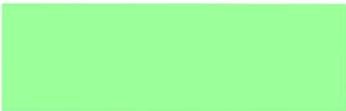


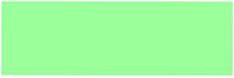
(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

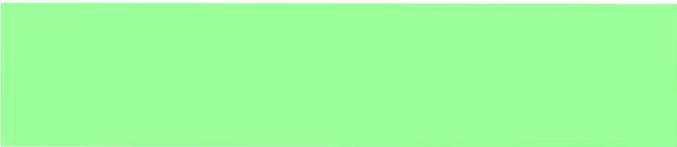


DATE: **JUN 10 2013** OFFICE: NATIONAL BENEFIT CENTER FILE: 

IN RE: Applicant: UNIDENTIFIED

APPLICATION: Application for Advance Processing of Orphan Petition (Form I-600A) Pursuant to 8 C.F.R. § 204.3

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) denied the Application for Advance Processing of Orphan Petition (Form I-600A) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

Applicable Law

The petitioner seeks to classify four orphaned children from Haiti as immediate relatives 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 . . . 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[.]

In the case of an unidentified orphan, the regulation at 8 C.F.R. § 204.3(c) provides for the submission of a Form I-600A in order to secure the necessary clearance to file an orphan petition (Form I-600) once a child to adopt has been identified. The purpose of the Form I-600A is to ensure that the U.S. citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for a foreign orphan. 8 C.F.R. § 204.3(a)(1)(i).

Pursuant to 8 C.F.R. § 204.3(c), the following supporting documentation is required along with a Form I-600A:

(2) *Home study*. The home study must comply with the requirements contained in paragraph (e) of this section. If the home study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application

The requirements for the home study mentioned at 8 C.F.R. § 204.3(c)(2) are found at 8 C.F.R. § 204.3(e) and state, in pertinent part:

(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan*. The home study must include a discussion of the following areas:

* * *

(ii) *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 one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or 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 Service will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

The regulation provides at 8 C.F.R. § 204.3(h)(2):

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. . . .

Factual and Procedural History

The applicant is a 67-year-old married citizen of the United States who, together with his spouse, seeks to adopt four unidentified children from Haiti. On March 14, 2012 the applicant filed a Form I-600A to gain advance approval to secure the necessary clearance to file an orphan petition. When filing the Form I-600A, the applicant submitted a Home Study, dated January 26, 2012, from [REDACTED] New Mexico [REDACTED]. The [REDACTED] home study preparer noted that the applicant and his wife currently have eight adopted children under the age of 18, for whom they are financially responsible. In determining that the applicant and his wife would be able to financially support four additional children the social worker stated that the family budgets its money, is able to pay their monthly bills, spends their money wisely, and has a reliable and sufficient income to meet the family's needs. The home study preparer stated that the family's financial status was verified through updated tax forms, employment verifications and a financial statement. No additional information was provided regarding the applicant's financial situation.

On April 25, 2012, the director issued a Request for Evidence (RFE), asking in part, for a new home study clarifying the "income, financial resources, debts, and expenses of the prospective adoptive parents", and for specific information about the family's sources and amounts of income and financial resources. The applicant submitted a second Home Study from [REDACTED] dated May 24, 2012, in which the home study preparer reiterates her finding that the applicant and his wife are financially stable and able to support four additional children. In making her determination, the home study preparer adds, in pertinent part, that she reviewed the applicant's 2011 U.S. Individual Tax Return, monthly oil royalties information, and official documents from the applicant and his

wife reflecting that their current monthly income is \$7870.52; the applicant's annual income is about \$20,4867.66; and the applicant's wife's annual income is about \$73,958.60; and that their expenditures, including mortgage, utilities, food, and childcare costs are about \$2872.00 a month.

In a decision dated August 4, 2012, the director noted that the applicant and his wife filed for an extension to file their 2011 Federal Tax Return, and that no 2011 tax return information was contained in the record. The director found, upon review of the evidence in the record, that the applicant failed to meet his burden of establishing that he and his wife are able to provide proper care for a foreign born orphan, as set forth in 8 CFR § 204.3(e). Accordingly, the Form I-600A could not be approved.

On appeal the applicant asserts, through counsel, that the home study preparer mistakenly referred to unfiled 2011 tax return information in her report. Counsel asserts that the evidence relating to the applicant and his wife's savings and earning capacity should be taken into account, in addition to income information contained on previous tax returns. Specifically, counsel asserts that the applicant and his wife are business and rental property owners, that they received oil royalties in 2012, and that they can supplement their business income if needed. Counsel asserts further that, for financial ability purposes the applicant's household size should consist only of the four prospective adoptive children, the applicant and his wife (six persons rather than 14), because their eight other adopted children receive \$4859.60 in monthly subsidies from the State of New Mexico, and should therefore not be considered as financial burdens on the household.

In support of the assertions, counsel submits affidavits from the applicant and his wife stating in pertinent part, that they own a laundry facility and flower/gift shop; as business owners they can earn more money as needed; they receive monthly rental and oil royalty income, as well as monthly Social Security benefits; and they have always been able to provide for their family without public benefits. The record also contains income tax return information; bank account balance, oil royalty and rental income information; and Social Security benefits and adoption subsidy evidence.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the AAO finds that the evidence in the record does not demonstrate that the applicant has sufficient financial resources to provide proper care to a foreign born orphan.

