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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: DALLAS, TEXAS

DATE: JUN 09 2006

IN RE:

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:

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, Dallas, Texas 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 Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on February 17, 2005. The petitioner is a sixty-one-year-old married citizen of the United States. The beneficiary was born in India on February 20, 1989. He turned sixteen on February 20, 2005. The beneficiary is presently seventeen-years-old.

The I-600 petition was denied on October 25, 2005, based on a finding that the beneficiary's natural mother and father had specifically transferred their parental rights over the beneficiary to the petitioner and his wife, and that the beneficiary was in the United States either illegally or in nonimmigrant status.

Counsel concedes on appeal that the beneficiary's natural parents specifically transferred their parental rights over the beneficiary to the petitioner and his wife. Counsel asserts, however that the beneficiary's natural parents' actions demonstrate that they have "abandoned" the beneficiary under immigration law. Counsel additionally asserts that the beneficiary's nonimmigrant status expired, and that he has returned to India and is thus not ineligible for the benefits of an orphan petition.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F), 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).

The record contains two "Affidavits of Relinquishment of Parental Rights", signed on October 23, 2004, by the beneficiary's natural mother, [REDACTED] and by the beneficiary's natural father, [REDACTED]. Each affidavit reflects that the beneficiary's natural mother and father intended to transfer their parental rights over the beneficiary specifically to the petitioner and his wife. A September 14, 2004, Guardianship Deed signed by the beneficiary's natural father further reflects that he intended to transfer his parental rights over the beneficiary to the petitioner and his wife.

Abandonment by both parents is a defined term in the Volume 8 of the Code of Federal Regulations (8 C.F.R.)

8 CFR 204.3(b) states 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.** (Emphasis added.)

The AAO finds that the petitioner has failed to establish that the beneficiary's natural parents "abandoned" the beneficiary pursuant to the definition contained in 8 C.F.R. § 204.3. Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

8 C.F.R. § 204.3(k)(3) states:

Child in the United States. A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

The September 23, 2005, home study report contained in the record reflects that the beneficiary resided with the petitioners when the home study was conducted. The home study report indicates further that the beneficiary came to the United States on a nonimmigrant visa in the summer of 2004, that he resided with the petitioners and began attending his sophomore year in high school in August 2004, and that he would complete his year in high school before his visa expired, at which time he planned to return to India. The AAO notes that the record contains no evidence establishing that the beneficiary has departed the United States. The AAO notes further that even if the beneficiary did depart the U.S., the evidence in the record clearly supports the district director's finding that the beneficiary was present in the United States either illegally or as a nonimmigrant. Accordingly, the AAO finds that the district director properly determined that the beneficiary is ineligible for the benefits of an orphan petition pursuant to 8 C.F.R. § 204.3(k)(3).

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

ORDER: The appeal is dismissed.