



U.S. Citizenship  
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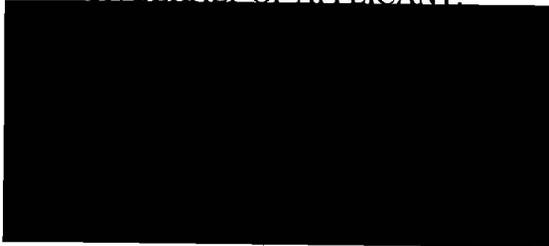
APR 05 2007

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 APPLICANT:



**PUBLIC COPY**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director in Rome, Italy, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 petition) at the U.S. Embassy in Islamabad, Pakistan, in September 2004. The petitioner is a 51-year-old married U.S. citizen. The beneficiary was born in Pakistan on July 28, 2003. The petitioner seeks to classify the beneficiary as an orphan and immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

The district director found inconsistencies and misrepresentations in the evidence provided by the petitioner and concluded that the petitioner had failed to provide corroborating evidence to support his claim that the beneficiary's parents had died or disappeared. The petition was denied accordingly. *District Director Decision*, September 28, 2006. The decision indicates (1) that the petitioner received guardianship of the beneficiary on November 12, 2003, and applied for permission to "take the minor ward to USA for brought up-education/as a family member"; and (2) that the application was granted and a competent authority has released the child for emigration. *Id.*, at 5. The decision states, however, that in the application, the petitioner claimed that he adopted the child, when he only had guardianship, and misinterpreted the purpose of his approved Application for Advance Processing of Orphan Petition (Form I-600A), finding that "[these misinterpretations and misstatements place doubt on the accuracy and truthfulness of the proceedings." *Id.* The decision also raises concerns about the validity of the beneficiary's birth certificate, noting that it was the petitioner who reported the birth data to provincial authorities. *Id.*, at 4.

On appeal, the petitioner, through counsel, asserts that the Notice of Intent to Deny (NOID) issued in this case on January 3, 2006 stated one set of reasons for a finding that the petitioner did not conclusively prove that the parents of the beneficiary had died and requested the petitioner to resolve inconsistencies and add sufficient detail to overcome a lack of credibility; that the denial did not clarify whether the petitioner's detailed response to the NOID had resolved any of the claimed inconsistencies; that the decision stated an entirely different reason as a basis for denial, including questioning the Pakistani guardianship proceeding.<sup>1</sup> *Notice of Appeal to the Administrative Appeals Office (AAO)(Form I-290B)*, October 25, 2006. The petitioner also asserts that the evidence submitted was consistent with availability of documents under country conditions prevailing in Pakistan for Afghan refugees; that he made a good faith search for the beneficiaries relatives, following legal procedures in Pakistan, including publication, to obtain guardianship; and that the inconsistent use of the terms "adoption" and "guardianship" is not a basis for doubting the accuracy or truthfulness of the application for permission to take the beneficiary to the United States. *Id.*; see also *Appellant's Brief*, submitted November 29, 2006.

In support of his appeal, petitioner, through counsel, submits a memo from the U.S. Consular Section in Islamabad, Pakistan, regarding "Obtaining Guardianship," in which the Immigrant Visa Unit refers to the beneficiary as the petitioner's "adoptive child" while explaining that the petitioner must obtain a court order granting guardianship (*Memo*, dated August 3, 2004); and an article from a Pakistani daily publication, *The Frontier Post*, entitled "1,000 Afghans registered in 1<sup>st</sup> two days of refugee census," referring to an estimated 3.04 million Afghan refugees in Pakistan according to a 2005 census and quoting the United Nations High Commissioner for Refugees (UNHCR) on the "massive scale" of the registration.

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<sup>1</sup> The AAO notes that this decision addresses the District Director Decision, *supra*, as the subject of this appeal, and not the conclusions of the Notice of Intent to Deny.

