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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 20-90
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



F₁

DATE: **AUG 28 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:

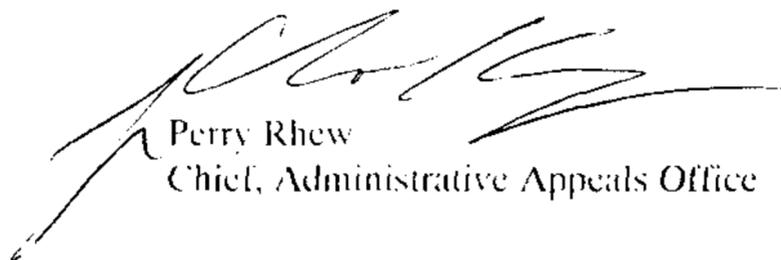
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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), which govern orphan petitions, require the submission of a home study with a Form I-600 that must include, in part:

(2) Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.

The home study must include a discussion of the following areas:

* * *

(ii) Assessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. The Service will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

(iii) History of abuse and/or violence.

(A) Screening for abuse and violence.

(1) Checking available child abuse registries. The home study preparer must ensure that a check of each prospective adoptive parent and each adult member of the

prospective adoptive parents' household has been made with available child abuse registries and must include in the home study the results of the checks including, if applicable, a report that no record was found to exist. Depending on the access allowed by the state of proposed residence of the orphan, the home study preparer must take one of the following courses of action:

(i) If the home study preparer is allowed access to information from the child abuse registries, he or she shall make the appropriate checks for each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household;

(ii) If the State requires the home study preparer to secure permission from each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals, and make the appropriate checks;

(iii) If the State will only release information directly to each of the prospective adoptive parents and directly to the adult member of the prospective adoptive parents' household, those individuals must secure such information and provide it to the home study preparer. The home study preparer must include the results of these checks in the home study;

(iv) If the State will not release information to either the home study preparer or the prospective adoptive parents and the adult members of the prospective adoptive parents' household, this must be noted in the home study; or

(v) If the State does not have a child abuse registry, this must be noted in the home study.

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:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized

under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

* * *

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

* * *

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*.

* * *

Sole parent means 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. . . In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.

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 49-year-old U.S. citizen who adopted the beneficiary, a native of Ghana, in September 2010. The petitioner filed the Form I-600 on February 28, 2011, seeking to classify the beneficiary as an orphan due to the biological father's inability to provide proper care to the beneficiary. After issuing a Request for Evidence (RFE) the director denied the petition for the petitioner's failure to submit: the beneficiary's pre-adoption birth certificate that contained the names of his biological parents; death certificates of the biological parents or other evidence that the beneficiary was an orphan as described at section 101(b)(1)(F)(i) of the Act; a home study that contained an assessment of the petitioner's financial resources, including a statement from the home study preparer concerning the evidence she considered to verify the source and amount of the petitioner's income; and evidence that the appropriate child abuse registries were checked. On appeal, the petitioner submits an affidavit from the biological father who states that the biological mother disappeared and he cannot provide for the beneficiary's needs, a home study addendum, a copy of the petitioner and her spouse's 2010 Wage and Tax Statement (W-2) and the petitioner's 2011 W-2, a copy of the beneficiary's pre-adoption birth certificate, and copies of documents already included in the record.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan.

The Petitioner's Home Study – Finances and Child Abuse Registry Checks

The record contains a June 24, 2011 home study that was prepared by [REDACTED], Licensed [REDACTED] (home study preparer), as well as her Home Study Addendum, dated October 10, 2011.

Regarding the petitioner's finances, the home study preparer stated in the initial June 2011 home study:

[The petitioner and her husband] manage their finances quite well. [The petitioner] is gainfully employed full[-]time as a Speech Therapist with [REDACTED] and earns [REDACTED] per month. [The petitioner's spouse] is gainfully employed full[-]time as a Housekeeping Aide at the [REDACTED]. He earns [REDACTED] per month.

The applicants have been caring for [the beneficiary] even before the adoption was finalized in Ghana with no noted difficulties. It does not appear that any additional expenses of [the beneficiary] being in the home will have an adverse effect on their finances.

The home study preparer's October 10, 2011 addendum contains the same information that was in the initial home study with the added statement: "Home study consultant confirmed [the petitioner's income] by applicant's last 3 pay stubs."

