



U.S. Citizenship
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FILE:

Office: BALTIMORE

Date:

APR 02 2007

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:

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 Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Baltimore. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on March 14, 2006. The District Director concluded that the beneficiary did not meet the requirements of the definition of “orphan” under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F). The petition was denied accordingly.

The District Director Decision, as well as a prior Notice of Intent to Deny, indicated that the petitioner had not submitted sufficient evidence to establish that the beneficiary’s surviving parent was “incapable of providing proper care” as that term is defined in Title 8, Code of Federal Regulations (8 C.F.R.) § 204.3(b). *Notice of Intent to Deny*, September 8, 2006; *District Director Decision*, November 22, 2006.

In his Rebuttal to Notice of Intent to Deny (*Rebuttal*, dated October 5, 2006) the petitioner stated:

I would like to know the particular document which is required to establish that the surviving parent who is the mother is unable to provide for the basic care of [the beneficiary] other than the fact that this peasant mother who lives in a rural area in Cameroon can’t even afford for her daily meal, not to talk of declaring her income as in the U.S.A. 98% of Cameroonians don’t have any idea about income declaration.

The High court in granting the adoption took into consideration documents (annexure D and E) submitted by the mother of [the beneficiary] before granting the adoption . . .

The District Director Decision, *supra*, noted that, “[a]s stated previously, a court, a government agency, or some other competent authority must issue evidence of a surviving parent’s inability to care for the child. This evidence must be specific and objective and it may not be based solely on an applicant’s statement or on witness testimony.”

On appeal, the petitioner, through counsel, asserts that the documents and evidence previously submitted were sufficient and adequate under the regulations. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)* and *Brief in Support of Appeal*, dated December 20, 2006. In support of this assertion, the petitioner cites to two documents in the record: (1) an Affidavit of Parental Consent from the beneficiary’s mother, provided to the High Court of Fako Division on October 12, 2005, in which she states that the beneficiary lived with the family of the petitioner and his wife “for a very long time” before they left Cameroon and that they bore the cost of the beneficiary’s “custody, care and general up bringing” before and after they left Cameroon; and that she gives her irrevocable consent to their adoption of the beneficiary; and (2) the official adoption decree from the Republic of Cameroon, dated November 1, 2005, in which the High Court of Fako-Buea considered “all affidavits and annex[es]” and the welfare of the children in its decision to grant the adoptions.¹ See *Brief, supra*. The petitioner also submits on appeal an additional affidavit by the beneficiary’s biological mother in which she states that she is the sole surviving parent; that she is a peasant farmer engaged in the cultivation of food crops “barely for [her] own consumption”; that after her husband’s death, it was practically impossible for her to sustain

¹ The High Court Judgment grants the adoption of two children to the petitioner and his wife.

herself and the beneficiary or provide for the beneficiary's health, upkeep and education; that when the petitioner and his wife were in Cameroon, "they took [the beneficiary] and have ever since then been the sole providers for her basic needs and education"; and that she granted her consent for the petitioner and his wife to adopt the beneficiary. There is no further evidence in the record relevant to a determination of the biological mother's ability to provide proper care for the beneficiary. The above noted documents have been reviewed and taken into consideration 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).

8 C.F.R. § 204.3 provides in pertinent part:

(b) *Definitions. . . .*

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*.

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

. . . .

(d) *Supporting documentation for a petition for an identified orphan.*

(1)(iii)(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption . . .

The record reflects that the beneficiary was born in the Republic of Cameroon on July 3, 1990; her father died on December 23, 1990. The petitioner and his wife adopted the beneficiary, by Judgment of the High Court of Fako-Buea, Republic of Cameroon, on November 1, 2005. The beneficiary's biological mother provided an affidavit, and the petitioner stated, that the petitioner and his wife lived with and supported the beneficiary before they adopted her, though no dates were provided to indicate the time period involved. The beneficiary's biological mother also provided an affidavit indicating that she was unable to support her daughter after her husband died. The High Court Judgment granting the adoption of the beneficiary states:

The facts upon which the application [for adoption] is based are contained in an eleven paragraphs affidavit duly deposed to by Counsel on behalf of the Applicants [the adoptive parents]. . . .

This Court has had a cursory examination of all the paragraphs of the affidavit and all the annex[es] attached thereto. . . .

Also as per anne[xes] D and E the mother of the children to be adopted who hitherto had defacto care and custody over them has given her consent to the Applicant's prayer. . . .

Considering the fact that the Welfare of the children to be adopted is of paramount importance in considering an application of this nature. And from the facts deposed to above, this Court is satisfied that the grant will be for the benefit of the children to be adopted.

The petitioner referred to the above-mentioned annexes D and E in his Rebuttal, *supra*. Counsel also refers to them to support the petitioner's assertion that he has provided sufficient evidence that the surviving parent is incapable of providing proper care for the beneficiary, and notes that the petitioner "is willing to provide all affidavits and annexures presented before the High Court of Cameroon." *See Brief, supra*. However, no such documents have been submitted, making it impossible to assess their relevance. In fact, the High Court Judgment cites to them to support its finding that the beneficiary's biological mother was responsible for the care and custody of the children before consenting to the adoption, which contradicts the petitioner's assertions. The other affidavit (of eleven paragraphs) referred to in the High Court Judgment is also absent from the record.

The petitioner has not submitted any documentation from "a competent authority" as evidence that the sole parent is "incapable of providing proper care." An affidavit from the biological mother to that effect is not to be disregarded, but if not supported by the conclusions of a competent authority or other objective evidence, it is not afforded much weight. *See, e.g., Matter of Rodriguez*, 18 I & N Dec. 9 at 11 (BIA 1980) (concluding that the beneficiary is an orphan, where, *inter alia*, the beneficiary's mother, a sole parent, "has declared and a social welfare agency study in Peru has verified that she is unable to provide proper care for the beneficiary"); *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). In this case, there is no documentary evidence to support the biological mother's affidavits, and as a result, they cannot be given much weight.

Details regarding local standards of living in the Republic of Cameroon are also absent from the record. The petitioner's assertion that the surviving parent is a peasant in a rural area who cannot afford her daily meal is not objective evidence that rural peasants cannot properly provide for their children, or that the beneficiary's mother was unable to do so given her individual circumstances. Moreover, in this case, the beneficiary's father died in 1990, the same year that the beneficiary was born. Her mother has been her sole parent since

that time and was responsible for raising her for 15 years. Although the petitioner and the biological mother claim that the petitioner and his wife provided support for the beneficiary for many years, there is no documentary evidence of this and no indication of the years involved; indeed the Court Judgment granting the beneficiary's adoption is evidence that the biological mother was responsible for the beneficiary's custody and care prior to the adoption in 2005. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the beneficiary's mother is incapable of providing for the beneficiary's basic needs in a manner consistent with the local standards in the Republic of Cameroon. Accordingly, the AAO finds that the beneficiary does not meet the definition of "orphan" as set forth in 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.