



U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-B-O-

DATE: OCT. 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)(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:

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:

....

- (ii) The orphan's birth certificate, or if such a certificate is not available, an explanation with other proof of identity and age;
- (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[.]
- (iv) Evidence of adoption abroad...

....

- (3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence.

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

- (e) *Home study requirements.* For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children. If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section. A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. The home study, or the most recent update to the home study, must not be more than six months old at the time the home study is submitted to the Service. Only one copy of the home study must be submitted to the Service.

The regulation at 8 C.F.R. § 204.3(e)(2)(i) states, in pertinent part:

Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(b)(6)

Matter of T-B-O-

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a [REDACTED] year-old naturalized U.S. citizen, submitted Form I-600, Petition to Classify Orphan as an Immediate Relative, to U.S. Citizenship and Immigration Services (USCIS) on March 3, 2014, and it was denied on August 22, 2014. 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 in Nigeria.

The Director sent a Request for Evidence (RFE) to the Petitioner on April 18, 2014, asking, in part, for an original and complete home study with original signature(s), a surrogate court approval if the home study was performed by a private social worker, the Beneficiary's birth certificate, a full and final adoption, and evidence showing that the Beneficiary's surviving parent is unable to provide for the Beneficiary's basic needs consistent with local standards in Nigeria and has irrevocably released the orphan for emigration and adoption.

In response to the RFE, the Petitioner provided a new home study; reports from the New York State [REDACTED] financial documents; a consent to adoption from his adult son; an adoption order from the Chief Magistrate Court, [REDACTED] an adoption approval from the [REDACTED] a probation officer's report to the magistrate of the family court, [REDACTED] approving the adoption; a certificate of birth for [REDACTED] a death certificate for the Beneficiary's father; an identification certificate for the Beneficiary's mother; and a letter of consent from the Beneficiary's aunt.

The Director denied the Form I-600 on August 22, 2014, concluding that the home study lacked an assessment of the Petitioner's additional household member; the Petitioner did not provide the Beneficiary's birth certificate, registered at the time of his birth; the Petitioner did not provide a surrogate court approval as required in New York; the Petitioner's evidence was insufficient to establish that the Beneficiary's biological mother is incapable of providing proper care to the Beneficiary according to the standards in Nigeria; and the Beneficiary's mother has not irrevocably released the orphan for emigration and adoption in writing. 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 provides an order from the Surrogate's Court of the State of New York, an updated home study, an explanation for the lack of a birth certificate for the Beneficiary, and evidence related to the Beneficiary's mother's inability to provide proper care to the Beneficiary in Nigeria.

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) of the Act.

(b)(6)

Matter of T-B-O-

Concerning the surrogate court order issue, the Petitioner provides a court order from the Surrogate's Court of the State of New York, [REDACTED] dated [REDACTED], 2014, in which the Petitioner and his spouse are certified as qualified adoptive parents of the Beneficiary and may accept physical custody of him for the purposes of adoption. As such, the Petitioner has provided a surrogate court approval as required in New York due to a private social worker preparing the home study and has therefore met the preadoption requirements of the state of the proposed residence.

In regard to the home study issues raised by the Director, the Petitioner submits an updated home study, dated October 24, 2014, which provides an assessment of the Petitioner and his spouse's [REDACTED] year-old son. However, the home study does not include an initial assessment of how the physical, mental, and emotional health of the Petitioner's son would affect his ability to properly care for the Beneficiary, as required by 8 C.F.R. § 204.3(e)(2)(i). As such, the Petitioner has not provided an assessment of the Petitioner's additional household member which meets the regulatory requirements.

In regard to the birth certificate issues, the Petitioner states that the Beneficiary's birth was recorded "in the family book" but no birth certificate was registered at the time of his birth as is typical in Nigeria. The Petitioner has provided a Certificate of Birth, registered on [REDACTED] which states that [REDACTED] was born on [REDACTED]. The record is not clear about whether this is an alias of the Beneficiary, and we also note that it is not registered at the time of his birth. In addition, he did not provide other proof of identity and age. The Form I-600 instructions available at <http://www.uscis.gov/sites/default/files/files/form/i-600instr.pdf>, state:

You should submit a copy of the orphan's birth certificate, or if such certificate is not available, an explanation together with other proof of age and identity. Such secondary evidence could include medical records, school records, church records, entry in a family Bible, orphanage intake sheets, or affidavits from individuals with first-hand knowledge of the event(s) to which they are testifying.

The record does not include the Beneficiary's birth certificate registered at the time of his birth or sufficient secondary evidence of his date of birth.

In regard to the inability to provide care and irrevocable release issues, the Petitioner provides an April 25, 2014, letter from the Beneficiary's mother, who states that she has cared for him since her spouse passed away, and she was left with three children to care for, so she wholeheartedly released the Beneficiary to the care of the Petitioner. The record includes a March 22, 2014, letter from the Beneficiary's aunt, who states that the Beneficiary has been under her guardianship since October 20, 2005, and she wholeheartedly releases him to the custody and guardianship of the Petitioner. The Petitioner states that the Beneficiary's mother has been struggling to raise the children and he has been supporting her financially to raise the children for a long time. The record lacks evidence of the expenses involved with caring for the Beneficiary, any income the Beneficiary's mother may have, or of the financial support she receives. The record also does not include documentary evidence of the specific conditions where the Beneficiary's mother resides and of local standards. 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)).

We find that the Petitioner has not provided sufficient evidence that the Beneficiary's mother is incapable of providing for the Beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b). We also find that the record does not include sufficient evidence to establish that she has in writing irrevocably released the child for emigration and adoption. Although the record includes a statement from the Beneficiary's mother in which she "wholeheartedly" releases the Beneficiary to the Petitioner, this statement lacks the requisite specificity mentioned in section 101(b)(1)(F)(i) of the Act, which requires irrevocably releasing the Beneficiary in writing for emigration and adoption.

IV. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of T-B-O-*, ID# 13845 (AAO Oct. 1, 2015)