U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16512384

Date: MAR. 4, 2022

Appeal of National Benefits Center Decision

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 under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). 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 establish eligibility for the benefit sought. On appeal, the Petitioner submits previously submitted evidence, additional evidence, and requests approval of his petition.[1] We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

An orphan is defined as a child, under the age of 16 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.

II. ANALYSIS

A. Relevant Factual and Procedural History

The Petitioner filed the orphan petition on behalf of the Beneficiary, his nephew and a citizen of Nigeria, in 2019, when the Beneficiary was 11 years old. The Petitioner marked the box on the orphan petition indicating that the Beneficiary is an orphan because he "has only one sole or surviving parent who is incapable of providing proper care and who has irrevocably released the child for emigration and adoption in writing." With the filing of the orphan petition, the Petitioner submitted civil documents from Nigeria for the Beneficiary, a copy of the marriage certificate between the Beneficiary's birth father—the Petitioner's brother—and the Beneficiary's birth mother, a copy of the

[1] The Petitioner submits an updated affidavit of parental consent from the Beneficiary's birth mother, and copies of the previously submitted "application for adoption" and "enrolment of order."

death certificate of the Beneficiary's birth father, an affidavit of parental consent from the Beneficiary's birth mother, a social enquiry report from the [redacted] Ministry of Women Affairs and Social Welfare, a letter from the Petitioner's primary care physician, a copy of the adoption application and order, affidavits from the Petitioner's father and spouse, a copy of a checking account statement from the [redacted] and copies of the certificates of naturalization for the Petitioner and his spouse.

The Director issued a request for evidence (RFE) for an irrevocable release from the birth mother for the Beneficiary's adoption and emigration, proof that the Petitioner engaged a primary adoption service provider (ASP), a Hague-complaint home study, proof of the Petitioner's spouse's immigration status and termination of previous marriage, and evidence that the Beneficiary's birth mother is incapable of providing proper care. In response to the RFE, the Petitioner submitted previously submitted evidence as well as a copy of his divorce decree from a previous marriage. The Director denied the orphan petition, concluding that the Petitioner did not show that he engaged an ASP, that he submitted a Hague-compliant home study, or that the Beneficiary's surviving parent was incapable of providing proper care or that she irrevocably released him for adoption and emigration.[2]

B. The Petitioner Has Not Complied with the Requirements of the Intercountry Adoption Universal Accreditation Act of 2012 (UAA)

The Director determined that the Petitioner did not demonstrate under the requirements of the UAA[3] that he is currently working with a Hague-accredited primary provider or established that he is exempt from this requirement ("UAA grandfathered").[4] The UAA extends the safeguards provided by accreditation to orphans who are being adopted from countries that are not party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), to their adoptive parents, and to their birth parents.[5] *See* 42 U.S.C. § 14925(a) ("The provisions . . . shall apply to any person offering or providing adoption services in connection with a child described in section [101(b)(1)(f) of the Act] to the same extent as they apply to the offering or provision of adoption services in connection with a Convention adoption."); 22 C.F.R. § 96.1 ("This part provides for the accreditation and approval of agencies and person pursuant to the . . . [UAA]"). Thus, although Nigeria is not a party to the Hague Convention, certain Convention requirements still apply.

The UAA became effective on July 14, 2014, and requires in pertinent 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.

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[2] Additionally, the Director noted that the Petitioner did not submit evidence of the legal termination of his spouse's prior marriage.

[3] Pub. L. 112-276 (2012).

[4] The UAA does not apply if the prospective adoptive parent filed an orphan petition or a Form I-600A, Application for Advance Processing of an Orphan Petition, or submitted an application or accepted a match from a competent authority prior to July 13, 2013. U.S. Department of State, UAA Grandfathering Guidance, https://travel.state.gov/content/dam/aa/pdfs/UAA%20Grandfathering%20Guidance%20%208-14.pdf.

[5] An adoption service provider identifies a child for adoption and arranges an adoption; secures consent to termination of parental rights and to adoption; performs a background study on a child or a home study on a prospective adoptive parent; makes non-judicial determinations of the best-interests of a child; monitors a case after a child has been placed; and assumes custody and provides a social service pending alternative placement for the child. 22 C.F.R. § 96.2.

§ 204.311, and that the home study is prepared by a person authorized under 22 C.F.R. § 96 to conduct home studies. *See* 42 U.S.C. § 14925(b) ("The provisions of this section shall take effect 18 months after January 14, 2013"); *see also* 8 C.F.R. § 204.301 (defining "Home study preparer" as "a person . . . authorized under 22 C.F.R. [§] 96 to conduct home studies for Convention adoption cases, either as a public domestic authority, an accredited agency, a temporarily accredited agency, approved person, supervised provider, or exempted provider and who (if not a public domestic authority) holds any license or other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted"). Here, the Petitioner has not demonstrated that he has engaged an accredited agency or approved person to act as the primary ASP in his 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 are provided and for supervising and being responsible for supervised providers where used. 22 C.F.R. § 96.2; *see also* 22 C.F.R. § 96.2 (providing that "Adoption service" means any one of six services, including identifying a child for adoption and arranging an adoption, securing the necessary consent to termination of parental rights and adoption, and performing a background study on a child or a home study on a prospective adoptive parent). The Petitioner does not claim that he is exempt from the UAA requirement's as a petitioner who is UAA grandfathered. He also did not list a primary adoption service provider on the orphan petition, nor has he submitted evidence to demonstrate that he has since engaged an accredited or approved ASP to act as a primary provider in his adoption case. Instead, he argues that the [redacted] Ministry of Women Affairs and Social Welfare was the ASP, and that it determined that he was "fit and capable of providing proper and adequate parental care and protection" to the Beneficiary. We note, however that the [redacted] Ministry of Women Affairs and Social Welfare is not an ASP because it is not a U.S. accredited or approved agency or individual authorized to be a primary provider of adoption services.[6]