The home study preparer's assessment of the petitioner's finances does not comport with the regulation at 8 C.F.R. § 204.3(e)(2)(ii). The home study preparer described and verified only the petitioner's employment income as reported on the petitioner's W-2 forms; she did not describe any of the petitioner's financial resources (other than income), debts or expenses as the regulation at 8 C.F.R. § 204.3(e)(2)(ii) requires. Consequently, the home study preparer's assessment of the petitioner's finances is incomplete and does not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(ii).

Regarding the requirement to check child abuse registries as described at 8 C.F.R. § 204.3(e)(2)(iii), the initial June 2011 home study did not contain the required statement from the home study preparer about her check of child abuse registries for the petitioner and the petitioner's spouse. In her October 2011 addendum, the home study preparer states the following:

[The petitioner and her spouse] are fully aware that they must complete fingerprinting and receive clearance letters from State Child Abuse Registry on all household members age appropriate. Once letters are obtained applicants will contact home study consultant so that the information can be added to the initial home study.

The home study preparer's statement in the addendum does not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(iii). At the time of filing a Form I-600, a petitioner must establish all eligibility criteria, 8 C.F.R. § 103.2(b). This includes the submission of a home study that contains all essential elements as outlined at 8 C.F.R. § 204.3(e). At the time the Form I-600 was filed and continuing until this date, the home study preparer has not ensured that checks of the petitioner and her spouse have been made with available child abuse registries and included the results of the checks in the home study. Accordingly, the initial home study and the home study addendum are deficient and considered together do not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(ii) and (iii).

The Beneficiary's Eligibility to be Classified as an Orphan

Evidence in the record, which consists of the home study, information on the Form I-600, and the biological father's November 1, 2011 affidavit, indicates that the beneficiary is currently living with his biological father and has been since birth. The biological father claims in his affidavit that the biological mother disappeared when the beneficiary was four years old and he cannot provide proper care to the beneficiary.

Only a biological mother, not a biological father, can be a *sole parent* as that term is defined at 8 C.F.R. § 204.3(b) ("*Sole parent* means 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. . . ."). Accordingly, the petitioner cannot demonstrate that the beneficiary is an orphan because he is the child of a sole parent who is unable to provide proper care to him consistent with the local standards in Ghana. Similarly, the beneficiary is also not the child of a *surviving parent*, as that term is defined at 8 C.F.R. § 204.3(b) because there is no evidence that the biological mother is deceased.

The biological father states in his affidavit that the biological mother deserted the beneficiary when the beneficiary was four years old, that the beneficiary "has been in [his] custody to date," and that because he is single and unemployed he "surrendered" the beneficiary to the petitioner for adoption and has relinquished his parental rights to her. The beneficiary's Order of Adoption, dated September 17, 2010, also indicates that the biological father consented to the adoption.

To demonstrate that the beneficiary is an orphan because he was abandoned by both parents, the evidence must establish that the biological parents have willfully forsaken their parental rights without any intent to transfer those rights to a specific person. The definition of *abandonment by both parents* specifically states: "A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment." Here, the biological father's affidavit and the Order of Adoption demonstrate that the biological father relinquished his parental rights directly to the petitioner for this specific adoption, which is prohibited by the regulation.

The beneficiary is also not an orphan because he was *deserted by both parents*, as that term is defined at 8 C.F.R. § 204.3(b). While the biological father claims that the biological mother deserted the beneficiary when he was only four years old, the biological father's affidavit establishes that the beneficiary never became a ward of a competent authority in Ghana because he

refused to carry out his parental rights and obligations and had willfully forsaken his parental rights. To the contrary, although the beneficiary's adoption by the petitioner was granted in September 2010, the home study preparer indicated in her initial June 2011 home study that the beneficiary "remain[s] with his father at this time until [the petitioner and her spouse] have been approved by [U.S. Citizenship and Immigration Services] to have him enter the United States." The biological father also asserted in his November 1, 2011 affidavit that the beneficiary "has been in my custody to date."

Conclusion

The petitioner has failed to establish that the Form I-600 merits approval because the record lacks the home study described at 8 C.F.R. § 204.3(e), and the beneficiary does not meet the orphan definition at section 101(b)(1)(F)(i) of the Act. 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.