



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

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

MATTER OF E-O-A-

DATE: AUG. 10, 2016

APPEAL OF NATIONAL BENEFITS CENTER 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.

The Director, National Benefits Center, denied the petition. The Director concluded that the Petitioner did not provide a home study reflecting her spouse's arrests related to abuse and violence and an evaluation of the suitability of the home for adoptive placement.

The matter is now before us on appeal. The Petitioner submits a brief and claims that she has satisfied all of the requirements for an orphan petition.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. Section 101(b)(1)(F)(i) of the Act provides the definition for an orphan to be classified as an immediate relative child (unmarried person under twenty-one years of age):

[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) of this title, 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 [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

8 C.F.R. § 204.3(d)(1) identifies the supporting documentation required to accompany orphan petition, including:

....

- (ii) The orphan's birth certificate, or if such certificate is not available, an explanation together with other proof of identity and age;

8 C.F.R. § 204.3(e)(2) provides for the submission of a home study of the prospective adoptive parents to accompany orphan petition, including:

- (iii) *History of abuse and/or violence.*

- (A) *Screening for abuse and violence.*

- (2) *Inquiring about abuse and violence.* The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse, sexual or child abuse, or domestic violence, even if it did not result in an arrest or conviction. The home study preparer must include each prospective adoptive parent's response to the questions regarding abuse and violence. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

- (B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. 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. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

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- (D) *Failure to disclose or cooperate.* Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service, may result in denial of the advanced processing application or, if applicable, the application and orphan petition...

II. ANALYSIS

The issue in the Petitioner's case is whether she has provided a home study reflecting her spouse's arrests related to abuse and violence and an evaluation of the suitability of the home for adoptive placement. The Petitioner provided two home study reports, in which her spouse indicated that he has never been arrested in the United States or abroad. A review of the Petitioner's spouse's arrest record reveals that he was arrested on three separate occasions in New Jersey, and two of the arrests were related to abuse or violence.

We find that the Petitioner's petition for adoption is deficient under the Act for not including in the home study the Petitioner's spouse's two arrests in New Jersey that related to abuse or violence. In addition, we find that the identity of the Beneficiary was not clearly established, as the Beneficiary's birth certificate was not timely registered and does not list his biological parents.

A. Eligibility

The Petitioner alleges that the Director erred in denying the petition, because she had submitted all of the requested and required evidence to support the petition. The Petitioner submitted two home study reports. In the first home study report, the home study preparer asked the Petitioner and her spouse "if they have ever had a history of substance abuse, sexual abuse, or child abuse, or family violence, even if such history did not result in an arrest or conviction" both in the United States and abroad. The Petitioner and the Petitioner's spouse replied "no" to the home study preparer.

A criminal records check of the Petitioner's spouse revealed that he was arrested in New Jersey on three separate occasions. The first arrest occurred in [REDACTED] 1995, for criminal sexual contact in [REDACTED]. The second arrest occurred in [REDACTED] 1998, for theft of movable property in [REDACTED]. The third arrest occurred in [REDACTED] 2002, for simple assault in [REDACTED].

Matter of E-O-A-

In response to a request for evidence (RFE), the Petitioner submitted a printout of the arrest records and showed the dispositions for each arrest. The Petitioner indicated that her spouse inadvertently did not disclose the arrests because they never led to convictions. The Petitioner also provided a statement from her spouse and a copy of a letter to the home study preparer disclosing the arrests.

In a second RFE, the Petitioner was asked to submit an updated home study discussing the suitability of the home and if there is any history of abuse or violence. Specifically, the updated home study should reflect that the “preparer ask each prospective adoptive parent whether they have a history of substance abuse, sexual abuse, child abuse, or domestic violence, even if it did not result in an arrest or conviction.” The Petitioner submitted an updated home study report, which was nearly identical to the original home study report. The home study was not updated to reflect the Petitioner’s spouse’s arrests related to abuse and violence in New Jersey, and it did not include an evaluation of the suitability of the home for adoptive placement.

The home study does not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(iii). At the time of filing Form I-600, a petitioner must establish all eligibility criteria. *See* 8 C.F.R. § 103.2(b). This includes the submission of a home study that contains all essential elements as outlined at 8 C.F.R. § 204.3(e). When the Form I-600 was filed and to date, the Petitioner has not provided a home study that reflects her spouse’s arrest record and an evaluation of the suitability of the home for adoptive placement. The initial home study and the updated home study are deficient and, considered together, do not satisfy the regulation at 8 C.F.R. § 204.3(e)(2)(iii). Accordingly, the Petitioner has not established suitability to adopt a child under 8 C.F.R. § 204.3(e).

In regards to the Beneficiary’s identity, the Petitioner contends that the Beneficiary was left abandoned at a specific children’s home. The birth certificate the Petitioner submitted indicates that the Beneficiary was born on [REDACTED] with the birth certificate recorded on [REDACTED] 2010. The birth certificate lists the Petitioner and her spouse as the Beneficiary’s parents. The legitimacy of the birth certificate is called into question, when the birth certificate was issued before Petitioner’s marriage to her spouse in [REDACTED] 2012, and before the adoption order was finalized in [REDACTED] 2014. The Petitioner submitted a letter from the [REDACTED] indicating that the Beneficiary’s birth certificate is a “genuine document”; however, the Petitioner has not established that the birth certificate is an updated birth record reflecting the adoption order. Therefore, the Petitioner has not established the identity of the Beneficiary, because she has not resolved concerns about the veracity of the birth certificate.

III. CONCLUSION

In visa petition proceedings, the petitioner has the burden of establishing 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 not been met.

Matter of E-O-A-

ORDER: The appeal is dismissed.

Cite as *Matter of E-O-A-*, ID# 16700 (AAO Aug. 10, 2016)