

(b)(6)

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: FEB 06 2014 OFFICE: NATIONAL BENEFITS 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:
[REDACTED]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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). The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision on a motion to reopen. The matter is now again before the AAO on a second motion to reopen. The motion to reopen will be granted and the appeal will remain dismissed.

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

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

* * *

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. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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 director denied the Form I-600 on November 9, 2011 because the petitioner failed to provide: (1) a home study that contained original signatures, was no more than six months old when the petitioner filed the petition, and had been updated to reflect the petitioner's change in marital status; (2) evidence of the petitioner's spouse's U.S. citizenship or lawful permanent resident status; and (3) evidence that the beneficiary's biological mother (the claimed "surviving parent") was incapable of providing proper care to the beneficiary consistent with the local standards in the Philippines, and had, in writing, irrevocably released the beneficiary for emigration and adoption. In a decision dated April 26, 2012, the AAO withdrew the director's determination that the petitioner failed to submit a proper home study and establish that her spouse is a U.S. citizen or lawful permanent resident. The AAO, however, dismissed the appeal because the petitioner had failed to establish that the biological mother was incapable of providing proper care to the beneficiary consistent with the local standards in the Philippines, and that the biological mother's new husband was not a stepfather to the beneficiary for immigration purposes. In its July 5, 2013 decision on the petitioner's motion to reopen, the AAO affirmed its prior decision to dismiss the appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Analysis

The petitioner has still not established that the surviving parent is incapable of providing proper care to the beneficiary. In its April 26, 2012 decision, the AAO determined that the record failed to demonstrate that at the time the petitioner adopted the beneficiary in 1995 or anytime thereafter, the biological mother was incapable of providing for the beneficiary's basic needs. In sum, the AAO found that a social worker's report from the Philippine Department of Social Welfare and Development, which indicated that the biological mother was living in a home owned by the petitioner and was jobless, did not show that she was incapable of providing proper care to the beneficiary according to the local standards of the Philippines. The AAO also found that a reference in the adoption decree to the biological mother's lack of "substantial property" was ambiguous. The AAO concluded that nothing in either the adoption decree or the social worker's report indicated that biological mother could not provide for the beneficiary's basic needs, consistent with the standards of the community in which they were living at the time.

On the prior motion, counsel referred to an affidavit from the petitioner and asserted that the beneficiary's biological mother was living and working in a foreign country as a factory worker and only made enough money to support herself. He stated that the biological mother never sent any money to the Philippines for the beneficiary's living expenses. In its July 5, 2013 decision the AAO determined that the record failed to demonstrate that the petitioner had personal knowledge of the biological mother's residence in Taiwan, or of her financial or other circumstances in the Philippines. The AAO found that the documentary evidence in the record materially contradicted statements made by the petitioner with regard to the biological mother's residence in Taiwan and her husband's

Taiwanese citizenship. The AAO also found that the record indicated that the biological mother resided at the same address as the beneficiary. The AAO concluded that the record lacked documentary evidence to corroborate assertions that the biological mother lived in Taiwan, or that she had resided at any other address in the Philippines.

On the present motion, counsel asserts that at the time the beneficiary's biological mother relinquished the beneficiary for adoption in 1995, she was unemployed and did not file an income tax return. He states that the biological mother obtained employment in Taiwan as a factory worker from February 1996 until October 1998. Counsel submits employment verification letters for the beneficiary's biological mother from the [REDACTED] which is based in Taiwan. The letters state that the biological mother was employed with the company from February 1996 until October 1998 and February 3, 2002 until February 23, 2005. Counsel also submits a copy of a driver's license issued for the biological mother's new husband in Taiwan on January 28, 1993.

De novo review of the record shows no error in our prior decisions. The record contains no evidence regarding local standards in the Philippines. Nor does the record demonstrate that the beneficiary's biological mother is incapable of providing proper care to the beneficiary consistent with such standards. The social worker's report from the Philippine Department of Social Welfare and Development stated that a week after the beneficiary's biological father's death, the petitioner and the beneficiary's biological mother decided that the petitioner should adopt the beneficiary to give him a "better future" in the United States. The report provides no information on any economic or social difficulties, or other limitations, that would have rendered the beneficiary's biological mother incapable of providing proper care to the beneficiary. Similarly, the adoption decree mentions that the biological mother had "no substantial property," but does not further discuss her inability to provide for the beneficiary. The beneficiary's biological mother's decision to relocate to Taiwan in 1996 is not, alone, evidence of her inability to provide proper care to the beneficiary as no credible, probative information was provided about the reason for her departure to Taiwan. In the affidavit submitted on the prior motion, the petitioner indicated that the beneficiary's biological mother abandoned the beneficiary and did not reside with him when she returned to the Philippines in 1998. However, as discussed, the biological mother's marriage certificate from January 14, 1999 reflects that she at that time resided at the same address as the beneficiary. Counsel does not address this inconsistency, or provide any evidence to resolve it, on the present motion. Consequently, the petitioner has not established that the beneficiary has a surviving parent who is incapable of providing proper care, as that term is defined at 8 C.F.R. § 204.3(b).

The petitioner has failed to demonstrate that the biological mother is incapable of providing proper care to the beneficiary. Consequently, we need not discuss whether the beneficiary acquired another parent when the biological mother remarried because had such relationship been established, the beneficiary was not abandoned by them, as the biological mother relinquished her parental rights directly to the petitioner. *See* 8 C.F.R. § 204.3(b)(defining *abandonment by both parents*).

Conclusion

As set forth in the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an “orphan,” as that term is defined at section 101(b)(1)(F)(i) of the Act. 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). Here, that burden has not been met and the appeal will remain dismissed.

ORDER: The motion is granted. The April 26, 2012 and July 5, 2013 decisions of the Administrative Appeals Office are affirmed. The petition remains denied.