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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FI

FILE:

[REDACTED]

OFFICE: DENVER, CO

DATE: JUL 13 2006

IN RE:

Petitioner:

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:

[REDACTED]

PHOTOCOPY

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, Denver, Colorado 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) in February 2005. The petitioner is a fifty-two year old married U.S. citizen. The beneficiary was born in the Philippines on December 10, 2003, and she is presently two years old.

The I-600 petition was denied on March 7, 2006, based on a finding that the beneficiary's natural mother had specifically transferred her parental rights over the beneficiary to the petitioner and her husband, and that the beneficiary therefore did not meet the "orphan" definition contained in section 101(b)(F)(1) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(F)(1).

Counsel concedes on appeal that the beneficiary's natural mother specifically transferred her parental rights over the beneficiary to the petitioner and her husband. Counsel asserts, however that the beneficiary's natural father is deceased, and that accordingly, the district director erred in applying "abandonment by both parents" requirements rather than "surviving parent" requirements to the petitioner's case. Counsel indicates further that the district director made a determination in his decision, that the beneficiary's natural mother was incapable of caring for the beneficiary. Counsel concludes that the beneficiary therefore meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

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 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.

The AAO finds that the district director erroneously applied “abandonment by both parents” requirements to the petitioner’s case. The AAO notes 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 I-600 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). 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*.<sup>1</sup>

Neither definition cited above specifically prohibits a surviving parent from relinquishing or releasing his or her child to a specific individual in preparation for an adoption. Accordingly, any evidence in the record which shows that the beneficiary’s natural mother relinquished her parental rights for a specific adoption should not bear on the determination of whether the beneficiary, who has only one surviving parent, may be classified as an “orphan”.

Counsel indicates on appeal that the district director determined in his decision, that the beneficiary’s natural mother is not able to provide for, or maintain the beneficiary. The AAO disagrees with counsel’s assertion. The district director’s decision states that “[a]ccording to documentation submitted with the application, Mr. [REDACTED] is deceased and Ms. [REDACTED] is not in a position to maintain [REDACTED].” The district director’s decision makes no other reference to the beneficiary’s natural mother’s ability to provide proper care to the beneficiary. Moreover, the decision contains no analysis of the issue, and the decision is not based on this issue. Accordingly, the AAO finds that the district director did not find that the beneficiary’s mother is incapable of providing proper care to the beneficiary, as set forth in 8 C.F.R. § 204.3(b).

The evidence relating to the beneficiary’s natural mother’s ability to provide proper care to the beneficiary, and the beneficiary’s status as an “orphan” consists of the following:

A birth certificate reflecting that the beneficiary was born in the Philippines on December 10, 2003, to [REDACTED] (mother) and [REDACTED], (father).

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<sup>1</sup> 8 C.F.R. § 204.3(b) provides that:

*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.

A death certificate reflecting that the beneficiary's natural father died in the Philippines on June 17, 2003.

An Affidavit of Consent signed on March 18, 2005, by the beneficiary's natural mother, stating that she is a single parent, that she is financially incapacitated and has no source of income to maintain her family's livelihood and education, that she lives below the poverty line, and that she voluntarily and freely consents to the beneficiary's adoption by the petitioner and her husband.

The AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in the Philippines. The AAO notes that the beneficiary has apparently been living with her natural mother and her two brothers since her birth in December 2003. Moreover, the record is devoid of any corroborative evidence to support the assertion that the beneficiary's mother is financially incapacitated, that she lives below the poverty line or that she is otherwise incapable of providing for the beneficiary's basic needs according to local standards in the Philippines.

The AAO notes further that general adoption guidance information provided by the U.S. Department of State at <http://travel.state.gov>, reflects a clear adoption process and authority in the Philippines in which the Department of Social Welfare and Development and the Inter-Country Adoption Board or Regional Trial Court are actively involved in the adoption application, approval, placement and transfer of legal custody of a child. The present record contains no indication that legal custody over the beneficiary has been transferred to the petitioner by any of the above Philippine government authorities.

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 failed to meet her burden in the present matter. The appeal will therefore be dismissed

**ORDER:** The appeal is dismissed.