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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

DATE: JUL 14 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.

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 matter was appealed to the Administrative Appeals Office (AAO), and the appeal was dismissed. The AAO now reopens the matter *sua sponte*. The director's decision dated, August 20, 2013, and the AAO decision dated February 6, 2014, shall be withdrawn. The matter is remanded to the director for further action consistent with this decision.

Facts and procedural history

The director found, in a decision dated August 20, 2013, that the petitioner failed to provide evidence establishing a full and final adoption of the beneficiary, in accordance with the laws of Haiti. The Form I-600 was denied accordingly. In a decision dated February 6, 2014, we dismissed the petitioner's appeal on the basis that the petitioner failed to submit evidence of a full and final adoption of the beneficiary, in accordance with the laws in Haiti.¹ On April 16, 2014, we reopened the proceedings in the applicant's case on our own motion, and requested additional evidence demonstrating that the beneficiary is the subject of a full and final adoption under Haitian law. The petitioner responded to the request by submitting a legible copy of the beneficiary's December 27, 2012, Adoption Act. The petitioner now seeks classification of the beneficiary as an *orphan* pursuant to section 101(b)(1)(F)(i) of the Act. Specifically, the petitioner seeks to classify the beneficiary as the child of a *surviving parent* who is *incapable of providing proper care* to the beneficiary, as the terms are defined in 8 C.F.R. § 204.3(b).

Applicable law

Section 101(b)(1)(F)(i) of the Act 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:

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.

* * *

¹ Neither the director's decision nor our February 2014 decision reached the issue of whether the beneficiary meets the definition of an *orphan* under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i).

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.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

(d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

* * *

(1)(iii) Evidence that the child is an orphan as appropriate to the case:

* * *

(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan’s care and has irrevocably released the orphan for emigration and adoption. . . .

* * *

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad[.]

* * *

*Analysis**Full and Final Adoption*

The U.S. Department of State (DOS) advises that the process for finalizing an adoption in Haiti includes, in pertinent part: (1) birth parent(s)' consent to the prospective adoptive parent(s)' adoption before a Justice of the Peace (as well as the Dean of the civil courts in the [REDACTED] jurisdiction); (2) [REDACTED] approval of the adoption and issuance of an Authorization of Adoption (Autorisation d'Adoption); and (3) the issuance of an Adoption Act (Acte d'Adoption) from the civil court with jurisdiction over the child's residence to finalize the adoption.²

The record contains a copy of the beneficiary's Adoption Report, reflecting that on September 17, 2012, Mr. [REDACTED] consented to the petitioner's adoption of his daughter (the beneficiary). The record also contains a copy of the [REDACTED] adoption authorization issued in [REDACTED] on February 7, 2013, authorizing the petitioner to adopt the beneficiary. In addition, the record now contains a civil court issued Adoption Act for the beneficiary, reflecting that the beneficiary was adopted by the petitioner in Haiti on December 27, 2013. The petitioner has therefore satisfied her burden of establishing, by a preponderance of the evidence, that the beneficiary is the subject of a full and final adoption in Haiti.

Orphan

The petitioner seeks to classify the beneficiary as the child of a *surviving parent* who is *incapable of providing proper care* to the beneficiary, as the terms are defined in 8 C.F.R. § 204.3(b). In support of this claim, the petitioner submits the beneficiary's birth certificate; death certificate information for the beneficiary's biological mother; and adoption evidence. The petitioner also submits documentation from the [REDACTED] and claims that [REDACTED] is an orphanage; [REDACTED] had custody over the beneficiary prior to her adoption; and [REDACTED] irrevocably released the beneficiary for adoption by the petitioner.

We conduct appellate review on a *de novo* basis (see *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The documentation in the record fails to establish, by a preponderance of the evidence, that the beneficiary qualifies as a child of a surviving parent who is incapable of providing proper care to the beneficiary. As the director did not address the issue of whether the beneficiary meets the definition of an orphan, we must remand the matter for the director to address this issue.

Although the adoption report contained in the record states that the beneficiary's biological father consented to the petitioner's adoption of the beneficiary, the record lacks evidence that the beneficiary's biological father irrevocably released the beneficiary, in writing, for emigration and adoption, as required under section 101(b)(1)(F)(i) of the Act. The record also lacks the [REDACTED]

² See http://adoption.state.gov/country_information/country_specific_info.php?country-select=haiti.

report describing the beneficiary's social history, and stating why the beneficiary was placed into adoption proceedings.³

In addition, the record contains documentation from [REDACTED] stating that it is an orphanage, the beneficiary lived at [REDACTED] prior to the adoption, and it irrevocably released the beneficiary for adoption and emigration. However, there is no evidence that [REDACTED] obtained legal custody over the beneficiary prior to the adoption. Moreover, evidence in the record indicates that [REDACTED] also operates as a school, and the [REDACTED] stating that [REDACTED] was registered at the Office of Employment between July 2011 and July 2013, fails to establish that the organization is registered as an orphanage in Haiti.⁴

The record also lacks evidence corroborating where the beneficiary lived prior to her adoption, or establishing that the beneficiary's biological father was incapable of providing care for her in accordance with local standards in Haiti. More importantly, the "Entry Form" from [REDACTED] documenting the beneficiary's entrance into its orphanage indicates that the beneficiary's father brought her to [REDACTED] in May 2004 when the beneficiary was seven years old and that the beneficiary's biological mother was deceased at that time. However, the [REDACTED] death certificate for the beneficiary's mother indicates that she passed away on February 15, 2012, or more than seven years after the beneficiary began living at [REDACTED]. Furthermore, the [REDACTED] is the only Haitian agency with the authority to issue extracts related to acts of birth, death, marriage, and divorce. Here, the death certificate for the beneficiary's mother was issued by the [REDACTED] not the [REDACTED].

Conclusion

While the petitioner has submitted an Acte D'Adoption for the beneficiary, she has not demonstrated the beneficiary's eligibility to be classified as an orphan under section 101(b)(1)(F)(i) of the Act. As the director denied the petition based only on the lack of a full and final adoption, the matter will be remanded to the director to address these additional issues of ineligibility and issue a new decision into the record.

ORDER: The director's decision, dated August 20, 2013, and the AAO's February 6, 2014 decision are withdrawn. The matter is remanded to the director for entry of a new decision.

³DOS guidance provides, in pertinent part, that documents required by [REDACTED] to process an adoption application include, "the child's social history, which is a statement prepared by a social worker appointed by [REDACTED] stating how the child became an abandoned child."

⁴The petitioner states in an affidavit dated March 4, 2014, that she is the founder and President of [REDACTED]