

identity: [REDACTED]
prevent clear, unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

FI

FILE:

[REDACTED]

Office: WASHINGTON DC (NORFOLK)

Date: **SEP 22 2006**

IN RE: Petitioner:
Beneficiaries:

[REDACTED]

PETITION: Petitions 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, Washington, DC, denied the Petitions to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO notes that, though there are two separate petitions and two separate files for the beneficiaries, both petitions were addressed in a single decision by the district director. As there is a single appeal, the AAO will also address both petitions in this decision.

The petitioner filed Petitions to Classify Orphan as an Immediate Relative (I-600 Petition) on April 3, 2000 on behalf of the beneficiaries, [REDACTED] and [REDACTED]. The petitioner is a 60-year-old married U.S. citizen; his wife is also a U.S. citizen; they have two adult children, a son and a daughter. The beneficiaries are the nephews of the petitioner, his brother's sons, now aged 20 and 21. Based on information from the U.S. Citizenship and Immigration Services (USCIS), New Delhi, India, regarding the validity of the adoption decrees in this case, the district director concluded that the adoptions of the beneficiaries were not in compliance with Indian law and that the beneficiaries did not therefore meet the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1101(b)(1)(F). The I-600 Petitions were denied accordingly.

On appeal, the petitioner submits a letter of explanation in which he lists the events affecting his nephews that led to their current situation, including the deaths of both of their parents and the emigration of their immediate relatives (a brother and aunts and uncles) to the United States; his adoption of his nephews in compliance with the laws of India and the United States; the hardship they are suffering in India; and his and other family members' willingness to help them and support them in the United States. *Notice of Appeal to the Administrative Appeals Office (AAO)(Form I-290B)*, dated March 16, 2006. The petitioner requests that the case be reviewed on a humanitarian basis and asserts that he has "followed all the procedures and obtained the adoption decree from a competent court in India and fulfilled the legal requirements of the [U.S.] laws." *Id.* He also requests more time to consult attorneys in the United States and in India to challenge the denial, noting that he needs 90 days to submit a brief or evidence to the AAO. *Id.*; *Letter submitted March 1, 2006 to U.S. Citizenship and Immigration Services, Norfolk, Virginia.* To date no brief or additional evidence has been received, and the record is considered complete.

As evidence that he has legally adopted the beneficiaries according to Indian law, the petitioner has submitted two official documents. The record contains an "Adoption deed/Guardianship" document (hereinafter "adoption deed") for each beneficiary, in which the nephews are given in "guardianship/adoption" by [REDACTED] and his wife, who are referred to as the "Natural parents/Guardian of the child" and "1st Party," to the petitioner and his wife, referred to as "Adoptive parents" and "2nd Party," represented by [REDACTED] an attorney acting on their behalf. The adoption deeds were issued by the Office of the Sub Registrar, Patiala, one dated March 5, 2001, the other undated. The adoption deeds note that the beneficiaries are "under the Guardianship of [REDACTED] and that "the physical possession of the adoptive [children] is already with the 2nd Party." Also included in the record are two stamped and signed documents, dated January 7, 2002, from the "Court of Sub Divisional Magistrate, Patiala," declaring that the adoptions of the beneficiaries by the petitioner and his wife are legal as per the adoption deeds, which were "registered in the Court of Sub Registrar, Patiala," and that the deeds are legal and valid. Various affidavits in the record from relatives and friends affirm the deaths of the parents of the beneficiaries in 1998 and 1999 and the familial relationship between the petitioner and the beneficiaries, and note that in 1999, after the deaths of both parents, [REDACTED] a "neighbor and family friend," looked after the beneficiaries, then aged 13 and 15. In his 1999

affidavit [REDACTED] states that he is caring for the beneficiaries temporarily and does not have legal custody of the children. The petitioner explains in his letter of March 1, 2006, *supra*, that after his nephews were orphaned, “Neighbors helped some for [a] few weeks. Then one child was put with [a] distant relative of my brother’s wife until the visa [was] available. The other son [went] to a village with [a] maternal uncle to wait until the visa was available.” The petitioner did not submit any additional official documents, other than those noted above, regarding compliance with Indian law regarding custody, guardianship or adoption. The entire record was reviewed and considered in rendering this decision.

