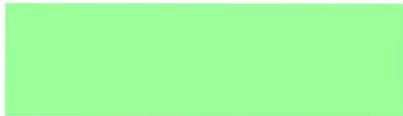




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 28 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:

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 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 Benefits Center (the director) revoked approval of the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600), and dismissed a subsequent motion to reopen and to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the Form I-600 will remain revoked.

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

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

* * *

The regulation at 8 C.F.R. § 204.3(e)(2) provides, in part, that the home study preparer must make an assessment of the physical, mental, and emotional health; criminal history; history of abuse and/or violence; and, if applicable, rehabilitation of all adult members of the household. Under 8 C.F.R. § 204.3(b), *adult member of the prospective adoptive parents' household* means, in pertinent part: "an individual, other than a prospective adoptive parent, over the age of 18 whose principal or only residence is the home of the prospective adoptive parents. . . ." The Service will fingerprint each adult member of the prospective adoptive parent's household. See 8 C.F.R. § 204.3(c)(2). The term *residence* "means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act.

Facts and Procedural History

The petitioner is a 43 year old naturalized U.S. citizen who adopted the beneficiary, a native of Liberia, in March 2002. She seeks to classify the beneficiary as an orphan due to his loss of both parents, as set forth in 8 C.F.R. § 204.3(b). The Form I-600 was initially approved in December 2006; however, on September 28, 2009, the director issued a Notice of Intent to Revoke (NOIR) the Form I-600 approval

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based on field investigation concerns that death certificate evidence was not authentic, and concerns relating to inconsistencies about the beneficiary's parentage. The director also later requested that the petitioner establish that [REDACTED] whom the petitioner claimed as her spouse on an October 2009 Form I-600 submitted for another beneficiary ([REDACTED]), was able to provide proper care for an adopted child. Section 101(b)(1)(F)(i) of the Act; 8 C.F.R. § 204.3(e)(2)

In a decision dated July 26, 2012, the director determined that Mr. [REDACTED] was an adult member of the petitioner's household, and that he had failed to complete fingerprint and background checks. The petitioner thus failed to establish her suitability as an adoptive parent as required under section 101(b)(1)(F)(i) of the Act. The Form I-600 approval was revoked accordingly. A subsequent motion to reopen and to reconsider was dismissed on September 28, 2012.

The petitioner asserts on appeal that evidence establishes that she and Mr. [REDACTED] were never married and that Mr. [REDACTED] no longer resides at her home. In support of her assertions, the petitioner submits: affidavits; Ghanaian utility bill and lease agreement information; evidence that Mr. [REDACTED] worked as an attorney on a legal case in Ghana; passport admission and exit stamp documentation for Mr. [REDACTED] and articles discussing address errors on internet information sites. The entire record was reviewed and considered in rendering a decision on the appeal.

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 failed to overcome the director's finding that Mr. [REDACTED] is an adult member of her household, and that she failed to establish that proper care would be furnished to the beneficiary, as required by section 101(b)(1)(F)(i) of the Act.

It is uncontested that Mr. [REDACTED] has not been fingerprinted in compliance with 8 C.F.R. § 204.3(c)(2). The petitioner asserts, however, that Mr. [REDACTED] no longer resides with her, and that he therefore does not qualify as an adult member of her household and is not required to submit his fingerprints.

The petitioner states in a December 29, 2012 affidavit that she and Mr. [REDACTED] have twin children together (born in February 2009), and that she and Mr. [REDACTED] lived together at her home on [REDACTED] between January 2006 and November 2009. She believed that they were married during that time because Mr. [REDACTED] proposed to her at an engagement party in December 2006, and stated that his family would complete Ghanaian customary marriage traditions in their respective countries of birth by visiting her family members, performing customary rites and paying a bride price to her mother. On this basis, she wrote that her marital status was "married" on amended and subsequently filed Form I-600s. However, after requesting a marriage certificate from Mr. [REDACTED] in November 2009, she discovered that his parents had not consented to the marriage and had not performed the customary marriage rights. Because they were not married, she ended her romantic relationship with Mr. [REDACTED] and he has not lived with her since November 2009. She states that Mr. [REDACTED] has lived and worked "primarily in Accra, Ghana" since November 2009, that he visits

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the United States about once a year, and that he lives at [REDACTED] home at [REDACTED] when he is in the United States.

