

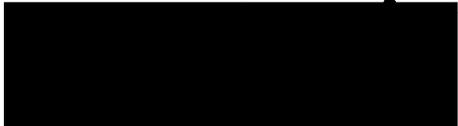


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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536

19 SEP 2002

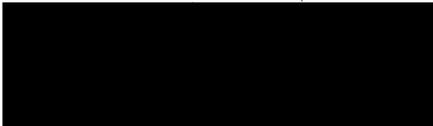
File: [Redacted] Office: NEWARK, NJ

Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT:



**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Newark, New Jersey District Office denied the visa petition to classify the beneficiary as an immediate relative, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on April 9, 1993. The petitioner is a 73-year-old divorced citizen of the United States. The beneficiary is 25 years old at the present time and was born in Saraikhash, India on April 11, 1977.

The director denied the petition after determining that the beneficiary did not meet the statutory definition of an orphan.

On appeal, counsel submits a brief. Counsel asserts that the beneficiary is the child of a surviving parent who is incapable of providing for the beneficiary's basic needs and that the Service failed to address all the evidence submitted.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines 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.

The record of proceeding contains the Form I-600 petition and accompanying documentation, a copy of the petitioner's home study report, the Form I-600 petition and accompanying documentation, the director's notice of intent to deny, the petitioner's response to the director's notice, the final denial letter, and the appeal documents.

In the notice of intent to deny, the director informed the petitioner that an overseas investigation was conducted into the claims made by the petitioner in the I-600 petition. The petitioner had claimed that the beneficiary was the child of a surviving parent (biological father) who was incapable of providing for the beneficiary's basic needs. According to the director, the surviving parent signed a sworn statement before an officer of the Service declaring that he has five acres of agricultural land for which he receives four to five thousand Indian rupees per year. The director said that the surviving parent told the investigator that he is capable of supporting his three children who were residing with him.

In response to the notice of intent to deny, counsel requested a copy of the beneficiary's father's sworn statement. Counsel asserted that this sworn statement contradicted prior sworn statements and that an annual income of four to five thousand rupees is insufficient to sustain a family of four.

The director initially denied the petition on January 9, 1997 and subsequently rescinded the denial to allow the petitioner an opportunity to rebut adverse information obtained in the overseas investigation. The director denied the petition on October 26, 1999 for the reasons stated in the notice of intent to deny.

On appeal, counsel for the petitioner states that the director relied on hearsay and contradictory evidence to deny the petition. Counsel asserts that evidence was submitted "clearly showing that 5000 rupees is in fact less than a subsistence level for a family of four."

The first items of evidence to discuss are the statements made by the beneficiary's father. The I-600 petition was filed with a sworn statement of the beneficiary's father that states that he was no longer capable of farming his land therefore he lacked the means to support his children. The beneficiary's father subsequently signed another sworn statement indicating that he owned five acres of agricultural land that he leased for four to five thousand rupees per year. At one point Counsel asserted that the beneficiary's father is illiterate so the subsequent statement should be disregarded. The petitioner provided the Service with two additional affidavits, which aver that they witnessed the beneficiary's father's signature on the subsequent statement and that it read that he was unable to provide for his children. A copy of the statement is in the record and it indicates that the beneficiary's father earns 4-5,000 rupees a year in annual income. The subsequent statement is silent regarding whether the beneficiary's father is able to support his family.

The latter statement is corroborated by the sworn statement of the beneficiary's father's tenant that indicates that the tenant paid the beneficiary's father five thousand rupees a year to cultivate his land.

The record contains a typed summary of the overseas investigation that states that five neighbors of the beneficiary's father informed the investigator that the father was in a good financial position and that his son who resides in the United States provides financial help to his family.

In support of his assertion that five thousand rupees in annual income is insufficient for a family of four living in rural India, counsel includes an exchange rate table and a letter from

the Consulate General of India stating that "to the best of our knowledge, an annual income of Indian Rupees Rs. 5,000.00 [would] not be sufficient to provide for a comfortable living for a family of four." The evidence fails to establish the subsistence level of income for a family of four in rural Punjab, India. The Consulate General's letter merely indicates that an annual income of five thousand rupees would not be sufficient to provide for a comfortable standard of living for a family of four. The operative standard is not whether the surviving parent can provide a comfortable standard of living, rather, whether the surviving parent is incapable of providing for the orphan's care. 8 C.F.R. 204.3(b).

Counsel wrote the Service and made reference to the Department of State's Report on Human Rights Practices for 1995, saying "this report also indicates that half of the rural population live below the poverty level." Counsel's assertions are not persuasive. He failed to address the operative standard again.

In this proceeding, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel also included an invoice for groceries as evidence of the beneficiary's father's expenses. Counsel failed to provide an explanation as to whether the grocery bill was representative of the beneficiary's father's weekly, monthly or quarterly expenses. The invoice lists, inter alia, 45 kilograms of milk, and 10 kilograms of flour. (One kilogram is equivalent to 2.205 pounds.) This evidence is useless without a context.

The record contains copies of seven pages of notes, three of which are written on the letterhead of the Guru Nanak Mission Hospital located in Jalandhar, India. One page reads: "To whom it may concern: [illegible] (beneficiary's father) is under my treatment for epigastric hernia and prostate [illegible]. He will require surgery for both. Another page reads: "Epigastric hernia. Opium addiction 20 years. Stopped 2 weeks back." The record is lacking in terms of the father's long-term prognosis for recovery, and how his ailment(s) affected his ability to care for the beneficiary.

On appeal, counsel asserts that the beneficiary's father's "medical condition addresses any speculation that he could work and earn additional income." (Emphasis in the original.) The assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

As the record of proceeding is presently constituted, there is insufficient evidence to conclude that the beneficiary is the

child of a surviving parent who is incapable of providing for the beneficiary's basic needs, consistent with the local standards of India.

Beyond the director's decision, the record does not contain a death certificate for the beneficiary's biological mother. Furthermore, the home study states that the petitioner resides with the beneficiary's sister and her spouse. The home study report is deficient to the extent that the preparer considers the income of all adults in the petitioner's household as income available to the petitioner even though she is not related to the other household members. Finally, according to the I-600 petition, the petitioner lived apart from the beneficiary's sister, but the home study report indicates that they resided together in the home of the beneficiary's sister. As the appeal will be dismissed on other grounds, these issues need not be examined further.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F).

**ORDER:** The appeal is dismissed.