<http://www.worldservicesint.com/newfp/>, printed October 18, 2006. Counsel also asserts that the petitioner did not mislead Pakistani authorities when requesting permission to take the beneficiary to the United States when he stated that he “adopted” the beneficiary, but was simply following the terminology used by the Immigrant Visa Unit, and that the Pakistani court had full knowledge of its own prior proceedings granting guardianship. *Appellant’s Brief, supra*, at 7. The article from the *Frontier Post* is submitted as evidence that prior to 2005 Afghan refugees were not registered or otherwise documented in Pakistan, making it difficult to obtain official records of births or deaths; and that as the petitioner was the child’s legal guardian at the time the birth was registered, he was a proper informant; and that other than incorrectly listing his own address as “father’s address” on the birth registration form, when the biological father was dead, the information he provided was correct to his knowledge and given to him by the doctor who attended the birth. *Id.* Counsel also refers to the U.S. Department of State’s Foreign Affairs Manual (FAM) regarding the difficulty of obtaining valid documentation of births and deaths in Pakistan and Afghanistan. Taking into consideration all of the evidence in the record, the AAO finds petitioner’s assertions persuasive regarding these issues and finds that, although there are some inconsistencies in the record, they are immaterial to a determination of whether the beneficiary is an orphan under the Act.

The AAO finds that the petitioner followed the proper procedures in Pakistan to obtain guardianship of the beneficiary by order of a Judge of the Family Court in Peshawar, submitted proper documentation of the beneficiary’s birth and the death of his mother in childbirth by providing the certificate of the doctor who attended the birth. The AAO also finds that the petitioner made a good faith effort to obtain death certificates for the beneficiary’s biological parents, but was unable to obtain them. He also made reasonable efforts to locate the father or other relatives with a claim to the child. Despite these efforts, including publication in a local newspaper of the guardianship hearing, the biological father could not be found and no one came forward to contest the award of guardianship. Sufficient evidence that the biological father of the beneficiary has either died or disappeared, has therefore been submitted. Moreover, although the beneficiary’s official birth certificate is based on information provided by the petitioner, it is supported by an affidavit from the attending doctor who had knowledge of the facts of the beneficiary’s birth and the death of his biological mother.

Section 101(b)(1)(F)(i) 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.

Title 8, U.S. Code of Federal Regulations (8 C.F.R.) § 204.3(d) states in pertinent part:

(1) [T]he following supporting documentation must accompany an orphan petition filed

after approval of the advanced processing application:

....

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable . . . and

(iv) 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:

....

(B) [I]f the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country.

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

In addition, 8 C.F.R. § 204.3(b) contains the following definitions pertaining to circumstances under which a child may qualify as an "orphan":

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

A "competent authority" is defined as "a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption." In Pakistan, the government office responsible for adoptions is the Family Court. See U.S. Department of State (DOS) general guidance on international adoption in Pakistan, found at <http://www.travel.state.gov>, last accessed on January 30, 2007.

In addition to documents submitted on appeal, noted above, the record contains the following evidence relating to the beneficiary's status as an "orphan":

A birth certificate, issued by the North West Frontier Province of Pakistan, stating that [REDACTED] (the beneficiary), of Afghan nationality, was born on July 28, 2003 in Hayatabad, Peshawar, and his birth was registered by the petitioner on December 19, 2004. It lists the names of both biological parents and lists the petitioner as the "reporter." It also lists the same address for the "father" and the petitioner.

A "Certificate" signed by [REDACTED] dated August 25, 2003, stating that a baby boy was born on July 28, 2003 to an Afghan refugee woman named "Hukamjana wife of unknown resident unknown" who came to the doctor's clinic in Hayatabad Township, Peshawar on July 28, 2003 in an advanced stage of delivery and died after the delivery of the baby. It further states that [REDACTED] was on the clinic's waiting list for an orphan child for the last three years, was contacted and took custody of the child; after proper documentation the child was put in his care, and he named the child [REDACTED] as his son.

An "Application for Guardian Certificate" submitted by the petitioner on November 4, 2003 to the Court of the Senior Civil Judge and Guardian Judge, [REDACTED] in [REDACTED] seeking guardianship of the beneficiary.

An announcement published in *Al Akhbar* newspaper (offices in Islamabad and Karachi) on November 4, 2003, giving notice that the petitioner "submitted an application for grant of Guardian Certificate in the Court" for the beneficiary and that, absent any objection, action would be taken in court on November 10, 2003 .

