

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

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: SEP 24 2014 OFFICE: NATIONAL BENEFITS CENTER

FILE

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
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 sustained. The director's decision shall be withdrawn and the matter returned to the director for further processing of the application.

*Applicable Law*

The petitioner seeks classification of an orphan as an immediate relative 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 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. . . . *Provided*, That the [Secretary] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation provides, in pertinent part, at 8 C.F.R. § 204.3(a) that:

- (1) [A] child who meets the definition of orphan contained in section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a U.S. citizen if:
  - (i) 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 an alien or orphan[.]

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

- (2) *Home study*. The home study must comply with the requirements contained in paragraph (e) of this section[.]

The regulation at 8 C.F.R. § 204.3(e)(2) states, in pertinent part, that the home study must include a discussion of the following:

- (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 also provides at 8 C.F.R. § 204.3(e)(2)(iii)(B) that a “certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action” must accompany the home study.

The regulation at 8 C.F.R. § 204.3(h)(2) provides, in pertinent part, that it is 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[.]

#### *Facts and Procedural History*

The applicant is a 66-year-old married citizen of the United States who, together with her spouse, seeks to classify a five-year-old child from Haiti as an orphan pursuant to section 101(b)(1)(F)(i) of the Act. The applicant filed the Form I-600A on November 18, 2013; however, the director found the home study report dated, January 17, 2014, to be deficient, and on February 3, 2014 the director sent a Request for Evidence (RFE). Specifically, the director asked the applicant to submit a home study discussing previous arrests for the applicant’s spouse, and including an assessment of finances with a statement of the evidence considered to verify the applicant’s income and financial resources. The director determined in a decision dated March 22, 2014, that the applicant failed to submit original certified court dispositions for her husband’s arrest, and that she failed to submit an original home study that included an assessment of the applicant’s finances. The application was denied accordingly for failure to establish eligibility for the benefit sought. On appeal the applicant submits original certified court dispositions for her husband’s arrest; an original home study update, dated March 12, 2014; and financial information.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on appeal.

#### *Analysis*

##### *Court Dispositions*

Certified court dispositions for the applicant's husband are now contained in the record. The applicant has therefore satisfied the requirement that she provide certified court dispositions for her husband's arrest.<sup>1</sup>

*The Petitioner's Financial Resources*

The home study preparer states in the applicant's home study report update, dated March 12, 2014, that the applicant and her husband's monthly income is \$9000.00; their monthly expenses are \$4765.00; they receive no assistance or foster care payments and "have a savings account and other assets, mostly in the value of their personal property"; and based on their "current financial stability and assets, it is feasible to think that they will remain financially secure." The home study preparer states further that a statement from [REDACTED] provides evidence verifying the source amount of income and financial resources of the applicant and her husband, and reflects that they "have averaged in excess of \$4 million market value for the past year." A financial worksheet reflects the monthly income and expenses discussed in the home study preparer's report, and indicates further that the applicant and her spouse have assets in the value of \$4,408,000, including \$4 million in stocks, bonds, etc.; a home valued at \$376,000; a vehicle valued at \$20,000; a savings account with \$200; and a checking account with \$9000. In addition, the record now contains a letter from the wealth management firm, [REDACTED] dated February 10, 2014, stating that the firm manages two investment trusts for the applicant and her husband; they have been clients in good standing for over 30 years; the trust assets "have averaged in excess of \$4 million market value of marketable securities for the past year"; the "combined annual income distribution from the trusts is anticipated to continue at a minimum rate of \$78,000"; and the applicant's husband has unrestricted access to the principal and income in his trust, and the applicant is entitled to 50 percent of the income in her trust.

Upon review, the home study preparer's conclusions with regard to the petitioner's ability to provide proper financial support to an adopted child are supported by the evidence. The requirements set forth in 8 C.F.R. § 204.3(e) have therefore been met.

*Conclusion*

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 been met. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained. The director's decision shall be withdrawn and the matter returned to the director for further processing of the application.

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<sup>1</sup> The court dispositions reflect that on July 23, 2012, the applicant's husband was found guilty of driving on the wrong side of the road. The record contains a written explanation from the applicant's husband about the incident, and the home study preparer discusses the charges in the home study report.