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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



File: [Redacted] Office: NEW DELHI, INDIA Date: **MAY 23 2003**

IN RE: Applicant: [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)

ON BEHALF OF APPLICANT:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

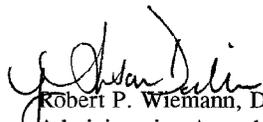
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC), New Delhi, India denied the petition to classify orphan as an immediate relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600). The petitioner is a 61-year-old single citizen of the United States. The beneficiary is 13 years old at the present time and was born in Bangladesh on October 7, 1989. The record reflects that the petitioner completed the Bangladesh guardianship procedures on January 8, 2001.

The OIC denied the petition after determining that the guardianship was invalid, as it was not obtained in conformity with the statutory guardianship regulations of Bangladesh. The OIC also determined that the petitioner failed to establish that the beneficiary meets the definition of an orphan because the beneficiary has a known family unit.

On appeal, counsel submits a brief and additional evidence.

The record of proceeding contains a cable indicating the approval of the petitioner's Form I-600A advance processing application, the Form I-600 petition and accompanying documentation, the OIC's Notice of Intent to Deny, the petitioner's response to the OIC's Notice, the OIC's final decision, and the appeal documents.

The first issue in this matter is whether the intended beneficiary qualifies as an orphan, as defined in Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), as amended. Concerning this issue, the OIC concluded:

The Congress has referred [to] orphans as "homeless children." . . . the intent of the Congress was to provide an immigration proviso for individuals who do not form a family unit in their native country. The law, irrespective of the destitute conditions of an individual, does not provide for his/her acceptance as an "orphan," if he/she has a known family unit. Therefore, it is concluded that the beneficiary may not be classified as an "orphan."

The OIC misconstrues the statutory and regulatory definition of an "orphan." This portion of the OIC's decision shall be withdrawn.

In pertinent part, section 101(b)(1)(F) of the Act defines an orphan 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.

8 C.F.R. 204.3(b) states, in pertinent part:

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.

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.

As the record is presently constituted, the beneficiary is the child of a surviving parent - the biological mother who has in writing irrevocably released the beneficiary for emigration and adoption. In support of his claim that the biological mother became unable to care for the beneficiary after the death of the biological father, the petitioner submitted an affidavit from the biological mother and letters from two missionaries familiar with the plight of the beneficiary and his biological mother. Each individual attested to the death of the biological father and the biological mother's inability to care for the beneficiary at a level consistent with the local standards of Bangladesh. The evidence establishes that the beneficiary's surviving parent is unable to provide for the beneficiary's basic needs, consistent with the local standards of the foreign sending country. Thus, the intended beneficiary does qualify as an orphan.

The critical issue in this case, however, is whether the petitioner has either adopted the intended beneficiary or will bring the intended beneficiary to the United States to be adopted. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). The petitioner concedes that Bangladesh law prohibits the adoption or guardianship of Bangladesh citizens by non-Bangladesh citizens. In support of the claim that the petitioner will bring the intended beneficiary to the United States for adoption, the petitioner presented a copy of a Bangladesh court order purporting to appoint him as the intended beneficiary's guardian. The issue, then, is whether this putative guardianship is valid for immigration purposes.

In a notice of intent to deny, the OIC provided the petitioner

with a copy of a legal opinion from the Library of Congress on the validity of the petitioner's guardianship of the beneficiary. The Library of Congress legal opinion, which is included in the Record of Proceeding, states that the court that issued the guardianship order lacked jurisdiction to issue the order and further, that Bangladesh law prohibits the appointment of someone who is not a Bangladesh citizen as the guardian of a Bangladesh child.

On appeal, counsel asserts that the Bangladesh government authorized the guardianship by appointing the petitioner guardian of the beneficiary. Counsel further asserts that the Bangladesh government sanctioned the guardianship appointment by issuing a no objection to the issuance of an international passport to the beneficiary.¹ Counsel asserts that the Bangladesh government sanctioned the guardianship appointment by issuing a passport for the beneficiary to the petitioner. Counsel argues that the petitioner's appointment of guardianship is valid because it was not challenged within the period established by the Bangladesh statute of limitations (30 days).

Counsel's arguments are not persuasive.

All orphan petitions filed after the advanced processing application has been approved must be accompanied with:

Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(d)(1)(iv) (Emphasis added).

Upon careful review of the evidence and the foreign law, the Bangladesh guardianship documents are found to be void under Bangladesh law, and void for the purpose of United States immigration law. To be recognized for immigration purposes, an adoption (or guardianship) occurring abroad must conform with and be recognized by the applicable law of the jurisdiction where it occurred. *Matter of Khatoon*, 19 I&N Dec. 153 (BIA 1984); *Matter of Mendoza*, 18 I&N Dec. 66 (BIA 1981). If a foreign country has a legal procedure for adoption, the petitioner must prove that the adoption met those requirements. *Mila v. Ins*, 678 F.2d 123 (10th Cir. 1982) cert. denied 459 U.S. 1104 (1983). The Bangladesh law clearly states that only a Bangladesh citizen may be appointed or declared as the guardian of a Bangladesh minor.² The petitioner is a United States citizen and does not assert

¹ It is noted that the Bangladesh government requiring the petitioner to post bond "that he bring back the child to Bangladesh at his cost."

² The Guardian and Wards Act, No. 8 of 1890, § 7.

that he is also a citizen of Bangladesh. Moreover, the petitioner obtained the guardianship order from an assistant judge in the Family Court, which does not have jurisdiction of guardianship appointments. Since the court did not have jurisdiction, this Office cannot conclude that the guardianship order is sufficient to establish that the petitioner has "secured custody of the orphan in accordance with the laws" of Bangladesh. 8 C.F.R. § 204.3(d)(1)(iv)(B)(1).

The petitioner has established that the beneficiary meets the definition of an "orphan" within the meaning of the Act. The petitioner has not met his burden of establishing, however, that he has lawfully obtained custody of the intended beneficiary under Bangladesh law and may lawfully bring the intended beneficiary to the United States for adoption. For this reason, the petition may not be approved.

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.

ORDER: The appeal is dismissed.

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U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE