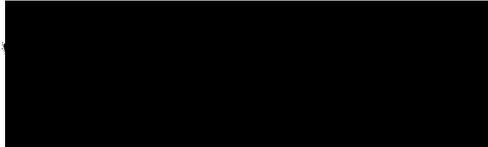




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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FI

FILE: [Redacted]

Office: WASHINGTON, DC

Date: AUG 24 2005

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

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 PETITIONER:

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, Washington, D.C., denied the immigrant visa petition and 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 (I-600 petition) on November 19, 2004. The petitioner is a forty-three-year-old unmarried citizen of the United States. The beneficiary was born in Pakistan on September 12, 2003, and she is one-years-old.

The officer in charge concluded that the petitioner had failed to establish the beneficiary was abandoned, that the beneficiary's birth father had disappeared, or that the beneficiary had only one surviving or sole parent, as defined in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3. Accordingly, the officer in charge concluded that the beneficiary failed to meet the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The officer in charge determined further that the petitioner had failed to provide a proper English translation of the beneficiary's birth mother's statement relinquishing her child to the petitioner. The officer in charge additionally determined that the petitioner had failed to provide evidence establishing that the beneficiary's birth mother had irrevocably released the beneficiary for emigration and adoption. The officer in charge concluded that the petition was deniable based on the petitioner's failure to provide requested initial evidence, and based on the evidence of ineligibility contained in the record.

On appeal, the petitioner asserts that U.S. Citizenship and Immigration Services (CIS) failed to properly consider that she obtained a legally binding Pakistani court order appointing her as the beneficiary's legal guardian. In addition, the petitioner asserts that the written statement made by the beneficiary's birth mother establishes that the beneficiary's birth father deserted the family, and that the beneficiary's birth mother is unable to provide proper care to the beneficiary. The petitioner indicates that the beneficiary's birth mother's statement is a legally executed document and that the content of the statement should therefore be accepted by CIS. The petitioner asserts further that the statement that the beneficiary's birth mother would welcome the beneficiary any time she visits her home, is a gesture of courtesy, and does not constitute a failure to release the beneficiary for emigration and adoption purposes.

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 . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence. (Emphasis added).

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

**Sole parent means the mother when it is established that the child is illegitimate** and has not acquired a parent within the meaning of section 101(b)(2) of the Act. **An illegitimate**

**child** shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section. (Emphasis added).

The record contains a copy of the beneficiary's passport, issued in November 2003, reflecting that her birth father was Mr. [REDACTED]. The record additionally contains a copy of the beneficiary's birth certificate reflecting that her birth mother [REDACTED] was the wife of (referred to as "w/o") [REDACTED] when the beneficiary was born on September 12, 2003. The beneficiary's birth mother also refers to herself as the wife of ("w/o") [REDACTED] in her October 29, 2004, Document of Agreement, and her February 23, 2005, Affidavit. Based on the above evidence, the AAO finds that the beneficiary was born the legitimate child of her birth parents. The "sole parent" definition and requirements contained in 8 C.F.R. § 204.3(b) therefore does not apply in the present matter.

8 C.F.R. § 204.3(b) additionally provides that:

***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. (Emphasis added).

The petitioner does not claim that the beneficiary's birth father is dead, nor does the evidence in the record support such a claim. The "surviving parent" definition and requirements contained in 8 C.F.R. § 204.3(b) thus also do not apply to the present matter.

8 CFR 204.3(b) provides in pertinent part that:

***Abandonment by both parents*** means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, **without intending to transfer, or without transferring, these rights to any specific person(s)**. Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. **A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.** Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned. (Emphasis added).

The record contains an October 29, 2004, Document of Agreement signed by the beneficiary's birth mother, stating that the whereabouts of her husband are unknown, that she is unable to provide for all of her children, and that she freely consents to the petitioner's adoption of her daughter. The record additionally contains a February 23, 2005, affidavit signed by the beneficiary's birth mother repeating the above information and stating that she has given physical custody of her birth daughter to the petitioner and has no objection to her birth daughter's adoption by the petitioner. The AAO notes that the record contains statements by the beneficiary's birth mother that her husband deserted her 1 ½ years ago. However, the record contains no other information or evidence relating to the beneficiary's birth father.

Upon review of the record, the AAO finds that the petitioner has failed to provide sufficient evidence to establish that the beneficiary's birth father deserted or abandoned the beneficiary. The AAO finds further that the evidence establishes that in surrendering her parental rights over the beneficiary, the beneficiary's birth mother intended to, and did transfer her parental rights specifically to the petitioner. The petitioner has therefore failed to establish that the beneficiary was "abandoned" by her parents, as defined in 8 C.F.R. § 204.3, and the petitioner has failed to establish that the beneficiary meets the definition of an "orphan" as set forth in section 101(b)(1)(F)(i) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act; 8 U.S.C. 1361. The petitioner has not met her burden in the present matter. The appeal will therefore be dismissed

**ORDER:** The appeal is dismissed.