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U.S. Citizenship
and Immigration
Services

F₂

FILE:

OFFICE: LOUISVILLE, KY

DATE: DEC 05 2008

IN RE:

PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. 204.3(c)

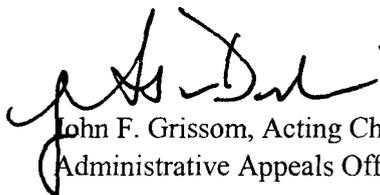
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Louisville, Kentucky denied the Form I-600A, Application for Advance Processing of Orphan Petition (Form I-600A). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the Form I-600A will be approved.

The applicant filed the Form I-600A on March 26, 2008. The applicant is a 31-year-old married citizen of the United States, who together with her spouse, seeks to adopt an orphaned child from Ethiopia.

The field office director determined that the applicant had failed to establish that she and her husband were able to provide proper financial care to the beneficiary, as required by section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The Form I-600A was denied accordingly.

On appeal the applicant asserts that she and her husband are self-employed farmers, and that the annual income contained in their federal income tax returns does not reflect their total equity and assets. The applicant indicates that she and her husband have established that they would be able to provide proper financial care to an orphaned child if their total equity and assets are taken into account. She indicates that an affidavit of support from her parents establishes further that she and her husband would be able to provide proper financial care to an orphaned child.

Section 101(b)(1)(F)(i) of the Act, defines the term “orphan” in pertinent part as:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), 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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided, That the Attorney General [now Secretary, Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States. . . .* (emphasis added).

The regulation at 8 C.F.R § 204.3(a)(1) provides that a child is eligible for classification as the immediate relative of a U.S. citizen if the child meets the definition of orphan contained in section 101(b)(1)(F) of the Act and if the U.S. citizen seeking the child's immigration can document that the citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for the child. In this regard, the regulations set forth the requirements of a home study, a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The regulation at 8 C.F.R. § 204.3(e)(2)(ii) requires that the home study include an assessment of the finances of the prospective adoptive parents:

The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be

included. Any income designated for the support of . . . another member of the household must not be counted towards the financial resources available for the support of a prospective orphan.

The regulation at 8 C.F.R. § 204.3(h)(2) addresses the “Director's responsibility to make an independent decision in an advanced processing application”:

No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan. If the director has reason to believe that a favorable home study, or update, or both are based on an inadequate or erroneous evaluation of all the facts, he or she shall attempt to resolve the issue with the home study preparer, the agency making the recommendation pursuant to paragraph (e)(8) of this section, if any, and the prospective adoptive parents.

The present record contains an April 26, 2008, Adoptive Parent Home Study, prepared by [REDACTED], of Adoption Assistance, Inc. [REDACTED] states in the “Identifying Data” section of the home study report, that the applicant and her husband (the applicants) have two biological children (born, July 25, 2000, and March 13, 2003.) [REDACTED] states in the “Financial Status” section that the applicants’ “net income for 2007, according to their accountant, is \$31,472 (after profits and losses from their businesses).” [REDACTED] provides further that the applicants’ 2007 gross income from their trucking business was \$92,394, and that the gross income from their Grow Crops and Cattle/Tobacco Business was \$250,113. She indicates that the applicants own a home valued at \$105,000, on which they owe \$86, 628, and pay \$450 a month. Ms. [REDACTED] states further that the applicants have assets totaling \$318,818 and debts totaling \$141, 497, for a total net worth of \$177, 231. [REDACTED] states that the applicants’ monthly net income of \$4176 is greater than their monthly expenditures of \$2699, and she states that, “[t]he source of revenue for their adoption will be obtained via regular cash flow, fund raisers, savings, and the federal income tax credit.”

Financial evidence submitted with the applicants’ Form I-600A includes: a First Community Bank letter stating that the applicants are customers in good standing; a letter from the applicants’ accountant (CPA) stating that the applicants had a combined truck and farm business net income of \$34,909 in 2006, and a combined business net income of \$31,472 in 2007; the applicants’ Form 1040, individual federal income tax returns for the years 2005, 2006, and 2007. The applicants’ 2005, individual federal income tax return reflects a total income of \$10, 914. Their 2006, individual federal income tax return reflects a total income of \$31,146, and the 2007, individual federal income tax return reflects a total income of \$10,919.

In a Request for Evidence, dated June 12, 2008, the field office director notes that the home study preparer’s claim regarding the applicants’ annual income in 2007, is contradicted by the total income amount contained on the applicants’ 2007, individual federal income tax return. The field office director indicates further that the gross annual income amount referred to by the home study preparer reflects the applicants’ business income rather than their personal income, and the field office director asks the applicants to provide evidence establishing that they have sufficient personal income to support a family of four.

The applicants responded to the field office director’s request for evidence by submitting a June 19, 2008 letter from their bank stating in pertinent part that, “[w]hile their tax returns, don’t show a large net income, when you add back in their non cash expenditures of depreciation and interest you will find that they have more than adequate cash flow to meet all debt obligations and provide adequately for their family.” The

applicants also submitted June and April 2008 letters from their CPA, stating in pertinent part that the applicants' businesses provide them with a reliable income, and that they are self-employed and filed their 2007 tax return on a "cash basis," meaning that income was counted only when received, and expenses were deducted when they were actually paid. The CPA states that the applicants' farm product inventory at the end of 2007 was counted as income in 2008, when it was sold, and that a \$10,000 depreciation expense was deducted on their 2007 tax return.

On appeal, the applicant submits additional business-related, asset, income-depreciation, and net-worth evidence to support the assertion that she and her husband have sufficient income and assets to provide proper financial care to an adopted child. The applicant also submits an affidavit of support signed by her mother, and evidence relating to her parents' income.

It is noted that the Act and the regulations require Form I-600A applicants to establish that they can provide proper care for an adopted orphan. In order to establish that they can provide proper care, the applicants must, in part, establish that they have sufficient financial resources to provide for an orphan child. The use of a joint sponsor does not relieve the applicants of their financial responsibility. The Affidavit of Support signed by the applicant's mother thus does not constitute evidence of the applicants' ability to provide proper financial care to the beneficiary.

The AAO finds, however, that the applicant's business-based gross income and the value of business-based assets serve as evidence of the applicant's personal financial resources. The AAO does not consider the applicant's personal income, as reflected on her Form 1040, individual federal tax return, to be the sole basis for measuring her financial resources. As noted above, such a determination is based on an assessment of "income, financial resources, debts, and expenses of the prospective adoptive parents." 8 C.F.R. § 204.3(e)(2)(ii), *supra*. In the present case, therefore, consideration must be given to the other assets enumerated by the applicant and confirmed by her CPA. While the applicant's Form 1040, federal income tax return, reflects that her individual personal income in 2007 was \$10,919, this is a partial reflection of her and her husband's financial resources and not determinative of their ability to provide proper financial care to an adopted child. Taking into account the assets of the applicant and her husband, as well as additional income from crops harvested in 2007, though counted as income in 2008, provides a more accurate basis for measuring the applicant's financial resources. The evidence shows more than adequate resources to care for an adopted child.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds, upon review of the evidence, that the applicant has overcome the field office director's finding that she and her husband failed to establish they would be able to provide proper financial care to an adopted orphan. The appeal will therefore be sustained, and the Form I-600A will be approved.

ORDER: The appeal is sustained. The application is approved.