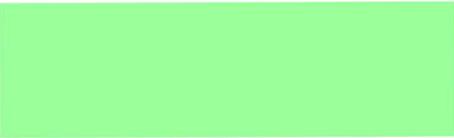
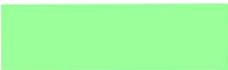


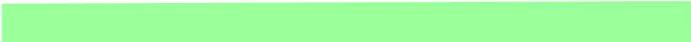


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 30 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)

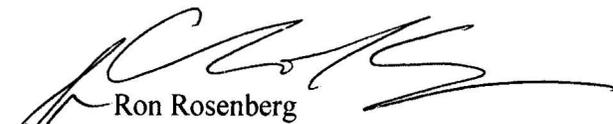
ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. 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 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630. The specific requirements for filing such a request 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 that any motion must 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 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 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.

*Facts and Procedural History*

The petitioner is a 61-year-old U.S. citizen who adopted the beneficiary, a citizen of Mexico, in 2008.<sup>1</sup> The director denied the petition, determining that the petitioner did not have the financial resources to properly care for the beneficiary. When submitting the appeal in September 2012,

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<sup>1</sup> The petitioner also adopted the beneficiary's sibling.

counsel provided a brief statement on the Notice of Appeal (Form I-290B) and indicated that she would submit a brief or other evidence to the AAO within 30 days. As of this date, however, the record contains no supplemental evidence for consideration.

*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 that the petitioner has sufficient financial resources to provide proper care to the beneficiary, and affirm the director's decision.

*The Petitioner's Financial Resources*

The April 25, 2012 home study that was prepared by [REDACTED] in Bakersfield, California, states the following regarding the petitioner's finances:

[REDACTED] verifies employment and income by a letter from each employer; by copies of income tax returns; by copies of recent pay check stubs; by a letter from the applicants' tax preparer; or by a combination of these items. According to verifications received, the [petitioner's family] is able to support additional family members. [The petitioner's two sons] have provided a letter stating that they will be financially responsible for the children [the petitioner] has adopted.

Social Security Administration verified [the petitioner's] monthly income of \$728. On February 19, 2012, [the petitioner's] sons . . . provided a letter to this agency indic[a]ting [the petitioner] does not pay rent and they are financially responsible for all her living expenses, including housing and food[.]

The home study preparer also described the monthly household income of the petitioner and her two adult sons, as well as their expenses, assets and liabilities.

The director issued a Notice of Intent to Deny (NOID) the petition because the home study indicated that the petitioner's income was insufficient to support her adopted children. In response, the petitioner submitted evidence of her bank account with an average monthly balance of \$564 and her life insurance policy. The director denied the petition because the additional documentation did not demonstrate that the petitioner had the financial resources to provide proper care to the beneficiary.

On appeal, counsel asserts that the director imposed a "misplaced" financial requirement upon the petitioner and ignored the fact that the petitioner has been caring for the beneficiary in Mexico since 2007. Counsel claims that had the beneficiary remained in the United States, she could have obtained lawful permanent residency through adjustment of status and reliance on a Form I-864, Affidavit of Support. Counsel submits no additional evidence or legal brief on appeal and the record does not support her claims.

The regulation at 8 C.F.R. § 204.3(a)(1)(i) requires a petitioner to “document that [the petitioner] (*and his or her spouse, if any*) are capable of providing, and will provide, proper care for an alien orphan.” (Emphasis added). Accordingly, while U.S. Citizenship and Immigration Services (USCIS) may take into consideration the income, financial resources, debts, and expenses of a petitioner’s spouse, such consideration is not extended to a petitioner’s children. As evidenced by the home study preparer’s financial assessment, the petitioner receives an income that is below the poverty level,<sup>2</sup> and can only afford to financially provide for the beneficiary with the assistance of her adult sons. While the income and assets of other individuals will be considered as joint sponsors to an affidavit of support for an alien under section 213A of the Act, joint sponsorship does not apply in these proceedings. Under section 101(b)(1)(F) of the Act and the regulation at 8 C.F.R. § 204.3(a)(1)(i), (e)(2)(ii), the petitioner must demonstrate that she herself is capable of providing proper care to the beneficiary. When viewed in its totality, the evidence fails to establish that the petitioner has the financial resources to properly care for the beneficiary.

*Conclusion*

The record lacks sufficient supporting documentation to establish that the petitioner has the financial resources to provide proper care to the beneficiary. 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.

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<sup>2</sup> The petitioner’s monthly income from social security is \$728, or \$8,736 per year. The 2012 poverty guidelines for a family of three are \$23,862.