

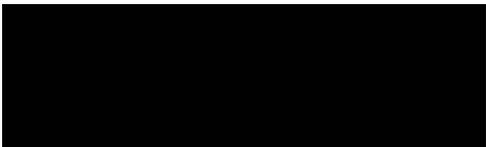
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

5/1

PUBLIC COPY



FILE:  OFFICE: SAN FRANCISCO (FRESNO), CA DATE: **JUL 05 2006**

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 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California 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 the Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on October 3, 2005. The petitioner is a forty-four year old U.S. citizen. The beneficiary was born in El Salvador on January 9, 2001, and she is presently five-years old.

The district director denied the I-600 petition based on a finding that the evidence failed to establish the beneficiary's natural mother was incapable of providing for the beneficiary's basic needs, consistent with the local standards in El Salvador.

The petitioner asserts on appeal that the beneficiary will probably become homeless if her adoption is not completed, and she asserts that additional evidence could have an impact on the approval of her I-600 petition.

Section 101(b)(1)(F) 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 (Emphasis added).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) 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.

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*.

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.

The evidence relating to the beneficiary's status as an "orphan" consists of the following:

A birth certificate reflecting that the beneficiary was born in El Salvador on January 9, 2001 to [REDACTED]. The birth certificate contains no information relating to the beneficiary's father.

A Home Study Update, prepared on May 31, 2005, by Family Connections Adoptions, reflecting the petitioner's statement that her son, [REDACTED] was the beneficiary's natural father, that [REDACTED] was raised by the petitioner's parents in El Salvador, and that he was killed in a work-related accident in El Salvador in October 2002.

A death certificate reflecting that [REDACTED] died in El Salvador on October 2, 2002. The death certificate notes that [REDACTED] mother was [REDACTED].

An notarized affidavit signed by the beneficiary's natural mother on November 6, 2003, stating that she authorizes the adoption of her child because she has no stable income and is unable to support and care for her child.

A November 2005 report from the Instituto Salvadoreño Para el Desarrollo Integral de la Niñez y la Adolescencia (ISNA), reflecting that the beneficiary's natural mother [REDACTED] moved in with the beneficiary's paternal grandparents when the beneficiary was born, and that [REDACTED] has remained living with them since that time. The report indicates that [REDACTED] does not work and that she is dependent on the beneficiary's father's family for the care and support of herself and her children. The report indicates that the twenty-five year old, [REDACTED] has become accustomed to her situation and that she lacks initiative to better her life and income. The report indicates, however, that [REDACTED] stated she is going to try to get a general labor job in order to obtain an income for her own support. The report reflects that the beneficiary lives in a seven-room home occupied by twelve family members, and that the household is largely supported by money sent by the petitioner and the petitioner's sister in the United States. The report indicates further that the beneficiary's home is well equipped, that it is a good environment for those who live there, and that the beneficiary's style of living is calm and well organized.

The AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural mother is unable to provide for the beneficiary's basic needs, consistent with the local standards in El Salvador. To the contrary, the evidence indicates that the beneficiary lives comfortably with her mother and extended family members, and that her mother hasn't felt the need to work.

The AAO finds further that the petitioner has failed establish that the beneficiary's natural mother has irrevocably released the beneficiary for emigration and adoption purposes. Although the record contains an affidavit signed by [REDACTED] stating that she authorize the adoption of her child, the AAO notes the ISNA Report statement that the petitioner and [REDACTED] agreed the beneficiary would return to El Salvador with the petitioner whenever she visits her family, and that the beneficiary and her mother would maintain communication between themselves. Moreover, the AAO notes that the record lacks evidence to establish that the petitioner has legally adopted the beneficiary.

General adoption information provided by the U.S. Department of State (DOS) at <http://travel.state.gov> reflects a clear adoption process in El Salvador. The DOS information indicates that:

[T]here are several Salvadoran governmental bodies involved in the adoption process. These include the Family Courts and the Procuraduria General de la Republica (PGR). The Procuraduria is responsible for family welfare law in El Salvador. The Instituto Salvadoreno Para el Desarrollo Integral de la Ninez Adolescencia (ISNA) is responsible for the care of orphans and other children in government custody. Representatives from ISNA and the PGR oversee international adoptions in El Salvador's adoption central authority called the Oficina Para Adopciones (OPA).

[T]he Procurador General, the Director of ISNA and representatives of OPA then make a final decision on whether a specific child may be adopted by a particular set of parents. The Procurador General must sign the approved adoption petition, once the committee makes a decision. The case then goes to a Salvadoran judge, who issues a final adoption decree.

The present record contains no adoption decree, or any other evidence to establish that the procedures set forth above were completed by the petitioner.

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 AAO finds that the petitioner has failed to meet her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.