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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: **APR 26 2012** 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

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.

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 (“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 appeal will be dismissed. The petition will remain denied.

Applicable Law

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), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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. . . . *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulations at 8 C.F.R. § 204.3(e) require the submission of a home study with a Form I-600 and, in some instances, must be updated or amended according to the following:

(9) *Home study updates and amendments -*

(i) *Updates.* If the home study is more than six months old at the time it would be submitted to the Service, the prospective adoptive parents must ensure that it is updated by a home study preparer before it is submitted to the Service. Each update must include screening in accordance with paragraphs (e)(2)(iii)(A) and (B) of this section.

(ii) *Amendments.* If there have been any significant changes, such as a change in the residence of the prospective adoptive parents, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family, the prospective adoptive parents must ensure that the home study is amended by a home study preparer to reflect any such changes. If the orphan's proposed State of residence has changed, the home study amendment must contain a recommendation in accordance with paragraph (e)(8) of this section, if required by State law. Any preadoption requirements of the new State must be complied with in the case of an orphan coming to the United States to be adopted.

Regarding the varying definitions of an orphan at section 101(b)(1)(F)(i) of the Act, 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.

* * *

Facts and Procedural History

The petitioner is a 54-year-old native of the Philippines and U.S. citizen who adopted the beneficiary, her nephew, in February 1995 in the Philippines. The beneficiary's biological father died in April 1994. The petitioner filed the Form I-600 in December 2003 when she was single, seeking to classify the beneficiary as an orphan due to the biological mother's inability to provide proper care to the beneficiary. After not hearing from U.S. Citizenship and Immigration Services (USCIS) about the disposition of the Form I-600, the petitioner filed an inquiry request in April 2011. The director subsequently issued a Notice of Intent to Deny (NOID) and ultimately denied the petition, in part, due to the petitioner's failure to submit a home study that contained original signatures, was no more than six months old when the petitioner filed the petition, and had been updated to reflect the petitioner's change in marital status based upon her 2008 marriage. The director also denied the petition because the petitioner failed to submit evidence of her spouse's U.S. citizenship or lawful permanent resident status and did not establish that the biological mother was incapable of providing proper care to the beneficiary consistent with the local standards in the Philippines, and had, in writing, irrevocably released the beneficiary for emigration and adoption. On appeal, counsel submits a brief and copies of documents already included in the record of proceeding. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004).

Analysis

Preliminarily, we withdraw the director's determination that the petitioner failed to submit a proper home study. It is evident from the record that a delay occurred in the adjudication of this petition, as it was filed in 2003 but not decided until 2011. Based upon the correspondence in the record, we conclude that the petitioner did submit an original home study as required of her in 2005, a copy of which is in the record. The director's contrary determination is withdrawn.

We also withdraw the director's determination that the petitioner failed to establish that her spouse is a U.S. citizen or lawful permanent resident, as the petitioner has submitted a copy of her spouse's U.S. passport on appeal.

We do, however, concur with the director that the petitioner has not established the beneficiary's eligibility for orphan status under section 101(b)(1)(F)(i) of the Act. The record establishes that the beneficiary's biological father died in 1994. On the original Form I-600, the petitioner indicated that the surviving mother had remarried and relocated to Taiwan. According to the marriage certificate of the biological mother and her second husband, she remarried in January 1999 in the

Philippines, after the petitioner adopted the beneficiary but before she filed the Form I-600 in December 2003.

The final adoption decree, dated February 9, 1995, did not contain any probative details about the biological mother's ability to provide for the beneficiary's basic needs consistent with the local standards in the Philippines. The judge in the adoption matter noted the death of the biological father, "leaving his widow no substantial property," as well as the petitioner's provision of "financial assistance to the minor after the death of his father." The judge also noted the biological mother's belief that the beneficiary would have a better life if he were adopted by the petitioner. In a home study report prepared on November 16, 1994 as part of the adoption proceedings, the social worker from the Philippine Department of Social Welfare and Development noted that the biological mother and the beneficiary had been living in a home in the Philippines owned by the petitioner after the biological father's death and that they "ha[ve] been dependents to [the petitioner] since then." The social worker also noted that the petitioner had been supporting the beneficiary's financial needs because the biological mother was "jobless." On appeal, counsel states that the evidence demonstrating the biological mother's inability to provide proper care for the beneficiary is her affidavit, dated December 27, 2011, in which she states: "I do not have the financial capability to support him."

The evidence in the record fails to demonstrate that at the time the petitioner adopted the beneficiary in 1995 or anytime thereafter, the biological mother was incapable of providing for the beneficiary's basic needs, consistent with the local standards in the Philippines. While the social worker's report indicated that the biological mother was living in a home owned by the petitioner, and was jobless, these two factors alone do not show that she was incapable of providing proper care to the beneficiary according to the local standards of the Philippines. In addition, the judge's reference in the adoption decree to the biological mother's lack of "substantial property" is ambiguous. Nothing in either the adoption decree or the social worker's report indicates that the biological mother could not provide for the beneficiary's basic needs, consistent with the standards of the community in which they were living at the time.

The biological mother's assertion in her December 27, 2011 affidavit that she cannot financially support the beneficiary is not supported by any other evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the biological mother's assertions lack credibility, as she refers to a final adoption decree between the petitioner and the beneficiary with a date of April 11, 2000, whereas the final adoption decree in the record is dated February 9, 1995. Neither counsel nor the petitioner provides a copy of this April 11, 2000 decree or explains to what adoption proceedings the biological mother is referring.

More importantly, prior to the filing of the Form I-600 in 2003, the biological mother had remarried and, therefore, the beneficiary may have acquired a stepparent. When issuing the NOID, the director requested the petitioner to demonstrate either that the beneficiary's stepparent had no legal relationship to the beneficiary under Philippine law, or that, if such a relationship did exist, the

beneficiary was an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both his biological mother and stepparent. The petitioner, however, never addressed this issue when responding to the NOID and has not addressed it on appeal.

Conclusion

Based upon the evidence in the record, the beneficiary is ineligible for status as an orphan under section 101(b)(1)(F)(i) of the Act. First, the petitioner has not demonstrated that the biological mother can be considered a surviving parent in light of her remarriage in 1999. Second, even if the biological mother's remarriage did not result in the beneficiary's acquisition of a stepparent, the petitioner has failed to demonstrate that the biological mother is incapable of providing for the beneficiary's needs consistent with the local standards in the Philippines.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.