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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

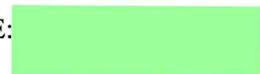


U.S. Citizenship  
and Immigration  
Services

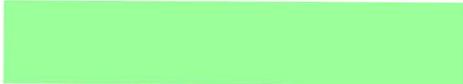


DATE: **JUL 10 2013** OFFICE: NATIONAL BENEFITS CENTER

FILE:

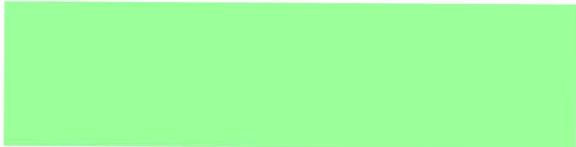


IN RE: Petitioner:  
Beneficiary:



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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, National Benefits Center (the director), denied the Form I-600, 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 The director's decision will be withdrawn and the matter remanded to the director for further action consistent with this decision.

*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 in his behalf . . . 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] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation provides, in pertinent part, at 8 C.F.R. § 204.3(a):

- (1) [A] child who meets the definition of orphan contained in section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a U.S. citizen if:
  - (i) The U.S. citizen seeking the child's immigration can document that the citizen (and his or her spouse, if any) are capable of providing, and will provide, proper care for an alien or orphan; and
  - (ii) The child is an orphan under section 101(b)(1)(F) of the Act.

The regulation provides, in pertinent part, at 8 C.F.R. § 204.3(e):

- (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:
  - (i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which

categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. . . .

(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. . . . 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.

#### *Facts and Procedural History*

The petitioner is a 50 year old naturalized U.S. citizen who, together with her spouse, seeks to adopt a child (her nephew) from Ghana. She seeks to classify the beneficiary as an orphan due to his loss from both parents, as set forth in 8 C.F.R. § 204.3(b).

The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on October 10, 2012, along with birth certificate evidence for the beneficiary; death certificate and accidental death information for the beneficiary's biological parents; a home study report; and medical evidence pertaining to the petitioner's husband's diagnosis and treatment for schizoaffective disorder. On November 29, 2012, the director issued a Request for Evidence (RFE) asking for further medical evidence addressing the petitioner's husband's mental health condition, the impact that the adoption of the beneficiary would have on his condition, and establishing that the petitioner and her husband would be able to provide proper care to an adopted child. In a decision dated February 1, 2013, the director determined that the petitioner had failed to establish her ability to provide proper financial and emotional care to an adopted child. The Form I-600 was denied accordingly.

Through counsel, the petitioner asserts on appeal that the home study report, financial documentation, and medical evidence establish the petitioner and her husband's ability to provide proper care to the beneficiary. Counsel indicates further that evidence establishes that the beneficiary qualifies as an orphan due to the loss of his biological parents. In support of the assertions, counsel submits medical evidence for the petitioner's husband; Federal income tax return documents for the petitioner and her husband; affidavits from family members; and death certificate and accidental death information for the beneficiary's biological parents. The entire record was reviewed and considered in rendering a decision on the appeal.

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### *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 petitioner has established that proper care would be furnished to the beneficiary, as required by section 101(b)(1)(F)(i) of the Act.

### *The Petitioner's Financial Resources*

The home study preparer states in an October 3, 2012 home study report that review of the petitioner and her husband's employment and federal income tax evidence reflects that their combined annual income is \$92,768.00. Monthly expenditure figures provided by the home study preparer are uncorroborated by evidence in the record. However, the home study preparer's conclusions with regard to the petitioner's annual income are supported by the evidence, which includes the petitioner and her husband's employment earnings statements, and 2010 through 2012 Federal income tax returns reflecting combined incomes between \$71,145.00 and \$90,139.00. The record also contains a copy of the petitioner and her husband's home deed and their life insurance policy.

The regulation provides at 8 CFR § 213A(a)(1) that the sponsoring petitioner's income must be at least 125% of the Federal Poverty line. The petitioner's household presently has two family members, and the Form I-600 proposes one additional family member, for a total of three family members. Federal Poverty Guidelines for 2013 reflect that the annual poverty level for a family of three persons is \$19,530.00. *See* U.S. Department of Health & Human Service website at: <http://aspe.hhs.gov/poverty>. The annual 125% poverty level for a family of three persons is thus \$24,412.50. In the present matter the petitioner and her husband's annual income of about \$90,000.00 is over three times higher than the Federal poverty guideline amount for a family of three persons, and the home study preparer's assessment of the couple's assets, debts and expenses indicates that the couple could provide proper financial support to an adopted child. The petitioner has therefore established that she would be able to provide proper financial care to an adopted child, and the director's contrary decision is withdrawn.

### *The Petitioner's Mental and Emotional Capabilities to Properly Parent*

The home study preparer indicates in the October 3, 2012 home study report; in a follow-up letter dated December 7, 2012; and in a home study addendum dated March 17, 2013, that verified medical evidence establishes that the petitioner's husband is compliant with medication and treatment plans for his schizoaffective disorder condition, and that his ability to properly parent is not restricted by his condition. The home study preparer's conclusions with regard to the petitioner's husband's ability to properly parent an adopted child are supported by evidence in the record.

Medical treatment records from the Government of the District of Columbia, Department of Mental Health reflect that the petitioner's husband's symptoms have included in the past fear, hearing voices, delusional thoughts and anxiety. The petitioner's husband is not considered dangerous to himself, or to others, and his symptoms have improved with medication. Letters dated in 2012 and 2013 from psychiatrist, [REDACTED] reflect that the petitioner's husband "has a diagnosis of schizoaffective disorder in remission," and that since starting a medication regimen in 2004, the

petitioner's husband "has been stable psychiatrically without presenting any psychotic or mood symptoms[.]" [REDACTED] states that she meets with the petitioner's husband every three months for medication management, and that he "has been fully compliant with follow [sic] appointments and also with his medications." [REDACTED] notes that the petitioner's husband has shown responsibility in managing and medicating his disorder and that he has successfully raised two adult children, and she states that the petitioner's husband is able to parent an adoptive child, and that his "mood disorder has no bearing on his ability to parent as his condition is well managed." Upon review of the evidence, the petitioner has established that she and her husband are physically, mentally, and emotionally capable of properly parenting an adopted child and the director's decision on this issue is also withdrawn.

*Conclusion*

In the present matter, the petitioner has established that proper care will be furnished to the beneficiary, as required by section 101(b)(1)(F)(i) of the Act. Although the AAO is withdrawing the director's adverse decision, because the director did not evaluate whether the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F)(i) of the Act, the AAO will remand the matter to the director for entry of a new decision after evaluating all eligibility criteria at section 101(b)(1)(F)(i) of the Act and the implementing regulations at 8 C.F.R. § 204.3. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

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