Relatedly, the Director also determined that the Petitioner did not provide a Hague-compliant home study. The 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. *Id.* at § 204.311(c). As provided for above, a home study must be prepared by a person (whether an individual or an agency) authorized to conduct home studies for Convention adoption cases, either as a public domestic authority, an accredited agency, a temporarily accredited agency, approved person, supervised provider, or exempted provider and who holds any license or other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted. *Id.* at § 204.301 (definition of home study preparer). We acknowledge that the Petitioner submitted a home study conducted by a Licensed Clinical Social Worker (LCSW) with his orphan petition. However, as highlighted by the Director, the record did not contain evidence establishing that the LCSW was authorized to conduct home studies for Convention adoption cases as contemplated by 8 C.F.R. § 204.301. The Petitioner did not

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[6] U.S. Department of State, Nigeria Intercountry Adoption Information, https://travel.state.gov/-content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Nigeria.html (stating that, "[b]efore taking steps to adopt a child from Nigeria, [an individual] should select a U.S. accredited or approved adoption service provider to be the primary provider in [their] case.").

submit a Hague-compliant home study, or otherwise substantively address this deficiency on appeal.[7] Accordingly, the Petitioner has not established that he complied with the home study and primary ASP requirements of the UAA.

C. The Petitioner Has Not Established that the Beneficiary's Surviving Parent is Incapable of Providing Proper Care

The Director also determined that the Petitioner did not provide a factual basis for determining that the Beneficiary's surviving parent is incapable of providing him with proper care, as defined by the regulation. Specifically, the regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

> *Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.
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> *Incapable of providing proper care* means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.

Upon *de novo* review, although the record shows that the Beneficiary's surviving parent has consented to his adoption and emigration,[8] it does not show, by a preponderance of the evidence, that she is incapable of providing the Beneficiary with proper care, consistent with local standards in Nigeria. The affidavits from the Beneficiary's birth mother do not support a determination that she is incapable of providing proper care to the Beneficiary. In her initial affidavit, the Beneficiary's birth mother stated that, following the death of the Beneficiary's father, "it is becoming unbearable to give the children adequate care and basic provisions as parents." In an affidavit submitted on appeal, the Beneficiary's birth mother again stated that, "following the death of [her] husband, it became very unbearable to give [the Beneficiary] adequate care and basic provisions as a parent for his basic needs and upkeep." She notes that her deceased spouse provided for the basic needs of the family and that she struggled to find employment following his death. She further notes that she now works as a petty trader, which has prohibited her from "provid[ing] for her child's basic needs consistent with the local standards in Nigeria." However, neither affidavit provides any probative details on her and the Beneficiary's living conditions. While the Petitioner states that the Beneficiary's father died, "making it impracticable for the mother alone to provide all the basic needs," he did not submit any objective evidence or offer any explanation as to why it would be "impracticable" for the birth mother to provide proper care to the Beneficiary, consistent with local standards in Nigeria. The Petitioner's claim that the Beneficiary's birth mother is unable to provide proper care is based largely on his own assessments and is not supported by any reference to the birth mother's earning capacity, or to local standards in Nigeria. Similarly, although the record indicates that the Petitioner has been responsible for the Beneficiary's education and upkeep since his brother's death, the record lacks evidence of the support he provided, the expenses involved in providing for the Beneficiary's education and upkeep, or why

[7] The Petitioner states on the Form I-290B, Notice of Appeal or Motion, that "a Hague-compliant home study was previously submitted[;]" however, a review of the record does not reflect that such a study was submitted.
[8] As noted above, the Petitioner submits an updated affidavit from the Beneficiary's birth mother in which she consents to his adoption *and* emigration on appeal.

the Beneficiary's birth mother was unable to provide proper care to the Beneficiary with the Petitioner's support. We acknowledge the Ministry's social enquiry report and its finding that the Beneficiary's birth mother "fe[lt] that she [could] not afford [the Beneficiary]." However, the report is not probative evidence of her inability to provide proper care to the Beneficiary at the time of the adoption because the report does not discuss specifics as to the Beneficiary's background or living conditions, or otherwise provide sufficient detail as to why the Beneficiary's birth mother is incapable of providing proper care. Accordingly, the Petitioner has not provided sufficient evidence that the Beneficiary's biological mother is incapable of providing for the Beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b). The Petitioner has therefore not established that the Beneficiary is an orphan, as defined under section 101(b)(1)(F)(i) of the Act.

III. CONCLUSION

The Petitioner has not overcome the bases for denial of his orphan petition. He has not established that he complied with the home study and primary ASP requirements of the UAA. Nor has he established that the Beneficiary is an orphan, as defined under section 101(b)(1)(F)(i) of the Act, or that he complied with the evidentiary requirements for orphan petitions.

ORDER: The appeal is dismissed.