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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **JUN 15 2015**

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center (the Director), denied the Form I-600, 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. 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:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

* * *

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.

* * *

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

Supporting documentation for a petition for an identified orphan. Any document not in the English language must be accompanied by a certified English translation. If an orphan has been identified for adoption and the advanced processing application is pending, the prospective adoptive parents may file the orphan petition at the Service office where the application is pending. The prospective adoptive parents who have an approved advanced processing application must file an orphan petition and all supporting documents within eighteen months of the date of the approval of the advanced processing application... An orphan petition must be accompanied by full documentation as follows:

(1) *Filing an orphan petition after the advanced processing application has been approved.* The following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

* * *

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

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable[.]

Facts and Procedural History

The petitioner is a 46-year-old married U.S. citizen. The petitioner submitted Form I-600A, Application for Advance Processing of an Orphan Petition, to U.S. Citizenship and Immigration Services (USCIS) on June 17, 2014, and it was completed on October 3, 2014. The petitioner also submitted Form I-600 on June 17, 2014, and it was denied on October 17, 2014. 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 Ethiopia.

The Director sent a Request for Evidence (RFE) to the petitioner on July 17, 2014, asking, in part, for evidence that: the beneficiary's parents abandoned her, as that term is defined in 8 C.F.R. § 204.3(b); the beneficiary's surviving parent is unable to provide for the beneficiary's basic needs consistent with local standards in Ethiopia; and, if the child is a relative, the petitioner, her spouse and the beneficiary's father entered into an adoption contract. The record indicates that the beneficiary is the niece of the petitioner's spouse. In response to the RFE, the petitioner provided a letter from the beneficiary's father, in which he states he is terminating his parental rights and irrevocably releasing the beneficiary for adoption; a letter from the petitioner and her spouse addressing issues for the beneficiary in Ethiopia; and an adoption contract between the petitioner, her spouse and the beneficiary's father,

After considering the evidence in the record, the Director denied the Form I-600 on October 17, 2014, concluding that the petitioner did not establish that: the beneficiary had been abandoned by both parents; the beneficiary's biological father is incapable of providing proper care to the beneficiary according to the standards in Ethiopia; the beneficiary's father's rights were terminated; and his sister was granted guardianship of the beneficiary. In addition, the Director found that the adoption contract is invalid if the beneficiary's father is not her legal guardian. 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) of the Act.

On appeal, the petitioner asserts that new evidence establishes that the beneficiary's biological mother is deceased; the beneficiary's father is unable to provide proper care to the beneficiary in Ethiopia; the beneficiary's aunt, who is her legal guardian, has an adoption contract with the petitioner and her spouse; and the beneficiary's aunt-legal guardian requested the [REDACTED] Court to allow the beneficiary to be adopted by the petitioner and her spouse.

Analysis

The AAO conducts 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) of the Act.

On appeal, to establish that the beneficiary's mother is deceased and her father is her surviving parent, the petitioner submits a letter from the administrator of [REDACTED] dated November 24, 2014, who states that the beneficiary's biological mother, died on [REDACTED] her funeral was held at [REDACTED] and she was buried at the church cemetery on April 14, 2001. To establish that the beneficiary's father is a surviving parent, however, the petitioner must submit a death certificate for the beneficiary's birth mother, in accordance with requirements described at 8 C.F.R. § 204.3(d). The record does not include a death certificate for the beneficiary's mother. According to the Form I-600 instructions, if a required document, such as a death certificate, is not available, the petitioner must submit an original written statement from the government agency that should have the record verifying that the record does not exist, or cite to the U.S. Department of States Foreign Affairs Manual section indicating that the

records are generally not available, or otherwise demonstrate the unavailability of both the primary and secondary evidence. The petitioner has not provided such evidence.

Because the petitioner has not established that the beneficiary has a surviving parent, the petitioner must establish that the beneficiary's parents abandoned her, as that term is defined in 8 C.F.R. § 204.3(b). The record includes a statement dated February 5, 2014, in which the beneficiary's father states that it is in the beneficiary's best interest for his parental rights to be terminated and for her to be irrevocably released for adoption. The record includes an adoption contract between the beneficiary's father and the petitioner and spouse, signed in March and May 2014, which proposed "the irrevocable severance of all parental rights" of the birth parents and that the beneficiary shall be the child of the petitioner and spouse. The record includes a December 19, 2014, decision from the [REDACTED] Court, permitting the beneficiary's father's sister, who has raised the beneficiary, to adopt her. The record includes an adoption contract agreement signed on December 14 and 29, 2014, between the beneficiary's aunt and the petitioner and her spouse, which proposes to give the petitioner and her spouse "all legal parental and guardian rights" to the beneficiary. The record includes a letter dated December 14, 2014, from the [REDACTED] Court in which the beneficiary's aunt states that she has custody of the beneficiary and requests from the court that the petitioner and her spouse be appointed the beneficiary's adoptive parents.

The documents submitted do not establish that both parents have willfully forsaken all parental rights, obligations, and claims to the beneficiary, as well as all control over and possession of the beneficiary, without intending to transfer, or without transferring, these rights to any specific person.

Moreover, had the petitioner established that the beneficiary's mother is deceased, the petitioner still must establish that the beneficiary's biological father, her surviving parent, is incapable of providing for the beneficiary's basic needs. In the beneficiary's father's statement dated February 5, 2014, he states that due to his own extreme poverty and his residence in the countryside of [REDACTED] Ethiopia, the beneficiary has been living in [REDACTED] "with various family members" and is under the legal guardianship of the beneficiary's aunt. Although the Director requested specific evidence information about local standards in Ethiopia to compare with the surviving parent's situation, the petitioner did not submit documentary evidence of the conditions where the beneficiary's father resides. In an August 27, 2014 statement, the petitioner and spouse state that the beneficiary's father has never had a job or income to provide for the beneficiary; his mother gave him a rudimentary house with dirt floors and no plumbing or electricity; he has no source of income and relies on donations from family; he has no education and is mentally challenged; Ethiopia is one of the poorest countries in the world, but many families are able to survive with government housing, school and jobs; the beneficiary's father lives below this standard of living; and his village offer no schooling, employment, infrastructure or government subsidies.

The record, in addition, does not include supporting documentary evidence to corroborate claims, raised on appeal, that the beneficiary's father is mentally challenged. The record includes a November 19, 2014 letter from [REDACTED] which states that the beneficiary's father has neither movable property nor fixed assets, and he has no cash deposits in any banks that were investigated. Upon review of the entire record, we find that the

petitioner has not provided sufficient evidence that the beneficiary's father is incapable of providing for the beneficiary's basic needs, consistent with local standards in Ethiopia, as set forth in 8 C.F.R. § 204.3(b).

In addition, although not discussed in the Director's decision, evidence in the record reflects that the petitioner did not complete the adoption or obtain custody of the beneficiary in accordance with the laws of Ethiopia, as required by 8 C.F.R. § 204.3(d)(iv).

The regulation at 8 C.F.R. § 204.3(d)(1) states, in pertinent part:

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

* * *

(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

The record does not include evidence that the requirements to obtain legal guardianship in Ethiopia have been met. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the petitioner has not established that the beneficiary's adoption was in compliance with Ethiopian law, as required by 8 C.F.R. § 204.3(d)(1)(iv), and the appeal must also be dismissed for this reason.

Conclusion

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Act and that the adoption was in compliance with Ethiopian law as required by 8 C.F.R. § 204.3(d)(1)(iv) . The appeal will therefore be dismissed.

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