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U.S. Citizenship
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Services

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APR 11 2005

FILE:

Office: ISLAMABAD, PAKISTAN

Date:

IN RE: Petitioner:

Beneficiary:

Petition: 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Islamabad, Pakistan denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 petition) with the OIC in May 2004. The petitioner is a forty-five-year-old married U.S. citizen. The beneficiary was born in Pakistan on December 9, 2003, and she is presently one-year-old. The petitioner seeks to classify the beneficiary as an orphan and immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

The OIC found the petitioner had failed to establish that the beneficiary's parents had disappeared or were deceased, or that the beneficiary was given unconditionally to an orphanage as set forth in 8 C.F.R. § 204.3(b). The petition was denied accordingly.¹

On appeal, the petitioner asserts that the beneficiary's mother died and that the beneficiary was placed into a recognized orphanage. The petitioner asserts that he obtained a death certificate from the beneficiary's paternal grandfather certifying the death of the beneficiary's mother. To support his assertion that the beneficiary was placed into a recognized orphanage, the petitioner indicates that he is aware of four other immigration cases in which the orphanage was found to be a recognized orphanage.

The record contains no additional information relating to other orphan decisions. The record also lacks any other evidence or information relating to the beneficiary's maternal grandfather, and the record does not contain a death certificate for the beneficiary's natural mother.

Section 101(b)(1)(F)(i) of the Act, 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; 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.

¹ The AAO notes the OIC's determination that the Afghan Aid for Women and Children (AAWC) is not an orphanage and that the organization does not perform the functions of an orphanage-like entity. Although the record contains two documents stating that the AAWC is an Afghan NGO, the AAO found nothing in the record to clarify the significance of the AAWC to the present case, or to link the AAWC to the Bibi Fatima-tuz-Zahra School, [REDACTED] that allegedly cared for the beneficiary in Pakistan. Because the evidence in the record refers to the Bibi Fatima-tuz-Zahra School [REDACTED] rather than to the AAWC, the AAO will address whether the petitioner has established that the Bibi Fatima-tuz-Zahra School, Madrasa Orphanage is an orphanage and whether the petitioner established that the beneficiary was given unconditionally to the Bibi Fatima-tuz-Zahra School [REDACTED]

8 C.F.R. § 204.3(d) states in pertinent part:

(1) [T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

....

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable . . . and

(iv) 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:

...

(B) [I]f the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country.

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

8 C.F.R. § 204.3(b) provides in pertinent part that, “[a] child who has been given unconditionally to an orphanage shall be considered to be abandoned.” In addition, 8 C.F.R. § 203(b) contains the following definitions pertaining to circumstances under which a child may qualify as an “orphan”:

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate

them as determined by a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(b) defines a “foreign-sending country as:

[T]he country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

A “competent authority” is defined as “a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.”

The record contains the following evidence relating to the beneficiary's status as an “orphan”:

A birth certificate stating that a female baby was born at the [REDACTED] Peshawar, Pakistan to “Nooria”, and to Nooria's husband, [REDACTED]. The birth certificate reflects that [REDACTED] was admitted to the hospital on December 8, 2003, [REDACTED] gave birth to a female baby on December 9, 2003, and that the date of discharge from the hospital was December 20, 2003. The birth certificate does not contain the baby's name.

An affidavit signed by “Hamida” on December 20, 2003, stating that she was a friend of the beneficiary's natural mother [REDACTED] and that [REDACTED] was destitute and stayed with her [REDACTED] Pakistan, for a few months prior to the beneficiary's birth. [REDACTED] states in her affidavit that [REDACTED] told her the beneficiary's father's name was [REDACTED] and that [REDACTED] was Afghani and was killed in a car accident in Afghanistan when [REDACTED] was three months pregnant. [REDACTED] lived with her [REDACTED] because she had no one else to live with. She states further that a few days after the beneficiary's [REDACTED] birth, [REDACTED] became very sick and died. [REDACTED] states that the beneficiary remained at her house for a few days after [REDACTED] death, but that she could not afford to support the baby and gave the child to an orphanage for Afghani refugees called [REDACTED] [REDACTED] few days later.