The Petitioner's Financial Resources

The home study preparer indicates in the May 24, 2012 home study report that, in addition to reviewing monthly oil royalties information and official documents from the applicant and his wife, she verified the family's annual and monthly income by reviewing the applicant's 2011 U.S. Individual Tax Return. Upon review she determined that their current monthly income is \$7870.52; the applicant's annual income is about \$20,4867.66; and the applicant's wife's annual income is about \$73,958.60. The home study preparer's conclusions are not supported by the evidence. The record does not contain the applicant's 2011 income tax returns. Moreover, the claim that the home study

preparer reviewed the 2011 tax returns is contradicted by evidence that the applicant and his wife have requested an extension to file their 2011 income tax returns.

Monthly expenditure figures provided by the home study preparer are also uncorroborated by the evidence in the record. Financial evidence contained in the record includes the applicant and his wife's 2008, 2009, and 2010 income tax returns. Their total income in 2008 was \$22,830.00, with rental, royalties, and business income in the amount of \$8806.00. The total income in 2009 was \$18,160.00, with rental, royalties and business income in the amount of \$37.00. Their total income in 2010 was \$1935.00, with a negative rental, royalties and business income balance in the amount of \$-1641.00.¹

Oil royalty information reflects that the applicant received approximately \$19,000.00 in oil royalty payments in 2012. In addition, a May 2012 letter from the applicant's daughter, [REDACTED] states that she pays \$227.00 a month in rent to the applicant. [REDACTED] states in an August 2012 letter that she pays \$600.00 a month to rent a property from the applicant and his wife. The record also contains a copy of a \$225.00 check made out to the applicant's wife which the applicant claims is rental income.

The applicant failed to establish that rental property, oil royalty and business related income is a regular source of income available to support four additional children. The submitted federal income tax information contains varying amounts for rental, royalties, and business income, showing the applicant and his wife earned a total of \$8806.00 in rental, royalties and business income in 2008, \$37.00 in 2009, and \$-1641.00 in 2010. The record contains no evidence of property title ownership or rental agreement evidence to corroborate claims that the applicant and his wife receive regular rental income for three rental properties. The record also lacks corroborative evidence to demonstrate that the applicant and his wife own or generate a regular income from businesses. 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)).

In addition, the oil royalty evidence contained in the record relates only to royalties received in 2012. The record contains no evidence that the applicant received royalties prior to 2012, and fails to demonstrate that he will receive oil royalty income on a regular basis after 2012.

The record additionally contains 2012 bank statements for the applicant and his wife, and two letters from their bank stating that their account balance in March 2012 was \$117,704.00, and that their account balance in August 2012 was \$51,912.27 (checking) and \$10,586.94 (savings). The bank evidence fails, however, to establish the source of the applicant's income or their expenditures. In addition, life insurance information reflects that the applicant and his wife's policies were assigned to their bank as collateral for a loan in May 2008.

¹ The 2010 income tax return reflects that the applicant and his wife were owed a tax refund in the amount of \$111,910. Further review of the return reflects, however, that this amount was derived from adoption credits for their other children.

Social Security benefits evidence reflects that the applicant receives \$681.00 a month in Social Security benefits, and his wife receives \$64.00 a month. Based on the evidence in the record, the applicant has therefore established that the total regular source of income available to the applicant and his wife consists of their Social Security income, which amounts to \$8940.00 a year.

The record contains additional financial evidence pertaining to Social Security benefits and adoption subsidy payments that the applicant's eight adopted children receive monthly; however, the regulation provides at 8 C.F.R. § 204.3(e)(2)(ii) that:

[A]ny income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or 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 monthly Social Security and adoption subsidies received for the applicant's other children may therefore not be counted towards the financial resources available to support four additional children.

The applicant's household presently has nine family members.² The Form I-600A application proposes four additional family members to the applicants' household, for a total of 13 family members. Federal Poverty Guidelines for 2012 reflect that the annual poverty level for a family of 13 persons is \$58,690. See U.S. Department of Health & Human Service website at: <http://aspe.hhs.gov/poverty>. The regulation provides further at 8 CFR § 213A(a)(1) that the sponsoring applicant's income must be at least 125% of the Federal Poverty line. Here, the annual 125% poverty level for a family of 13 persons is \$73,362.50. The applicant's annual income of \$8940.00 is significantly lower than the Federal Poverty Guideline amount for the family's size.³

Section 101(b)(1)(F)(i) of the Act and the regulations at 8 C.F.R. § 204.3 require prospective adoptive parents to establish that they can provide proper care for an orphan. Proper care includes, but is not limited to, having sufficient financial resources to provide for an orphan child. See 8 C.F.R. § 204.3(e)(2)(ii). When viewed in its totality, the evidence fails to establish that the petitioner has the financial resources to properly care for four additional children.

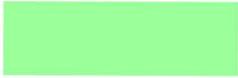
Conclusion

The record lacks sufficient supporting documentation to establish that the petitioner has the financial resources to provide proper care to an orphan. Accordingly, the requirements set forth in section 101(b)(1)(F)(i) of the Act have not been met. The burden of proving eligibility for the

² According to the home study preparer, a 15-year-old adopted daughter presently lives outside of the applicant's home with her boyfriend.

³ It is noted that even if regular oil royalty income in the amount of \$19,000.00 a year had been established, the applicant's annual income would still be significantly less than the Federal Poverty Guidelines income for a family of 13.

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benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.