



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-C-U-

DATE: FEB. 12, 2016

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 (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative, but ultimately revoked the approval after proper notice. 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, which defines an orphan, in pertinent part, as:

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[.]

Relevant provisions of 8 C.F.R. § 204.3(d) state the following:

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:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the

(b)(6)

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unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad...

The regulations at 8 C.F.R. § 204.3(e), which govern orphan petitions, require the submission of a home study that must include, in part:

(9) *Home study updates and amendments*—(i) *Updates*. If the home study is more than six months old at the time it would be submitted to the Service, the prospective adoptive parents must ensure that it is updated by a home study preparer before it is submitted to the Service. Each update must include screening in accordance with paragraphs (e)(2)(iii) (A) and (B) of this section.

(ii) *Amendments*. If there have been any significant changes, such as a change in the residence of the prospective adoptive parents, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family, the prospective adoptive parents must ensure that the home study is amended by a home study preparer to reflect any such changes....

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a 60-year-old U.S. citizen who initially adopted the Beneficiary, a native of Nigeria, on July 24, 2012. The Petitioner filed Form I-600A, Application for Advance Processing of Orphan Petition, on March 8, 2011. She listed that she was divorced on the Form I-600A. The Petitioner's home study, dated September 19, 2011, reflects that she is not married. The Form I-600A was approved on December 1, 2011. The Petitioner filed Form I-600 on May 29, 2013, seeking to classify the Beneficiary as an orphan. She listed that she was divorced on the Form I-600. The record reflects that the Petitioner was married at the time she filed Forms I-600A and Form I-600, and she was divorced on [REDACTED] 2013. On October 10, 2014, the Petitioner again adopted the Beneficiary and the adoption order listed her ex-spouse as one of the adoption applicants. On October 22, 2013, the Form I-600 was approved. On December 1, 2014, after adverse information concerning the Petitioner's disclosure of her marital status came to the attention of the U.S. Consulate, [REDACTED] Nigeria, the Form I-600 was returned to the National Benefits Center for revocation. Specifically, there was information that the Petitioner was previously married in a traditional Nigerian marriage to the man listed on the birth certificates and adoption decree of July 24, 2012, of the Beneficiary, but did not disclose this marriage during her home study. According to the U.S. Consulate, in Nigeria an unmarried person is not allowed to adopt a child of the opposite sex.

On April 15, 2015, a Notice of Intent to Revoke (NOIR) was sent to the Petitioner requesting that she submit additional documentation showing that the Nigerian court that issued the adoption decree was aware of her single marital status and that the adoption decree was still valid. In addition, it was requested that the Petitioner submit an amended or new home study that fully disclosed her marital history. The Petitioner submitted a response to the NOIR, but this response was not found to overcome the deficiencies in the record

On July 1, 2015, the Director revoked approval of the Form I-600 on the basis that the Petitioner did not provide an updated home study that fully disclosed the Petitioner's marital status in accordance with 8 C.F.R. § 204.3(e)(9)(ii). In addition, given the Petitioner's single marital status and the laws in Nigeria, the Petitioner did not submit documentation to show that the court in Nigeria was aware of her single status at the time of adoption and that the adoption decree from Nigeria was valid. The Form I-600A was revoked on the same date for not having a home study that fully disclosed her marital history and continued to recommend her for adoption.

On appeal, the Petitioner states that the Director's revocation states that she did not submit proof that she contracted with another home study provider to obtain a new home study. The Petitioner asserts that in a May 14, 2015, letter she stated that a new home study would take at least three months to complete and that implied in this statement was that she had contacted other home study agencies and she found information from a new home study agency. She also states that she previously tried to obtain an extension from United States Citizenship and Immigration Services (USCIS) in order to obtain a home study update but she was refused. She claims that the basis of her appeal is that she tried to work with a new home study provider but because she was not granted an extension, she did not provide evidence of her effort to obtain a new home study, rather she mentioned that it would take three months to complete a new home study. With her appeal, the Petitioner submits an email from a new home study provider stating that they would be willing to provide a new home study and the costs associated with the service.

We acknowledge that the Petitioner has two other related Form I-600s that were similarly revoked at the time this petition was revoked. The appeal filed by the Petitioner indicates that she would like to appeal all three petitions, but she only submitted a filing fee for one appeal. As such, only this Form I-600 will be reviewed.

The record includes, but is not limited to: two letters from the Petitioner, an email from a prospective home study provider, a home study for the Petitioner, a copy of the Beneficiary's birth certificate, adoption orders from Nigeria, a copy of the Beneficiary's passport, financial documentation, a record of the Beneficiary's birth from the hospital where he was born, and a divorce decree with custody judgment.

III. ANALYSIS

The Petitioner's current home study does not reflect an accurate marital history for the Petitioner and, thus, does not contain all the essential elements required for a home study as outlined at 8 C.F.R. § 204.3(e). We note that in her letter from May 14, 2015, approximately nine months ago, the Petitioner states that a new home study would take at least three months to complete. She has not submitted an updated home study on appeal. As mentioned, the home study lists the Petitioner as not married, but she was married at the time the home study interviews were taken and when it was prepared. The Petitioner's home study must be amended or a new home study should be submitted showing accurate information regarding the Petitioner's marital history. Accordingly, the initial home study is deficient and does not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(ii) and (iii).

Furthermore, the record indicates that the adoption decree may no longer be valid in Nigeria. The record reflects that the Petitioner was divorced when she received her October 10, 2014 adoption order, however that order lists her ex-spouse as an adoption applicant. The Petitioner did not submit documentation to show that the court in Nigeria was aware of her single status at the time of adoption and that the adoption decree from Nigeria is valid. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

IV. CONCLUSION

The Petitioner has failed to establish that the Form I-600 merits approval because the record lacks the home study described at 8 C.F.R. § 204.3(e), and due to the issues related to the adoption order.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-U-*, ID# 15409 (AAO Feb. 12, 2016)