An affidavit signed by Marwat Ullah in Peshawar on June 23, 2004, stating that [REDACTED] [REDACTED] Afghanistan for twenty-two years, that she was the wife of [REDACTED] and that she resided as a refugee in his neighborhood at Arbab Road, Peshawar. The affidavit states that [REDACTED] gave birth to a baby named [REDACTED] on December 9, 2003, that after the delivery of her baby, she became ill and died on December 16, 2003, and that he attended [REDACTED]

An affidavit signed by [REDACTED] on June 23, 2004, stating that [REDACTED] resided in Kabul, Afghanistan for twenty-two years, that she was the wife of [REDACTED] and that she resided as a refugee in his neighborhood at Arbab Road, Peshawar. The affidavit states that [REDACTED] gave birth to a baby named [REDACTED] on December 9, 2003, that after the

delivery of her baby, she became ill and died on December 16, 2003, and that he attended Nooria's funeral.

A letter dated April 10, 2004, from the Director of School and Madrasa Orphanage, Bibi Fatema-tu-Zurhra, stating that the beneficiary (Naila) was given to the school/orphanage when she was 10 days old, on December 20, 2003. The letter states that they have not found any [REDACTED] relatives and that upon improvement of [REDACTED] she was given to the petitioner for a better future.

A letter addressed to the U.S. Embassy, dated June 18, 2004, from the School and Madrasa Orphanage, Bibi Fatema-tu-Zurhra, describing the Bibi Fatema-Tu-Zuhra school program, and stating that the school was established seven years ago and is registered with the Ministry of Planning, Afghanistan and the A.N.C.B. The letter states that all of the students are orphans who live mainly in a camp. The letter states further that the school also shelters, provides for, and takes care of a few orphans who have no parents.

A Guardianship Certificate dated May 13, 2004, from the Court [REDACTED] Senior Civil Judge/Guardian Judge/Judge Family Court, Peshawar, Pakistan, appointing the petitioner as the beneficiary's guardian during the period of her minority, and stating that the petitioner is allowed to take the beneficiary outside of the jurisdiction of the court and Pakistan for immigration purposes.

8 C.F.R. § 103.2(b)(2) states in pertinent part:

Submitting secondary evidence and affidavits.

(i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) Demonstrating that a record is not available. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an

appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

The AAO finds that the petitioner has failed to establish the loss or disappearance of the beneficiary's parents, or that the beneficiary was given unconditionally to an orphanage, as the terms are defined in 8 C.F.R. § 204.3(b).

The petitioner has failed to establish the death or disappearance of the beneficiary's natural father. The record does not contain a death certificate to verify his death. Moreover, the record contains no secondary evidence relating to his death or disappearance, and the record does not contain two or more affidavits, sworn to or affirmed by persons who have direct personal knowledge of his death or disappearance. The AAO finds further that the Pakistani Court guardianship findings fail to demonstrate that the court made a reasonable effort to locate the beneficiary's father. The court findings also fail to establish that the court verified that a reasonable effort was made to locate the beneficiary's natural father.

The petitioner also failed to establish that the beneficiary's mother died. The record does not contain a death certificate to verify her death, and the record contains no official statement by a relevant Pakistani authority stating that a death certificate is not available. The AAO notes that although the record contains three affidavits attesting to personal knowledge of the beneficiary's natural mother's death, the statements are uncorroborated by any evidence in the record, and they are vague and lack material details relating to the source of their knowledge. Moreover, the record contains no medical evidence or information to establish or indicate that there were medical or health-related complications related to the pregnancy. The AAO finds further that the letters submitted by the Bibi Fatima-tuz-Zahra School & Madrasa Orphanage, provide no details or information regarding their efforts to locate the beneficiary's relatives and family members. In addition, the AAO finds that the Pakistani Court guardianship order findings fail to demonstrate that the court made a reasonable effort to locate the beneficiary's natural mother or that the court verified that a reasonable effort was made to locate the beneficiary's natural mother. Moreover, the AAO notes that the petitioner's statement on appeal that he contacted the beneficiary's maternal grandfather puts into question the Fatima-tuz-Zahra School & Madrasa Orphanage assertion that it was not able to locate any of the beneficiary's relatives.

