



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

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

MATTER OF E-J-J-

DATE: JAN. 3, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a U.S. citizen, 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). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.<sup>1</sup>

The Director of the National Benefits Center denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), concluding that the Petitioner did not submit a home study that is in compliance with the regulations and provide evidence that she engaged an accredited or approved adoption service provider (ASP) as a primary provider, or otherwise show that she is exempt from those requirements. We summarily dismissed a subsequent appeal because the record at the time did not include a brief or additional evidence in support of her appeal.

On motion to reopen and motion to reconsider, the Petitioner provides evidence that she timely submitted additional evidence with her appeal. As it relates to the Director's underlying decision, she also provides an updated home study, as well as two letters from an accredited ASP stating that the agency has approved the amended home study.<sup>2</sup>

Upon review, the decision of the Director will be withdrawn, and the matter will be remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

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<sup>1</sup> An orphan who is under the age of 18 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may also be classified as an immediate relative, if the child's sibling who is under 16 years of age has been adopted, or is coming to the United States for adoption, by the U.S. citizen.

<sup>2</sup> We issued a Notice of Intent to Deny (NOID) the motion because the additional evidence did not demonstrate that the Petitioner engaged the ASP to act as a primary provider in her adoption case and the Petitioner timely responded with additional evidence.

## I. LAW

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

An orphan is defined as a child, under the age of sixteen at the time a petition is filed on his or her 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; provided, that the Secretary of Homeland Security is satisfied that proper care will be furnished if the child is admitted to the United States. Section 101(b)(1)(F)(i) of the Act. The sibling of such a child who is under the age of 18 is also eligible for classification as an immediate relative provided that he or she meets the orphan definition. Section 101(b)(1)(F)(ii) of the Act.

A prospective adoptive parent may file an orphan petition concurrently with an application for advance processing on a Form I-600 for U.S. Citizenship and Immigration Services (USCIS) to determine the individual's suitability as an adoptive parent and the child's status as an orphan. The Form I-600 must be completed and signed in accordance with the form instructions, and be accompanied by the supporting documentation identified in the regulations. 8 C.F.R. § 204.3(c), (d)(3).

The Intercountry Adoption Universal Accreditation Act of 2012 (UAA)<sup>3</sup> became effective on July 14, 2014, and requires, in part, that in every "orphan" intercountry adoption case, an accredited or approved ASP act as a primary provider, that the prospective adoptive parent submit a home study that complies with the requirements at 8 C.F.R. § 204.311, and that the home study is prepared by a person authorized under 22 C.F.R. § 96 to conduct home studies.<sup>4</sup>

## II. ANALYSIS

The current proceeding before us is a joint motion to reopen and reconsider. We will first consider whether the filing meets the requirements for a motion to reconsider. A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider. A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or

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<sup>3</sup> Pub.L. 112-276 (2012).

<sup>4</sup> See USCIS Interim Policy Memorandum PM-602-0103, *Guidance on the Implementation of the Intercountry Adoption Universal Accreditation Act of 2012 and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications* June 30, 2014, <http://www.uscis.gov/laws/policy-memoranda>.

regulatory provision, or statement of USCIS or Department of Homeland Security policy. The Petitioner does not argue that we applied an incorrect application of law or policy. Rather, the Petitioner focuses on the new evidence accompanying the motions which demonstrates that she did submit additional evidence to support her appeal. Thus, although the motion to reconsider is denied, the Petitioner has met the requirements for a motion to reopen and the evidence submitted in support of her appeal will be further considered here.

#### A. Compliance with the Home Study Requirements

A home study is a process for screening and preparing a prospective adoptive parent. 8 C.F.R. § 204.311(a). The information contained in a home study includes details on the physical, mental, and emotional health of the prospective adoptive parents, their criminal history and finances, the living accommodations for the child, and the placement preparation and training for the prospective adoptive parents. 8 C.F.R. § 204.311. Along with the orphan petition, the Petitioner submitted an initial home study dated June 2015 from the U.S. Virgin Islands Department of Human Services, Division of Children & Family Services Administrator, [REDACTED]. She submitted an amended home study dated June 2016 from [REDACTED] in response to the Director's request for evidence. On motion, the Petitioner submits a second updated home study dated August 2016 from [REDACTED]. In this amended home study, [REDACTED] determined that the Petitioner and her spouse are suitable candidates to adopt based upon their interviews, home evaluation, reference letters, and criminal background investigation.<sup>5</sup> This home study provides that the U.S. Virgin Islands Department of Human Services is the sole governing agency that facilitates and approves home studies for adoption under the law of the territory.

