneficiary "has only one parent who is the sole or surviving parent," that the other parent is "deceased," and that the remaining parent is not capable of providing for the beneficiary's support. After conducting its I-604 investigation, the United States Embassy in Georgetown, Guyana, returned the petition for further review and possible revocation. The field office director issued a notice of intent to revoke (NOIR) approval of the petition on June 9, 2010 pursuant to the regulation at 8 C.F.R. § 205.2(b). In his NOIR, the field office director relayed the concerns of the U.S. Consulate in Georgetown to the petitioner, and afforded her 30 days during which to address those concerns. In the NOIR, the field office director noted that during the beneficiary's visa interview, the beneficiary and his sister told the interviewing officer that twelve people live in the house, including their mother, their younger siblings, some cousins, and their grandmother, who is in poor health. The field office director also noted that the petitioner notified the interviewing officer that she was adopting the beneficiary and his twin sister because they "would be able to work soon and help support their younger siblings." The petitioner also stated at the consular interview that the birthmother has Human Immunodeficiency Virus (HIV), but takes medication for her condition and is employed as a teacher. Although the children were unaware of their birthmother's diagnosis, they stated that she often got sick. The I-604 investigation consisted of two visits to the beneficiary's family residence, although neither the children or nor their birthmother were home on either occasion. Based on the I-604 investigation, the field office director determined that the birthmother was capable of properly caring for the beneficiary consistent with local standards in Guyana and, as such, the beneficiary could not be considered an orphan as a result of having a surviving parent incapable of providing proper care consistent with such standards.

The petitioner disputed that conclusion, and submitted a timely response to the NOIR. The director[2] found the petitioner's response to the NOIR inadequate, and revoked approval of the Form I-600 on October 1, 2010. On February 25, 2011, we withdrew the director's decision revoking approval of the petition. In our decision, we determined that the information obtained during the I-604 investigation did not constitute "good and sufficient cause" for revoking the petition's approval pursuant to section 205 of the Act. We noted that the I-604 investigator had not visited the inside of the family home or spoken with any members of the family, and that the investigation was based on two observations of

[2] Although the NOIR was issued by the field office director, the file was subsequently transferred to the National Benefits Center (NBC), and the NBC director issued the October 1, 2010 decision revoking approval of the petition.

the family's home from the outside and conversations with two unidentified neighbors, one of whom admitted that he was just stating his opinion and "was not privy to their actual living situation."

Although we determined that the I-604 investigation did not provide good and sufficient cause to revoke the approval of the petition and that the director's revocation on that basis was erroneous, we concluded that the evidence of record was insufficient to establish the birthmother's inability to provide proper care to the beneficiary. Accordingly, we remanded the petition to the director with instructions to request further evidence of: (1) local conditions in Guyana; and (2) the impact of the birthmother's HIV positive status on her ability to care for the beneficiary.

The director issued a request for additional evidence on March 16, 2011. The petitioner did not submit a response within the period of time granted by the director and, as such, the director again revoked approval of the petition on July 8, 2011 and certified his decision to us for review.

On certification, the petitioner submits additional documentation. The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has established that the beneficiary qualifies for classification as an orphan as a result of having a surviving parent who is incapable of providing proper care to the beneficiary consistent with local standards in Guyana and who has, in writing, irrevocably released the child for emigration and adoption. Accordingly, the director's July 8, 2011 decision will be withdrawn and the matter will be remanded for resolution of any remaining issues.

Analysis

The sole issue before us on certification is whether the petitioner has established that the beneficiary's birthmother is incapable of providing proper care to the beneficiary, consistent with local standards in Guyana.

In our February 25, 2011 decision, we stated that although the petitioner had submitted information establishing the birthmother's claim of financial distress, the record lacked evidence regarding local standards in Guyana to place her specific financial situation into context. On certification, the petitioner makes that connection by submitting information regarding consumer price indices in Guyana, which supports the petitioner's claim that the birthmother is unable to provide proper care to the beneficiary consistent with local standards given her documented income and expenses. The petitioner submits additional medical documentation regarding the birthmother's HIV infection. The petitioner also submits the death certificate of the beneficiary's grandmother, who passed away after the director's initial revocation decision and who had helped care for the beneficiary and her siblings.

The petitioner previously submitted numerous documents demonstrating that the birthmother's basic living expenses far exceed her income. The evidence submitted below and on certification establishes that the beneficiary qualifies for classification as an orphan as a result of having a surviving parent who is incapable of providing proper care to the beneficiary consistent with local standards in Guyana and who has, in writing, irrevocably released the child for emigration and adoption. Accordingly, the director's contrary determination is hereby withdrawn.

Conclusion

The I-604 investigation conducted in this case was not good and sufficient cause for the director to revoke approval of the petition pursuant to section 205 of the Act. The remaining concerns regarding the birthmother's inability to care for the beneficiary have been resolved on certification. The petitioner has established that the beneficiary's surviving parent is incapable of providing proper care to the beneficiary consistent with local standards and who has in writing irrevocably released the child for emigration and adoption. Accordingly, the record establishes that the beneficiary meets the definition of an orphan as defined at section 101(b)(1)(F)(i) of the Act. Therefore, the director's July 8, 2011 decision will be withdrawn and the petition remanded for further processing and adjudication of any remaining issues. If the director identifies any remaining issues, he must afford the petitioner reasonable time to provide evidence pertinent to the resolution of such issues. The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The director's July 8, 2011 decision is withdrawn. The matter is remanded for further processing and adjudication of any remaining issues to ensure that all grounds of eligibility are met. The director shall then enter a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.