A Court Order issued by [REDACTED] Senior Civil Judge/Guardian Judge/Judge Family Court, Peshawar, on November 11, 2003, stating, in pertinent part:

This is an application for appointment of guardian of person of [REDACTED] [REDACTED]. As per certificate of [REDACTED], the minor is an orphan child. His mother died during the delivery of the child. No relation of the minor is known. The petitioner [REDACTED] who was on the waiting list was contacted and on his willingness, the child was handed over to him after proper documentation. Since the minor is an orphan child and has no relation nor any person claims him even after publication. It is in the welfare of the minor to remain in the custody of the petitioner:

In view of above facts, the petition in hand accepted subject to furnishing sureties bonds in the sum of Rs. 1,00000 with two sureties to the satisfaction of this court.

A "Guardianship Certificate" issued by the Court of the Senior Civil Judge [REDACTED] [REDACTED] Guardian Judge/SCJ/JFC, on November 12, 2003, appointing the petitioner guardian of the beneficiary during the period of his minority.

An "Application for Permission to Take the Minor Ward to USA for Brought up/ Education / as a Family Member" submitted by the petitioner to the Senior Civil Judge / Guardian Judge, [REDACTED] dated August 18, 2006 ("Application for Permission"). The petitioner states in the Application for Permission that he has been appointed guardian of the beneficiary, that he has "adopted the orphan as his son as they have no other issue," and that "the American Government has allowed the orphan to its country for brought up / education and forwarded the application to the American consulate at Islamabad Pakistan," noting that a copy of the application (the I-600A Petition), is enclosed, and requesting that permission of the court be granted "to take the minor orphan from the jurisdiction of the learned court."

A court order, dated September 6, 2004, on a "Form of Order Sheet" from the Court of Senior [REDACTED] signed by [REDACTED] Senior Civil Judge / Guardian Judge, granting the Application for Permission, *supra*. It states in pertinent part:

Counsel for the petitioner filed [the Application for Permission]. Perusal of the application reveals that the petitioner has [been] appointed as legal guardian of the minor namely [REDACTED] by the Court. Copy of the same placed on file. That the applicants (sic) wants to take the minor to USA for his brought up and education. In this respect statement of the petitioner recorded and placed on file.

Keeping in view of the statement of the petitioner and arguments of the learned counsel for the petitioner the application seems genuine hence the petitioner is allowed to take the minor namely [REDACTED] to USA for his brought up and educations.

Two affidavits signed by the petitioner on December 28, 2004, the first stating that he has adopted an Afghan orphan child whom he named [REDACTED] and that the father of the child passed away in Jalalabad, Afghanistan on January 5, 2003 in a bomb blast; and requesting that his death be confirmed and certified; and the second adding that the mother of the child, [REDACTED] came to Peshawar, Pakistan seeking refuge and remained in a refugee camp located at Kacha Garhi,<sup>2</sup> that she was pregnant at that time, delivered the child in a clinic under the care of [REDACTED] and died during delivery on July 28, 2003; and

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<sup>2</sup> In 2003, [REDACTED] [a] refugee village, located outside Peshawar" was home to around 75,000 persons. *World Refugee Survey 2004 Country Report*, US Committee for Refugees and Immigrants, published 2003. There had been no registration or census of Afghans in Pakistan for over a decade at that time. *Id.* At the end of 2002, UNHCR reported that Pakistan continued to host one of the world's largest refugee populations, including approximately 1.5 million Afghans living in refugee villages in North West Frontier Province, Baluchistan and Punjab, and that the government of Pakistan estimated that there were an additional 1.6 million Afghans in urban centers in the same regions. *UNHCR Global Appeal 2003*, December 2002, p. 182. UNHCR currently reports that Katchagari (UNHCR spelling), in North West Frontier Province, is one of four Afghan Refugee camps that are slated for closure in 2007 as agreed by the governments of Pakistan and Afghanistan, noting that the four camps together house more than 230,000 people "UNHCR News Story," Islamabad, Pakistan, February 7, 2007. Approximately 2.16 million Afghans in Pakistan were registered between October 2006 and February 2007. "UNHCR Briefing Notes," February 16, 2007.

requesting that the death of Hukamjama be confirmed and certified. The affidavits were submitted to the Government of Pakistan Ministry of Foreign Affairs, Camp Office, Peshawar, and to the Counselor General of Afghanistan, Peshawar.