The Director did not indicate that any information was missing from the initial and amended home studies. Rather, the Director determined that the Petitioner did not submit evidence that the home study preparer is authorized under 22 C.F.R. § 96 to complete home studies for intercountry adoption cases. The regulations on the preparation of home studies provide that a home study must be performed in accordance with 8 C.F.R. § 204.311, and any applicable State law. 22 C.F.R. § 96.47(b). Pursuant to 8 C.F.R. § 204.311(t)(2), when the home study is not performed in the first instance by an accredited agency or temporarily accredited agency, then an accredited agency or temporarily accredited agency must review and approve the home study before the home study is submitted to USCIS. However, the requirement for review and approval by an accredited agency or temporarily accredited agency does not apply to a home study that was actually prepared by a public domestic authority. 8 C.F.R. § 204.311(t)(2). A public domestic authority means an authority operated by a State (including the U.S. Virgin Islands), local, or tribal government within the United States. 22 C.F.R. § 96.2. In this case, the home study was performed by the U.S. Virgin Islands Department of Human Services, and therefore it was conducted by a public domestic authority

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<sup>5</sup> This updated home study also states that it was reviewed by [REDACTED], a licensed social worker with U.S. Virgin Islands Department of Human Services, Division of Family and Children Services.

authorized under 22 C.F.R. § 96 to complete home studies for intercountry adoption cases.<sup>6</sup> Accordingly, the Petitioner has overcome this basis for denial.

#### B. Engaging an Accredited or Approved Primary Adoption Service Provider

The remaining issue before us is whether the Petitioner provided evidence that she has engaged an accredited or approved ASP to act as a primary provider in her adoption case. The U.S. Department of State regulations on accreditation provide that in each intercountry adoption case, an accredited agency or an approved person will be identified and act as the primary provider. 22 C.F.R. § 96.14(a). *Primary provider* means the accredited agency or approved person responsible for ensuring that all six adoption services<sup>7</sup> are provided and for supervising and being responsible for supervised providers where used. 22 C.F.R. § 96.2.

When acting as the primary provider, the agency or person develops and implements a service plan for providing all adoption services and provides all such services, either directly or through arrangements with supervised providers, exempted providers, public domestic authorities, competent authorities, Central Authorities, public foreign authorities, or, other foreign providers (agencies, persons, or other non-governmental entities). 22 C.F.R. § 96.44. Documentation showing that a prospective adoptive parent engaged an accredited or approved ASP to act as a primary provider may include: 1) a letter from the primary ASP stating that it is acting as the primary provider in the case; 2) evidence demonstrating that the accredited or approved ASP is involved in the provision of an adoption service; 3) a copy of the service plan detailing the six adoption services; or 4) a copy of a contract between the petitioner and the primary ASP demonstrating that the accredited agency or approved person is acting as the primary provider in the case.

The Petitioner indicated on the Form I-600 that the U.S. Virgin Islands Department of Human Services is the primary ASP in her case. However, this agency is a public domestic authority, and therefore, by definition, cannot be considered an accredited or approved primary provider. See 22 C.F.R. § 96.2 (stating that an accredited agency is a private, nonprofit organization and an approved person does not include public domestic authorities). On motion, the Petitioner submits two letters from an accredited ASP, [REDACTED] but the letters do not indicate that the agency is acting as a primary provider in the adoption case or, alternatively, that the agency is otherwise involved in the provision of an adoption service. In response to the NOID, the Petitioner

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<sup>6</sup> The initial home study states that the home study preparer is authorized under 22 C.F.R. § 96.37(f) to complete home studies for Hague Convention adoption cases and in the U.S. Virgin Islands under the Virgin Islands Adoption Code.

<sup>7</sup> An adoption service includes: identifying a child for adoption and arranging an adoption; securing consent to termination of parental rights and to adoption; performing a background study on a child or a home study on a prospective adoptive parent; making non-judicial determinations of the best-interests of a child; monitoring a case after a child has been placed; and assuming custody and providing a social service pending alternative placement for the child. 22 C.F.R. § 96.2.

<sup>8</sup> [REDACTED] is listed as Hague Accredited on the Council on Accreditation's website at [http://\[REDACTED\]](http://[REDACTED]) and the record contains a copy of [REDACTED]

[REDACTED] Florida license.

submits—among other documentation—copies of [REDACTED] service plan, detailing the six adoption services being provided in her adoption case, as well as her contract with [REDACTED] showing that she engaged the agency to provide adoption services in her case. The Petitioner has therefore demonstrated that she has engaged an accredited ASP to act as a primary provider in her adoption case. Accordingly, the Petitioner has also overcome this basis for denial of her orphan petition.

### III. CONCLUSION

In sum, the Director denied the orphan petition because the Petitioner did not comply with the home study and primary provider requirements of the UAA. However, the initial and amended home studies the Petitioner submitted were conducted by a public domestic authority, which is authorized under the regulations to complete home studies for intercountry adoption cases. In addition, the Petitioner has demonstrated that she engaged an accredited adoption service provider to act as a primary provider in her adoption case. As the Petitioner has satisfied the requirements of the UAA, we will remand the matter for the Director to determine whether the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act.

**ORDER:** The motion to reopen is granted, and the matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of E-J-J-*, ID# 610271 (AAO Jan. 3, 2018)