[REDACTED] states, in pertinent part, in a December 26, 2012 affidavit that she rented her basement apartment to Mr. [REDACTED] "in July 2010, so that he would have a place of his own whenever he comes to the United States from Ghana."

The petitioner's mother, [REDACTED] states in a January 3, 2013 affidavit that she has lived in Maryland since November 2007; she visits the petitioner two or three times a week; and that Mr. [REDACTED] has lived in Ghana since late 2009, visiting the United States once in 2010 and 2011.

A friend, [REDACTED] states, in pertinent part, in a November 6, 2012 affidavit that Mr. [REDACTED] has lived and worked as an attorney in Accra, Ghana since 2009. Ms. [REDACTED] states that she relocated to Ghana in 2011, that she works at Mr. [REDACTED] law office in Ghana, and that Mr. [REDACTED] "primary residence since 2009" is at [REDACTED] Ghana.

A friend, [REDACTED] states in an affidavit dated December 19, 2012, that Mr. [REDACTED] has lived and worked primarily in [REDACTED] a suburb of Accra, Ghana since late 2009. He states that Mr. [REDACTED] has worked full-time as a lawyer in Ghana since 2010, and that he and Mr. [REDACTED] get together at least three times a week.

Copies of Mr. [REDACTED] U.S. passport reflect travel to Ghana, China and the United States between 2007 and 2010. A handwritten notation by the petitioner, next to a July 29, 2011 Ghanaian arrival stamp, states that Mr. [REDACTED] "arrived in Ghana July 29, 2011 and have [sic] not returned to U.S. since then."

The record contains February 2010, August 2010, and October 2011 electric bills sent to Mr. [REDACTED] at [REDACTED] in Ghana. A "Sublease Contract" reflects that on March 1, 2012, Mr. [REDACTED] signed an eight year lease to rent "a premises" at [REDACTED] Ghana. The record also contains a partial copy of a March 7, 2011, "Ghana Monthly Judgements" publication reflecting that Mr. [REDACTED] was co-counsel in a legal case filed in Ghana in July 2011.

Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's finding that she failed to establish that proper care will be furnished to the beneficiary. Although the petitioner contends that Mr. [REDACTED] July 2011 passport admission stamp demonstrates that he has not left Ghana since July 2011, it is noted that the passport admission stamp clearly states that Mr. [REDACTED] admission to Ghana on July 29, 2011 was only "valid for 60 days." The admission stamp states further that "employment [is] prohibited." The passport information thus contradicts petitioner and affiant statements that Mr. [REDACTED] has lived and worked in Ghana since late 2009. In addition, the director notes in the petitioner's final revocation decision that "public records at www.whitepages.com indicate that [REDACTED] resides at [REDACTED] which is the petitioner's address. AAO review of the website reflects that www.whitepages.com no longer contains address information for Mr. [REDACTED]. However, several other attorney-related public websites indicate that Mr. [REDACTED] practices law in [REDACTED] and

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Maryland, and list Mr. [REDACTED] office address as [REDACTED] where the petitioner resides. See [REDACTED] (updated on December 27, 2011); [REDACTED]

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the affidavits contain material inconsistencies with passport documentation contained in the record and with public information found on the internet. The affidavits therefore have diminished evidentiary weight. Moreover, the Ghanaian lease and electric bill evidence, and the evidence reflecting that Mr. [REDACTED] worked as co-counsel on a Ghanaian legal case fail, without more, to establish that Mr. [REDACTED] has a law firm in Ghana, that he works and resides primarily in Ghana, and that he is not a member of the petitioner's household as defined in the regulations.

In visa petition proceedings, the burden of proof rests solely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner failed to establish that proper care will be furnished to the beneficiary, as required by section 101(b)(1)(F)(i) of the Act.

Because the petitioner failed to establish that proper care will be furnished to the beneficiary, the AAO finds it unnecessary to evaluate whether the beneficiary is an orphan due to the loss of both parents.

Conclusion

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of an "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and approval of the Form I-600 will remain revoked.

ORDER: The appeal is dismissed. Approval of the Form I-600 petition remains revoked.