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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: **MAY 05 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)

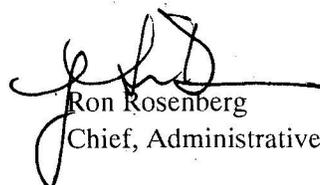
ON BEHALF OF PETITIONER:
[REDACTED]

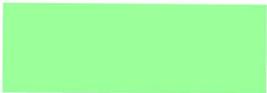
INSTRUCTIONS:

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) and denied a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Applicable Law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The beneficiary of the instant petition is the natural sibling of a child with a Form I-600 petition filed on her behalf by the petitioner in the instant matter. Section 101(b)(1)(F) defines the term “orphan,” in pertinent part, as:

(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, 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

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . ; (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]

The regulation at 8 C.F.R. § 204.3(b) provides definitions for certain terms found at section 101(b)(1)(F) of the Act and states, in pertinent part:

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.

* * *

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 60-year-old married U.S. citizen. She and her husband adopted the 18-year-old beneficiary and his 14-year-old sister, both natives of Haiti, on July 8, 2011. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on December 24, 2012 and subsequently provided the death certificate of the beneficiary's biological father. The petitioner seeks to classify the beneficiary as the child of a surviving parent (the biological mother) who is incapable of providing proper care to the beneficiary. The director denied the petition because the petitioner did not submit evidence that the surviving parent is unable to provide for the beneficiary's basic needs, consistent with the local standards of Haiti. The director denied a subsequent motion to reopen. Counsel filed a timely appeal.

Analysis

Section 101(b)(1)(F)(i) of the Act states, in part, that a child may be deemed an orphan if "the . . . surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption." The term "incapable of providing proper care" means that a surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country. 8 C.F.R. § 204.3(b). The petitioner submitted below a notarized statement from the beneficiary's biological mother titled "Certificate of Incapacity." The statement shows that on February 4, 2013 the beneficiary's biological mother appeared with two individuals before a notary and asserted that she cannot meet the needs of her children because she is unemployed and does not have her own housing. The beneficiary's biological mother stated that she and her children have been residing with an individual named [REDACTED] since July 2000. The petitioner also submitted a court transcript from the Justice of Peace of Jacmel, which shows that the beneficiary's biological mother appeared before the court on February 5, 2013 and testified that she is in a difficult situation because she is alone and cannot send her children to school. The director determined that these documents do not show that the beneficiary's biological mother is incapable of providing care for her children according to Haitian economic standards.

On appeal, counsel asserts that the petitioner has demonstrated that the beneficiary's biological mother cannot provide shelter, food, education, or basic needs for her children. Counsel contends that these conditions are extreme even compared to normal conditions for children living in poverty. Counsel contends that the cost of living in Haiti is high and the beneficiary would have little chance of survival without the assistance of [REDACTED] and aid workers. Counsel submits, *inter alia*: an affidavit from the petitioner; a letter from [REDACTED] M.D.; health information on arthritis from the World Health Organization; and reports on country conditions in Haiti from the U.S. Department of State and the Central Intelligence Agency.

The petitioner stated that the beneficiary, his biological mother and sister have been residing with [REDACTED] "for some time now" because his biological father was absent and his biological mother is very ill. She stated that Ms. [REDACTED] takes care of the beneficiary and his family members. The petitioner recounted that after the earthquake in Haiti in 2010, Ms. [REDACTED] and the

family moved to various places and were sometimes separated. She stated that in 2010, the family moved with Ms. [REDACTED] to Jacmel, Haiti, where the beneficiary and his sister are now attending school. The letter from Dr. [REDACTED] provided that the beneficiary's biological mother was diagnosed in March 2008 with osteoarthritis and the possibility of rheumatoid arthritis. Although the petitioner submitted a physician's letter that briefly describes the beneficiary's biological mother's medical condition and generalized reports on Haiti's poor economic conditions, these documents do not provide sufficient details to establish that the beneficiary's biological mother is unable to provide for the beneficiary's basic needs in Haiti.

The record contains a Permission of Adoption, dated April 29, 2011, from [REDACTED]. According to the U.S. Department of State website¹ [REDACTED] is Haiti's adoption authority. To process an adoption, the [REDACTED] requires the submission of, in part: "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." The petitioner submitted several documents relating to the beneficiary's adoption process; however, the social worker's report was not one of them.

On December 30, 2013, the AAO issued a Request for Evidence (RFE) to the petitioner to submit the social worker's report referenced in the Permission of Adoption, or other evidence demonstrating that the beneficiary's biological mother is *incapable of providing proper care* to the beneficiary, consistent with the local standards in Haiti, as that term is defined in the regulation at 8 C.F.R. § 204.3(b). In response to the RFE, counsel submits a brief, an affidavit from the petitioner, evidence of remittances from the petitioner to the beneficiary's biological mother, and a report on country conditions in Haiti from the United Nations and the Central Intelligence Agency.

The petitioner stated that she already submitted all of the adoption-related documents from her lawyer in Haiti to USCIS. She explained that [REDACTED] approved the adoptions, but did not provide her with a social worker's report. The petitioner reiterated that the beneficiary, his biological mother and sister reside with [REDACTED] in Jacmel. She stated that Ms. [REDACTED] helps the beneficiary's biological mother with daily activities because the biological mother has osteoarthritis, diabetes and circulation problems. She asserted that the beneficiary's biological mother is handicapped and cannot find any work to support herself and her children. The petitioner also stated that she and other family members financially support the beneficiary, his biological mother and sister.

A full review of the evidence fails to demonstrate that the beneficiary's biological mother is unable to provide for the beneficiary's basic needs consistent with the local standards of Haiti. The petitioner asserts that the beneficiary's biological mother is a surviving parent who suffers from medical conditions that have caused her to become disabled and, as a result, unable to provide for the beneficiary's basic needs in Haiti. However, she has not provided any supporting documentation, such

¹*Intercountry Adoption, Haiti, U.S. Department of State*, [http://\[REDACTED\]](http://[REDACTED]) (last visited December 24, 2013).

as medical records, a detailed physician's letter, or the social worker report as evidence to corroborate her statements. As discussed, Dr. [REDACTED]'s letter briefly describes the beneficiary's biological mother's medical condition and the country condition reports only contain generalized information on Haiti.

Counsel asserts that an affidavit is sufficient evidence of incapacity to care for a child in the context of an orphan petition and cites to *Brar v. Ridge*, 2005 WL 1459679. However, *Brar v. Ridge* is an unpublished District Court decision involving distinct facts and is not binding in these proceedings, as the AAO is not bound to follow the published or unpublished decisions of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Counsel also cites to *Matter of Treasure Craft of California*, 14 I&N Dec 190, 194 (Reg. Comm. 1972), a case involving the classification of trainees, and asserts that affidavits may not be dismissed without a specific, cogent reason for finding that they are not credible. In *Matter of Treasure Craft of California*, the Board of Immigration Appeals rejected "the argument that the petitioner may rely solely upon his statement 'on record' that the beneficiaries will not displace United States workers." *Id.* While we are not questioning the credibility of the petitioner's affidavits, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The brief letter from Dr. [REDACTED] does not meet the petitioner's burden of proof. Accordingly, the petitioner has not established that the beneficiary has a surviving parent who is incapable of providing him with proper care, as the term is defined at 8 C.F.R. § 204.3(b).

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. Consequently, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.