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

(b)(6)

U.S. Citizenship and Immigration Services

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:

SELF-REPRESENTED

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 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. 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 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 and 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:

> *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*.
>
> * * *
>
> *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 58-year-old married U.S. citizen who seeks to classify the beneficiary, a native of Samoa, as an orphan based upon the death of the child's biological mother and his biological father's inability to provide him with proper care. The petitioner adopted the beneficiary in Samoa on November 16, 2011. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on April 13, 2012 along with the death certificate of the beneficiary's biological mother and other evidence in support of the petition.

After issuing a Request for Evidence and a Notice of Intent to Deny the petition, and considering the petitioner's response, the director denied the petition because the submitted evidence did not demonstrate that the surviving parent was incapable of providing for the beneficiary's basic needs, consistent with local standards in Samoa. On appeal, the petitioner submitted a letter, dated October 29, 2012, from the Commissioner of Police and Prisons, Ministry of Police and Prison Services, Samoa, regarding the biological father. The petitioner indicated on the Notice of Appeal or Motion (Form I-290B), which he signed on November 5, 2012, that he would submit additional

evidence within ninety days, or by February 5, 2013. As of this date, however, no supplemental evidence has been entered into 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). Our review of the record reveals that the beneficiary does not meet the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

In his September 14, 2012 declaration, the biological father stated that he lives with his domestic partner, their child, the beneficiary, and members of his domestic partner's extended family (both adults and children). He stated that none of the adults, including himself, are employed and that his domestic partner sells fruits and vegetables approximately three times each week when fruit is available, but the money that she earns is insufficient for them to buy basic necessities. He maintained that he sometimes borrows money from his uncle because the cost of living in Samoa is very high, and that the beneficiary only attends school when the family has some money, which is rare. A letter from the beneficiary's school confirms the beneficiary's sporadic attendance.

The petitioner maintains that the biological father is incapable of providing proper care to the beneficiary, in part, because he was charged with theft in Samoa. According to the letter from the Commissioner of Police and Prisons, the biological father was charged with theft as a servant, and he failed to appear before the Supreme Court of Samoa in connection with the charges on March 12, 1012. According to the commissioner, a warrant of arrest was issued for the biological father and the matter remains pending while awaiting the warrant's execution. While the commissioner's letter is evidence that the biological father was charged with theft, there is no evidence that he was convicted of the crime and imprisoned, rendering him incapable of properly caring for the beneficiary.

As used in the definition of *Incapable of providing proper care* at 8 C.F.R. § 204.3(a), the term *basic needs* encompasses more than just educational opportunities; it may include, but is not limited to, shelter, food, clothing and emotional and psychological support. The biological father's lack of employment, by itself, is insufficient to demonstrate that he is incapable of providing the beneficiary with proper care. The record contains insufficient evidence demonstrating that the biological father cannot meet the beneficiary's basic needs, consistent with local standards in Samoa. Such evidence may consist of, but is not limited to, information about the biological father's former employment, future employment prospects, living situation and parental responsibilities since the death of the biological mother that was garnered through and made part of the record during the adoption proceedings that were concluded in November 2011. *See Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg. Comm'r 1980) (citing social welfare agency study as evidence of a sole parent's inability to provide proper care).

Conclusion

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, the petitioner has failed to meet his burden in establishing the beneficiary's eligibility for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act.

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