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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JUN 10 2013 OFFICE: NATIONAL BENEFIT 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:

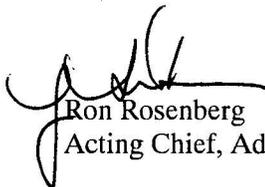
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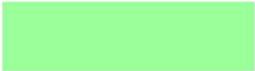
INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office



DISCUSSION: The Director, National Benefit 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 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 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[.]

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

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.

* * *

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*.

* * *

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence.

Facts and Procedural History

The petitioner is a 72-year-old naturalized U.S. citizen. He and his 59-year-old U.S. lawful permanent resident wife adopted the beneficiary, a native of Ethiopia, in June 2010. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) in May 2012, and seeks to classify the beneficiary as the child of a surviving parent who is incapable of providing proper care to the beneficiary. In support of this claim, the petitioner submits the beneficiary's birth certificate; baptismal certificate evidence for the beneficiary; death certificate information for the beneficiary's biological

father; adoption contract evidence and an adoption order; affidavits and letters addressing the biological mother's inability to care for the beneficiary; and financial evidence reflecting that the petitioner sent money to the beneficiary's biological mother and to the beneficiary between 2005 and 2008.

The director sent a Request for Evidence (RFE) to the petitioner on June 6, 2012, asking in part for evidence that the beneficiary's surviving parent is unable to provide for the beneficiary's basic needs, consistent with local standards in Ethiopia. The director also requested evidence that the petitioner had paid biometric fees for all household family members over the age of 18. On August 9, 2012, the director issued a Notice of Intent to Deny (NOID) the petition, stating, in part, that the evidence in the record was insufficient to establish that the beneficiary's biological mother was incapable of providing care according to the local standards in Ethiopia, or that the beneficiary was eligible for classification as an "orphan" under section 101(b)(1)(F) of the Act. Initial evidence was also insufficient to establish that biometric fees were paid for all household family members over 18. The petitioner was afforded 30 days to show why the Form I-600 should not be denied. After considering the evidence in the record, the director denied the Form I-600 on October 1, 2012, based on the determination that the petitioner had failed to establish that the beneficiary qualified for classification as an "orphan," as defined at section 101(b)(1)(F)(i) of the Act. Specifically, the director found that the petitioner had failed to establish that the beneficiary's biological mother was incapable of providing care for the beneficiary according to local standards in Ethiopia. The director also found that the petitioner failed to establish that biometric fees were paid for all household family members over the age of 18.

On appeal, counsel for the petitioner asserts that the evidence in the record establishes that the beneficiary's biological mother is incapable of providing proper care to the beneficiary in accordance with local standards in Ethiopia. Counsel asserts further that the evidence demonstrates that biometric fees were paid for all household members over the age of 18. The beneficiary therefore qualifies as an "orphan" for immigration purposes.

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In the present matter, the petitioner seeks to establish that the beneficiary is the child of a surviving parent who is incapable of providing proper care to the beneficiary.

Evidence consisting of the beneficiary's birth certificate, baptismal certificate, and January 8, 2008 court ordered certificate of inheritance from the Addis Ababa City First Instance Court establishes that the beneficiary was born in [REDACTED] Ethiopia on April 9, 1997, to [REDACTED] (biological mother) and [REDACTED] (biological father). The inheritance certificate order reflects that the beneficiary's biological parents were legally married under Ethiopian law. In addition, death certificate evidence reflects that the beneficiary's biological father died in [REDACTED] Ethiopia on June 11, 2006.¹

¹ The inheritance certificate order also reflects that the beneficiary has an older sibling, [REDACTED]

The petitioner states in a July 6, 2012 affidavit that the Ethiopian court and Ministry of Women's Affairs office have determined that the beneficiary's biological mother is poor and unable to raise the beneficiary. The AAO finds that the petitioner's assertion is unsupported by the evidence in the record.

The record contains a June 16, 2010 adoption order from the [REDACTED] Ethiopia. The one-page, adoption order reflects that the order is based, in part, on the court's approval of an April 20, 2010 adoption contract between the beneficiary's biological mother and the petitioner and his wife, and in part on a [REDACTED] finding that the petitioners are better able to raise and care for the beneficiary.

The record contains a May 26, 2010 letter from the [REDACTED] ordering the [REDACTED] to examine "the appropriate personal and economic evidences to make a legitimate adoption"; to determine whether the adoption would benefit the beneficiary; and to "present a notice as to who the adoptee is and how the child was accepted by a government or private orphanage." However, the record does not contain a copy of the [REDACTED] report. Moreover, the June 2010 court adoption order does not refer to, or discuss any of the above factors relating to, the circumstances of the beneficiary's adoption.