A "Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition" indicating that the petitioner's I-600A application was completed on June 29, 2004, and stating, *inter alia*, "[i]t has been determined that you are able to furnish proper care to an orphan or orphans as defined by section 101(b)(1)(F) of the Immigration and Nationality Act" and "your advance processing application has been forwarded to the American Consulate or embassy at Islamabad, Pakistan."

An inquiry from the petitioner to the USCIS Officer in Charge in Rome, Italy, regarding "Visa Status," dated October 17, 2005. The petitioner states that he just spoke with an immigration officer regarding "our adopted son [REDACTED] and asks if he can do anything "to help expedite this orphan child adoption application or be informed why it is still pending.

Supporting documentation

8 C.F.R. § 103.2(b)(2) states in pertinent part:

Submitting secondary evidence and affidavits.

(i) **General.** The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) Demonstrating that a record is not available. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, **a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An**

**applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement.** However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement (emphasis added).

In this case, the District Director raises concerns about the validity of the beneficiary's birth certificate because it was the petitioner who reported the birth data to provincial authorities. *District Director Decision, supra*. The petitioner originally submitted the certificate of the doctor who delivered the beneficiary as evidence of the beneficiary's birth and his mother's death, as the doctor had first hand knowledge of the circumstances of birth. However, the petitioner was told by USCIS that he needed a birth certificate for the child and death certificates for the biological parents. He duly registered the child's birth on December 19, 2004 and submitted the Birth Certificate, issued by the appropriate authorities in Peshawar, to USCIS. He states that he was not initially given information regarding the beneficiary's biological father, but by the time he registered the birth, he states that he had found out his name and circumstances of his death in Afghanistan. He included the father's name when he registered the birth, but mistakenly listed the father's address as his own. The petitioner also sought to register the deaths of the beneficiary's parents by submitting his affidavits regarding the circumstances of their deaths, to the best of his knowledge, to the Government of Pakistan Ministry of Foreign Affairs, Camp Office, Peshawar, and to the Counselor General of Afghanistan, Peshawar. However, no official death certificates have been issued; and the birth certificate, while official, is based on information provided by the petitioner, as the guardian of the child.

The official death records of the beneficiary's biological parents are not available despite the petitioner's efforts to obtain them. In such cases, the regulations generally require that the appropriate government authorities confirm that a document does not exist; however, such official certification **is not required** if the FAM indicates that a type of document generally does not exist. See 8 C.F.R. § 103.2(b)(2)(ii), *supra*. In Pakistan, reporting of births is voluntary, and records are not uniformly kept; records of deaths are inconsistent. FAM, Vol. 9, updated September 7, 2006. In Afghanistan, "[p]rotracted wartime conditions and the absence of an established central authority have made document availability and reliability very uncertain." *Id.*, updated February 20, 2003. It would be reasonable to conclude that this inconsistency and lack of availability of birth and death records would also affect the Afghan population in Pakistan, particularly in light of the millions of Afghan refugees in Pakistan and lack of official registration before 2006 (*see p. 2, supra; fn 2, supra*). In this case, under these circumstances, the evidence in the record of the beneficiary's birth, his mother's death at the time of his birth, and his father's death or disappearance is sufficient.

The petitioner has submitted evidence, in the form of a statement by the attending doctor regarding the birth of the child and death of the mother, affidavits submitted to Pakistani authorities seeking verification of the deaths of the child's parents, an advertisement in the Pakistani newspaper in an attempt to locate relatives of the child, and his own affidavits and statements describing his efforts to search for relatives in the refugee camp and surrounding area based on his knowledge of the prior residence of the mother. It is also important to note that the petitioner was granted legal guardianship of the beneficiary by the competent authority in Pakistan, pursuant to Pakistani law and procedures, and without official death certificates for the beneficiary's biological parents.

### Misinterpretations and misstatements

The District Director found that the petitioner's "misinterpretations and misstatements place doubt on the accuracy and truthfulness of the [Pakistani Court] proceedings." *District Director Decision, supra*. A review of the record, however, supports a conclusion that these "misinterpretations and misstatements" are neither willful nor significant and are immaterial to a determination of whether the beneficiary is an orphan under the Act.

