



U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-W-

DATE: OCT. 5, 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 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:

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:

Supporting documentation for a petition for an identified orphan. . . . 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) 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 [and]

....

(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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a 56 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 October 10, 2014,

(b)(6)

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and it was denied on January 7, 2015. The Petitioner seeks to classify the Beneficiary as a child who has no parents.

The Director sent a Request for Evidence (RFE) to the Petitioner on November 18, 2014, asking, in part, for the social worker's final report, evidence that the Beneficiary was in the Petitioner's custody for at least three consecutive months, and the full and final adoption decree from the High Court in Cameroon. In response to the RFE, the Petitioner provided a Certificate of Non Appeal, Republic of Cameroon, Ministry of Justice, Court of Appeal of the Littoral Registry; a social worker's report on the adoption of the Beneficiary; and information on the adoption process in Cameroon from an Internet site,

[last accessed on September 24, 2015].

The Director denied the Form I-600 on January 7, 2015, concluding that the Petitioner did not provide a full and final adoption decree from the High Court in Cameroon. The Director states that the Petitioner submitted an adoption decree from a lower court, the Court of [REDACTED], and since August 26, 1972, jurisdiction in adoption issues rests with the High Court. Therefore, the Director found that Petitioner did not establish eligibility for the benefit sought and denied the petition.

On appeal, the Petitioner states that the studies and documentation provided earlier to the Lower Court have been accepted by the High Court, and she is travelling to Cameroon in April 2015 "to attend at least one" session with the High Court to resolve the issue. The Petitioner requests an extension of at least six months. The Petitioner, however, has not provided any new documentation or information since her extension request in February 2015, approximately seven months ago. As such, we will adjudicate the appeal based on the record as it currently stands.

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 Petitioner has established eligibility for the benefit sought.

The Petitioner previously submitted an April 11, 2014, judgment from the Court of [REDACTED] Republic of Cameroon, which grants the Petitioner the full right to adopt the Beneficiary. The Petitioner previously stated that decisions of the Court of [REDACTED] are forwarded to the Court of Appeal in [REDACTED] and if no appeal against the judgment is recorded, then the Certificate of Non Appeal makes the approval of the decision final. The record includes a Certificate of Non Appeal related to the Petitioner's adoption, dated [REDACTED] 2014. However, according to the U.S. Department of State, Intercountry Adoption Information on Cameroon, dated February 1, 2009, the adoption authority in Cameroon is the Ministry of Social Affairs and the High Court (*Tribunal de Grande Instance*) having jurisdiction over the place of residence of the child to be adopted, and the High Court will consent to the adoption and issue a final adoption decree. Book I, Title VIII, Chapter 1, Section 2, Article 353 of the Cameroon Civil Code states, "An adoption order may be made at the request of the adopter by the *tribunal de grande instance* which shall verify 'within six months after reference to the court' (. . . whether the statutory requirements are

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fulfilled and adoption is consonant with the welfare of the child” (internal citation omitted). The Petitioner has not submitted an adoption decree from the High Court having jurisdiction over the place of residence of the Beneficiary. Therefore, the requirement in 8 C.F.R. § 204.3(d)(1)(iv) has not been met.

IV. CONCLUSION

The Petitioner has not met her burden of establishing that she adopted the Beneficiary in accordance with 8 C.F.R. § 204.3(d)(1)(iv). The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of D-W-*, ID# 13398 (AAO Oct. 5, 2015)