U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-G-H-

DATE: DEC. 1, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE RELATIVE

The Petitioner, a citizen of the United States, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (INA, or the Act) § 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director, National Benefits Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

The Petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(ii). Section 101(b)(1)(F) of the Act defines an orphan, in pertinent part, as:

> (i) 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…or
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> (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) or subparagraph (E)(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) 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*.
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> . . . .
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> *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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a 44 year-old naturalized U.S. citizen, submitted Form I-600A, Application for Advance Processing of Orphan Petition, on July 5, 2013, and it was approved on August 12, 2013. She submitted Form I-600, Petition to Classify Orphan as an Immediate Relative, to U.S. Citizenship and Immigration Services (USCIS) on August 1, 2014, and it was denied on January 17, 2015. The Petitioner previously filed Form I-600 for the Beneficiary on February 26, 2014, and it was denied on May 7, 2014. The initial Form I-600 was denied for not establishing that the Beneficiary's father was incapable of providing for the Beneficiary's basic needs consistent with the local standards in Jamaica. The Petitioner seeks to classify the Beneficiary as the child of a surviving parent, the biological father, who is incapable of providing proper care to the Beneficiary in Jamaica.

After considering the evidence in the record, the Director denied the Form I-600, concluding that the Beneficiary did not meet the definition of an orphan under the Act because of her age at the time of filing the petition. The Beneficiary was not under the age of 16 when the Form I-600 was filed. In addition, although the Beneficiary has a qualifying sibling who is concurrently being petitioned for, the Petitioner did not submit the Form I-600 before the Beneficiary reached the age of 18. Therefore, the Director found that Petitioner did not establish that the Beneficiary qualified for classification as an orphan under section 101(b)(1)(F)(i) or section 101(b)(1)(F)(ii) of the Act.

On appeal, the Petitioner asserts that the Beneficiary was years old when the first Form I-600 was filed, and the current Form I-600 should be considered "approvable when filed" under grandfathering principles.

III. ANALYSIS

We conduct 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 Beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F)(i) or section 101(b)(1)(F)(ii) of the Act.

The Petitioner states that the initial Form I-600 was filed on February 26, 2014; and the Beneficiary turned years old on 2014. The Petitioner asserts that the Beneficiary was years old when the first Form I-600 was filed and the current Form I-600 should be considered "approvable when

filed" under grandfathering principles. The Petitioner asserts that USCIS has adopted grandfathering principles; an individual can adjust his or her status based on a previous petition that was "approvable when filed"; and case law reflects that "approvable when filed" means that the petition must have been properly filed, meritorious in fact, and not frivolous. The Petitioner states that the petition was not fraudulent; the requisite familial relationships existed; birth certificates, adoption decrees, a home study, and other documents required by statute were submitted; and sufficient documentation was submitted to substantiate a meritorious in fact petition. The Petitioner further states that the Form I-600A approval implies that USCIS agrees that the Petitioner is able to provide a proper home environment and is a suitable parent. The Petitioner further states that the Form I-600 was properly filed on February 26, 2014, as the Petitioner accurately completed and signed all paperwork and submitted all of the required documents.

The Petitioner provides no legal basis, such as relevant case law, statutes, regulations, or USCIS policy, which permit using the Beneficiary's age on the date of the first Form I-600 as her age at the time of the current Form I-600 filing. The Petitioner cites to *In re Riero*, 24 I&N Dec. 267 (BIA 2007). However, this case addresses the term "approvable when filed" in the context of section 245(i) adjustment of status cases, and specifically refers to 8 C.F.R. § 1245.10(a)(3), which defines this phrase in the context of section 245(i) cases.

The Petitioner asserts that the legislative purpose of section 101(b)(1)(F)(ii) of the Act was to maintain family unity by preventing an adopted child who is under the age of 18 from being separated from a sibling under the age of 16. The Petitioner cites to a Committee on the Judiciary report that emphasizes maintaining family unity between siblings if the older one is 16 or 17 years old. We do not disagree that section 101(b)(1)(F)(ii) of the Act provides for family unity. However, the information from the report provided does not address the issue of an individual being 18 years old when a Form I-600 is filed and if the individual can benefit from a previous Form I-600 filing date.

The Petitioner cites to *Matter of Rumonat Anifowoshe*, 24 I&N Dec. 442 (BIA 2008), which states that the bill "was to maintain family unity by allowing an alien child 16 or 17 to qualify as an immediate relative child if the U.S. citizen adoptive parents have also adopted a sibling of that child who is under the age of 16." The case cited by the Petitioner does not address the issue at hand. Rather, the case deals with section 101(b)(1)(E) of the Act, and the Board of Immigration Appeals found that a child adopted while under the age of 18, and whose natural sibling was subsequently adopted by the same adoptive parent or parents while under the age of 16, would be considered a "child" under that section of the Act, even if the child's adoption preceded that of the younger sibling.

The Petitioner also asserts that section 101(b)(1)(F) of the Act is ambiguous in relation to defining the Beneficiary and the derivative Beneficiary; and the Form I-600 only needs to be submitted before the Beneficiary's sister turns 18 years old, not the Beneficiary. The Petitioner provides no legal basis for this claim, and a plain reading of the statute does not support the claim.

The Petitioner states that not granting the petition would be contrary to public policy. The Petitioner's claim lacks merit based on the aforementioned reasoning.

The record reflects that the Beneficiary was [redacted] years old when the current Form I-600 was filed on August 1, 2014. As such, she does not qualify as an orphan under section 101(b)(1)(F)(i) or section 101(b)(1)(F)(ii) of the Act.

IV. CONCLUSION

The Petitioner has not met her burden of establishing that the Beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F)(i) or section 101(b)(1)(F)(ii) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of W-G-H-*, ID# 13911 (AAO Dec. 1, 2015)