Regarding the petitioner's statements that he has adopted the petitioner, the AAO notes that throughout the process under review, the petitioner and all authorities involved, including the Immigrant Visa Unit in Islamabad, used the terms "adopted child," "adopted son" or "adoption"; the petitioner includes in several affidavits that he has "adopted the orphan as his son." It was clear, however, that even though the petitioner treated the child "as his son," he was in the process of seeking guardianship in Pakistan and a visa for the beneficiary to travel to the United States for adoption. There is no indication that the use of these terms was meant to mislead or misrepresent that the petitioner was seeking the benefits of an adoptive father rather than guardianship. The Pakistani Family Court was aware of the type of application before it, as were U.S. authorities; and the petitioner would not have benefited by claiming to have already adopted the child for whom he was seeking legal guardianship. Regarding a misrepresentation of the significance of the U.S. approval of his Application for Advance Processing of Orphan Petition, the petitioner's description to the Family Court was not significantly misleading. He explained to the Family Court that the U.S. has "allowed the orphan to its country for brought up/education" and repeated the language on the approval form, that his Advance Processing Application, which was approved, "has been forwarded to the American Consulate in Islamabad, Pakistan," enclosing a copy of the application for the Court's review. There is no indication that this was an attempt to mislead the authorities or that the Pakistani Family Court used that information as a basis to grant guardianship or permission to take the child outside the jurisdiction of the Court. The process was carried out in compliance with the Guardian and Wards Act of 1890 and is not dependent on an I-600A approval. Regarding incorrectly listing the "father's address" as his own when registering the beneficiary's birth, it would be illogical to interpret this as a willful or material misrepresentation by the petitioner. His claim that the child is an orphan because of the death or disappearance of his father cannot be reconciled with an attempt to mislead authorities by stating that the child's father resides at a known address in Peshawar. The AAO finds that these inconsistencies do not undermine the merits of petitioner's case.

### Conclusion

There is no allegation that the beneficiary's biological mother is alive, only that there is no official death certificate in the record. According to a "Certification" by the doctor who attended his birth, the beneficiary's biological mother died shortly after the birth. The petitioner reported the death in an affidavit filed with the Pakistani Ministry of Foreign Affairs and the General Consulate of Afghanistan, but he was not able to obtain a death certificate; he followed the same process to report the death of the biological father, with the same result. He explained in a detailed affidavit in response to the Notice of Intent to Deny his I-600 Petition, that he had made numerous attempts to locate the beneficiary's relatives, visiting the mother's refugee camp and surrounding area, contacting UNHCR, and advertising in the newspaper before obtaining legal guardianship. *See Reply to Notice of Intent to Deny*, dated January 3, 2006. The evidence he provided was sufficient for the Family Court in Pakistan to grant guardianship and permission for the child to emigrate. The statements of the petitioner and the doctor who attended the birth of the beneficiary, and the conclusions of the Family

Court should be given appropriate weight. *See 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.”); *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”).

There is also no question regarding the fact that the competent authority, the Pakistani Family Court, has given the petitioner guardianship of the beneficiary and a release for the child to emigrate. *See District Director Decision, supra*. The question is whether the basis of the Pakistani Court’s decisions to grant guardianship and permission to emigrate are based on sufficient evidence. The AAO finds that these decisions are based on sufficient evidence. The petitioner provided sufficient proof of the death of the beneficiary’s mother by submitting the attending doctor’s statement; and made a reasonable effort to locate the beneficiary’s father, including by advertising in advance of the guardianship hearing. Given the circumstances of Afghan refugees in Pakistan and the general unavailability of birth and death certificates in Pakistan as described by the U.S. Department of State in the FAM, official death and birth certificates are not required in this case, and were not required by the competent authority in Pakistan. The AAO finds that the actions of the Pakistani Family court are legitimate and that the petitioner has established the loss or disappearance of the beneficiary’s parents as those terms are defined in 8 C.F.R. § 204.3(b).

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See section 291 of the Act*, 8 U.S.C. § 1361. Based on the foregoing, the AAO finds that the petitioner has met his burden of establishing that the beneficiary is an “orphan” as set forth in section 101(b)(1)(F) of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.