The record also contains the April 2010 adoption contract between the beneficiary's biological mother and the petitioner which reflects the biological mother's statement that she is giving the beneficiary up for adoption because she is unable to "bring up," "educate" or fulfill "the necessary materials" for the beneficiary; and that the petitioner and his wife are in a better position to educate and care for the beneficiary. The adoption contract contains no other details or information with regard to the beneficiary's biological mother's inability to provide for the beneficiary's basic needs consistent with local standards in Ethiopia.

The [REDACTED] adoption order does not state that the biological mother is incapable of providing care to the beneficiary in Ethiopia. The court bases its adoption order decision on the adoption order between the biological mother and the petitioner and on a [REDACTED] finding. However, the court order contains no discussion with regard to the details of the adoption order or the [REDACTED] findings, and the court order provides no information regarding the beneficiary or her biological mother's personal, economic, or social circumstances, or regarding the facts relied upon in determining that the petitioner and his wife are better able to raise and care for the beneficiary. Accordingly, the adoption order fails to establish that the beneficiary's mother is unable to provide proper care to the beneficiary consistent with local standards in Ethiopia.

The record also contains affidavits and letters discussing circumstances relating to the beneficiary's adoption. Two identical May 2012 affidavits from [REDACTED] state that the affiants have known the beneficiary since birth; the beneficiary's biological mother is "very poor" and "not in a position to raise" the beneficiary; the beneficiary has not lived with her

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biological mother since the petitioners adopted her; and the beneficiary's well-being "is fully looked after by her adopted parents."

Ms. [REDACTED] the Administrative and Finance Head of [REDACTED] states in a November 11, 2011 letter that the beneficiary was found "on the street" by its organization member, [REDACTED], and "for fear that the child would be endangered" Ms. [REDACTED] "brought her to her house, provided her shelter and went on caring for her." Ms. [REDACTED] requested that the organization write a letter of support on her behalf "when an adoption arrangement was made," and the organization expresses its "thanks for her humane service in rescuing the life of the child." The letter states further that "we have confirmed from the [REDACTED] of her residence" that the biological mother "is living below poverty level."

An undated letter from the A/A City Government [REDACTED] Subcity Woreda Vital Statistic Registration Service written at the biological mother's ([REDACTED]) request states that Mrs. [REDACTED] "resides at the privately owned residence, House No. [REDACTED] on 06/14/2011" and that per information provided by the biological mother, the petitioners "have been raising and helping" the beneficiary financially after adopting her.

Notably, on the Form I-600 filed and signed by the petitioner under penalty of perjury on May 15, 2012, the petitioner responds to the question: "[i]f orphan is not residing in an institution, give full name of person with whom residing" by stating that the beneficiary resides with "[REDACTED]". The address provided for the beneficiary at question #25 is: [REDACTED] Ethiopia. This is the same address listed in the A/A City Government letter for the beneficiary's biological mother. In response to the director's request for an explanation regarding the beneficiary's current residence with her biological mother, the petitioner states in an affidavit dated July 6, 2012 that the Form I-600 statement "was an honest clerical mistake entered while preparing the form. The child is residing with Mrs. [REDACTED]". No other explanation was provided.

The AAO finds that the affidavit and the letter from the A/A City Government contained in the record have diminished evidentiary value. Statements that the beneficiary's biological mother is poor and not in a position to raise the beneficiary are vague, lack material detail, and lack information pertaining to the source of the affiants' knowledge. Furthermore, the affidavits and letters contain statements about the beneficiary's current and past residence locations that are materially inconsistent, with some evidence reflecting that the beneficiary has continuously resided with her biological mother and continues to do so; some evidence reflecting that the beneficiary resided with her biological mother until she was adopted and then began residing with [REDACTED] and some evidence reflecting that the beneficiary was found on the street by [REDACTED] and resided with Mrs. [REDACTED] before and after her adoption. The inconsistencies are material and are not explained. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Financial evidence reflecting that the petitioner sent money to the beneficiary's biological mother on three occasions between 2005 and 2007, and to the beneficiary on four occasions in 2008 fails to demonstrate that the biological mother is incapable of providing for the beneficiary's basic needs consistent with local standards in Ethiopia. The record lacks any documentary evidence of the biological mother's income, expenses, or financial circumstances. The record lacks any evidence regarding local standards in Ethiopia. Upon review of the entire record, the AAO finds that the petitioner has failed to establish that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Ethiopia, as set forth in 8 C.F.R. § 204.3(b).

Conclusion

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to establish that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Ethiopia and, therefore, the beneficiary does not meet the definition of an "orphan," as defined at section 101(b)(1)(F)(i) of the Act.

Because the petitioner has failed to meet his burden of establishing that the beneficiary qualifies as an orphan, the AAO finds it unnecessary to address whether the petitioner established that biometric fees were paid for all household members over the age of 18.

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