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(d) lists the supporting documentation required for a petition for an identified orphan, including:

Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country.

8 C.F.R. section 204.3(d)(1)(iv). The adoption abroad must be in compliance with controlling foreign law. *Matter of Garcia-Rodriguez*, 16 I & N Dec. 438 (BIA 1978). The “foreign-sending country” in this case is India, and the laws regarding adoption and custody are found in the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and the Guardians and Wards Act, 1890.

Chapter II, Section 6, of HAMA lists the requirements for a valid adoption:

Requisites of a valid adoption.—No adoption shall be valid unless—

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

“No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.” *HAMA, Ch. II, Sec. 9*. If both the father and mother are dead, “the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.” *Id.* at subsection (4). The term “guardian” means a person having the care of the child and includes “(a) a guardian appointed by the will of the child’s father or mother; and (b) a guardian appointed or declared by a court; . . . ‘court’ means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.” *Id.* at subsection (5).

The Guardians and Wards Act, 1890, Chapter II, sets forth the procedures for the appointment and declaration of guardians. It states, *inter alia*, the power of the court to make an order appointing or declaring a person to be a guardian of the person or property of a minor; the requirements of the application form; and the court procedure, including notice and a hearing, when acting upon an application.

Regarding who may adopt under the law, HAMA provides, in pertinent part:

11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu¹ son, son’s son or son’s son’s son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

In this case, the petitioner has submitted as proof of adoption in India (1) two adoption deeds and (2) two declarations by the “Court of Sub Divisional Magistrate, Patiala,” stating that the deeds were “registered in the Court of Sub Registrar, Patiala,” and that both the deeds and the adoptions are legal. The registration of the deeds and declarations of the court create a presumption that the adoptions have been conducted in compliance with the law, “unless and until it is disproved.” *HAMA, Ch. II, Sec. 16*. Despite the registration and court declaration, therefore, if it is shown that the adoptions were not conducted in compliance with the law, they would not be valid. In this case, the adoptions are not in compliance with Indian law in several respects.

The record reflects that both parents of the beneficiaries have died. In such a case, only the guardian of a child shall have the capacity to give the child in adoption, and a guardian must be either appointed by the will of the child’s father or mother or appointed or declared by a court. *See Id., Sec.9, supra*. The adoption deeds refer to either [REDACTED] and his wife” or [REDACTED] as the guardians of the beneficiaries. There is no evidence in the record, however, of a will in this case or that these individuals, or any other individual, have followed any of the procedures or been appointed by any court as required by Indian law to be the legal guardian or have lawful custody of the beneficiaries for purposes of adoption. There is no evidence that they applied for legal guardianship, attended a court hearing, or were appointed or declared by a court as

¹ HAMA specifies that it applies to any person who is a Hindu, Buddhist, Jaina or Sikh by religion (*HAMA, Ch. I, Sec.2(1)(a),(b)*) and that the expression “Hindu” in any portion of the Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom the Act applies. *Id. at Sec. 3*.

guardians. Lacking evidence of lawful guardianship, they are not capable of “giving [the beneficiaries] in adoption.” No adoption shall be valid unless the person giving in adoption has the capacity to do so. *Id. at Sec.6, supra.* The adoptions of the beneficiaries are therefore not valid.

The law also provides that no adoption shall be valid unless the person adopting has the capacity, and also the right, to take in adoption. *Id.* Even if all required procedures regarding guardianship had been carried out as prescribed by law, in this case, the petitioner and his wife are not qualified to adopt a male child in India because they have a son. *Id. at Sec. 11, supra.*

Because the adoptions of the beneficiaries were not in compliance with Indian law, the AAO finds that the beneficiaries do not meet the definition of “orphan” under section 101(b)(1)(F) of the Act. 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.