In addition to the above findings, the AAO finds further that the petitioner has failed to establish that the beneficiary qualifies as an orphan on the basis that she was given unconditionally to an orphanage. The letters submitted by the Fatima-tuz-Zahra School & Madrasa Orphanage are not signed and do not contain the name of the director or any other officials. Moreover, the letters contain no details regarding how, or by whom the beneficiary was placed with them, or about the circumstances of the placement. The letters additionally fail to provide any details or corroborating evidence relating to the school's operation as an orphanage, or regarding the application process or circumstances under which the beneficiary was given to the petitioner.

The petitioner also failed to establish that the beneficiary meets the definition of an orphan because a competent foreign authority took jurisdiction over the matter and found her to be an orphan.

The Petition for the Guardianship Certificate contained in the record indicates that the parties to the petition were [REDACTED] (the petitioner's wife) vs. the public at large and the director, School & Madrasa, Orphanage, Bibi Fatima-tuz-Zahra in Peshawar. The Order, dated May 13, 2004, reflects that the hearing was advertised and the respondents notified, and that the parties' statements were recorded. The Order reflects that the respondent (School & Madras Orphanage) appeared through an attorney and stated, "the minor was handed over to the petitioner for welfare of the minor, as the mother or minor has been died and whereabouts of her father and other relatives are not known." The Order reflects that arguments were heard and the file perused, and accordingly, the court appointed the petitioner's wife, [REDACTED] as legal guardian of the beneficiary. As noted above, the AAO finds that the Pakistani Court guardianship findings fail to demonstrate that the court made a reasonable effort to locate the beneficiary's parents, or that they verified that a reasonable effort was made to locate the beneficiary's natural parents. Moreover, the AAO notes its additional concerns regarding the legitimacy of the guardianship order contained in the record.

The Inter-country Adoption Home Study prepared on March 29, 2004, by "Across the World Adoptions" and signed by the petitioner and his wife, states on page 4 that the petitioner and his wife "have one biological child, Hina Saifi, age 8." However, the "Petition of Guardianship of Minor", attested to by the petitioner's wife in Peshawar on June 2, 2004, states that "[t]he qualification of the petitioner/proposed guardian is that she is issueless, young, married and having sufficient resources and she is interested to look-after the adopted minor." See Box I of the Petition of Guardianship of Minor, in the Court of Senior Civil Judge/Guardian Court Judge, Peshawar. In a second "Petition of Appointment of Guardian of [REDACTED] U/S 10 of Guardian and Ward Act 1890", signed on June 7, 2004 and filed in the Court of Senior Civil Judge/Guardian Court Judge Peshawar, the petitioner's wife attests to the fact that she "[h]as been married 18 years ago but unfortunately she is issueless and has no hope in future. That the petitioner intends to adopt a child. In this regard she applied to respondent No. 1." Based on the qualifications set forth in the Pakistani petitions for guardianship of a minor, it appears that Pakistani guardianship laws may specify that only persons who have no biological children may be allowed to adopt a child or be appointed as child guardians. It appears further that the petitioner's wife may have misrepresented the fact that she has a biological child in order to qualify to be a guardian for the beneficiary.

In visa petition proceedings, the burden of proof rests solely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. Based on the foregoing, the AAO finds that the petitioner has failed to meet his burden of establishing that the beneficiary is an "orphan" as set forth in section 101(b)(1)(F) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.