



U.S. Citizenship
and Immigration
Services

F1

[Redacted]

FILE: [Redacted]

Office: MEXICO CITY, MEXICO Date: JUL 21 2005
(LIMA, PERU)

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

PUBLIC COPY

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge, Lima, Peru, revoked and denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The petitioner is a forty-four year-old married citizen of the United States. The beneficiary was born in Peru on May 17, 1989, and she is sixteen-years-old. The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 Petition) in March 2005. The I-600 petition was approved on March 16, 2005. The I-600 petition was subsequently referred for further processing, with the provision that if negative information presented itself, the application process would be suspended. On March 28, 2005, the acting officer-in-charge, Lima, Peru revoked the I-600 petition approval and denied the petition on the basis that an in-depth investigation established the beneficiary's biological father was employed and providing proper care to the beneficiary, and that the beneficiary therefore did not meet the definition of an orphan as set forth in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

Specifically, the acting officer in charge found that information obtained during an interview with the beneficiary's biological father, Mr. [REDACTED] revealed the beneficiary lived at home with Mr. [REDACTED] and that Mr. [REDACTED] had cared for the beneficiary for over two years since the beneficiary's biological mother's death in May 2002. Photos taken of Mr. [REDACTED] home, including the beneficiary's room, were made part of the record. In addition, the acting officer in charge found that information obtained during Mr. [REDACTED] interview revealed Mr. [REDACTED] had relinquished his parental rights over the beneficiary because he had promised the beneficiary's mother he would release the child to the petitioners so the beneficiary could be educated in the United States. The acting officer in charge found further that information revealed during the interview demonstrated that Mr. [REDACTED] worked as a taxi driver and that he earned approximately 1000 soles a month, almost three times the national average income for Peru. Based on the above information, the acting officer in charge concluded that Mr. [REDACTED] was capable of providing proper care to the beneficiary, as defined in 8 C.F.R. § 204.3(b).

On appeal, the petitioner disputes that Mr. [REDACTED] stated he has steady employment or that he earns 1000 soles a month. The petitioner asserts that instead, Mr. [REDACTED] earns only 20 to 25 soles a day, as an intermittent taxi driver in Trujillo, Peru. In addition, the petitioner asserts that Mr. [REDACTED] two-story home and its contents were owned by Mr. [REDACTED] and his wife prior to her death, and that he has not acquired additional property since that time. The petitioner asserts that Mr. [REDACTED] is unable to provide proper care and support to the beneficiary, and he submits affidavit statements from Mr. [REDACTED] and Peruvian adoption court documents indicating that Mr. [REDACTED] works intermittently as a taxi driver outside of Lima, and that his children are cared for by relatives. The petitioner additionally asserts that he was denied due process because he was not allowed to submit rebuttal evidence prior to the revocation of his I-600 petition

8 C.F.R. § 204.3(h)(14) states in pertinent part:

[T]he approval of . . . an orphan petition shall be automatically revoked in accordance with § 205.1 of this chapter, if an applicable reason exists. The approval of an . . . orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

8 C.F.R. § 205.2 states:

Revocation on notice.

(a) General. Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) Notification of revocation. If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

The present record contains a March 28, 2005 decision entitled, "Notice of Revocation and Denial". The record does not contain a separate Notice of Intent to Revoke letter. Moreover, there is no indication in the record that the petitioner was provided an opportunity to offer evidence in opposition to the alleged grounds for revocation prior to the revocation of his I-600 petition. Accordingly, the AAO finds that the present matter must be remanded to the acting officer in charge for further action in accordance with the revocation notification provisions as set forth in 8 C.F.R. § 205.2.

In addition, the AAO notes the following factors which should be further addressed by the acting officer in charge on remand.

The AAO notes first that where it is established that the beneficiary has only one surviving parent, the definition of "abandonment by both parents" found at 8 C.F.R. § 204.3(b) should not be referred to or relied upon in the adjudication of the petition. Rather the definitions of "surviving parent" and "incapable of providing proper care" are the relevant definitions in 8 C.F.R. § 204.3(b). As discussed in the acting officer in charge's decision, these definitions state 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.

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*.

In addition:

Foreign-sending country means the 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.

Any evidence in the record, which shows that a surviving parent has relinquished his or her parental rights to a specific person or for a specific adoption should not bear on the determination of whether the child, who has only one surviving parent, may be classified as an orphan. Rather, whether the child meets the definition of orphan depends instead on whether the evidence in the record establishes that the surviving parent is able to provide for the child's basic needs consistent with the local standards of the foreign sending country.

8 C.F.R. § 204.3(k)(1) states:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. . . . In any case in which there are significant differences between the facts presented in the approved . . . orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. *In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.* (Emphasis added).

The AAO notes that the revocation of the applicant's I-600 petition approval was based primarily on information obtained during an interview with Mr. [REDACTED] and based on a visit to Mr. [REDACTED] home. However, the present record does not contain the interview notes. Nor does the record contain any independent evidence or documentation to demonstrate that Mr. [REDACTED] made the statements, or that the beneficiary's presently reside with Mr. [REDACTED]. Such corroborating evidence is especially important given the existence of contradictory affidavit and adoption court documentation contained in the record.

The AAO notes further that although the record contains several photos of Mr. [REDACTED] home, the photos in and of themselves are not probative of Mr. [REDACTED] ability to provide proper care to the beneficiary consistent with local standards in Peru. Rather, investigative report and supporting documentation information must be made part of the record so that the AAO may properly analyze the basis of the acting officer in charge's revocation of the petitioner's I-600 petition approval.

For the above reasons, the AAO finds it necessary to remand the present matter to the acting officer in charge for further action consistent with the present decision. If the new decision is adverse to the petitioner, the decision shall be certified to the AAO for review, accompanied by a properly prepared record of proceedings.¹

ORDER: The matter is remanded to the acting officer in charge for further action consistent with the present decision.

¹ The AAO notes that the acting officer in charge combined two sibling I-600 petition files into one AAO appeal file. The AAO has separated the files, as each I-600 petition must have its own alien file and AAO appeal.