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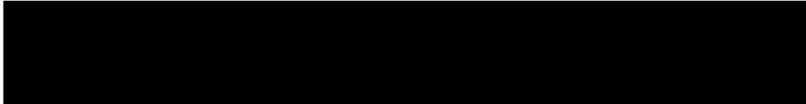


FI

FEB 28 2007

FILE: [Redacted] Office: SAN FRANCISCO (FRESNO) Date:

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:

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 Petition to Classify Orphan as an Immediate Relative was denied by the District Director, San Francisco. 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 September 24, 2004. 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 (INA or the Act), 8 U.S.C. 1101(b)(1)(F). The petition was denied accordingly.

Both the Notice of Intent to Deny the I-600 Petition, dated December 21, 2004, and the district director’s decision, dated March 29, 2005, noted that the beneficiary was not considered an orphan because his parents intended to transfer rights over their son to the petitioner; the actions of the beneficiary’s biological parents, therefore, did not constitute “abandonment” as this term is defined in Title 8 of the U.S. Code of Federal Regulations (8 C.F.R.). *District Director Decision*, March 29, 2005. The Credibility of the I-600 Petition was also questioned in light of many inconsistencies. *Id.*

On appeal, the petitioner submits a statement of “legal and factual reasons for appeal,” focusing on the interpretation of the word “willfully” in the law and the intent of the beneficiary’s biological parents “as adjudged by a Decree from a court of law” and a Decree “of Guardianship from Pakistan’s highest Family Court which irrefutably determines the child’s status as abandoned under US INS definitions.” *Notice of Appeal to the Board of Immigration Appeals (BIA) (Form EOIR-29)*,<sup>1</sup> *Reasons for Appeal*, filed April 27, 2005. The petitioner also submits an Addendum to the Home Study which “clarifies the status of the [c]hild and other alleged inconsistencies.” *Id.*; *Independent Adoption Center Intercountry Adoption Home Study Addendum (Home Study Addendum)*, dated April 12, 2005.

The Home Study Addendum notes:

The original adoption home study conducted on the \_\_\_\_\_ contained some factual errors and inconsistencies regarding the child they are seeking to adopt. . . .

Asarulislam and [his wife] \_\_\_\_\_ met with the child on their visit to Pakistan in January of 2004. . . . They met with his parents only ONCE and not several times. Only after the home study was completed were they able to obtain exact information about the child and this information was learned over the phone. The following are the facts about the child that have been established now by the High Court Judge at Lahore since the \_\_\_\_\_ petitioned recently for a Decree of Guardianship in January of 2005.

*Id.* (emphasis in the original). It further states that the following events occurred in January of 2004: (1) the beneficiary’s “primary caretaker for the past eleven years,” \_\_\_\_\_ “managed to locate the biological parents, who clearly stated they had no parental interest in their child, and were unconditionally willing to give up the child, to an orphanage, or any household”; (2) the beneficiary ran away from \_\_\_\_\_’s home and

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<sup>1</sup> The District Director’s Decision mistakenly instructed the petitioner to file his appeal to the BIA on Form EOIR-29 instead of to this office on Form I-290B; the AAO accepts petitioner’s appeal as timely filed with the correct office.

obtained domestic service work at the Lahore home of the [REDACTED] family; (3) the petitioner and his wife visited their family and learned about the beneficiary's "adverse living situation, abandonment and desertion by his biological parents, and living as an orphan"; (4) "the [REDACTED] enrolled the beneficiary in the Defence Public School in Lahore, an expensive English Medium School, and established contact with [REDACTED] who helped locate [the beneficiary's] biological parents. They said they had unconditionally given up the child to [REDACTED] because of poverty. The [REDACTED] then became informal guardians of the child and chose to sponsor his education in Pakistan. They arranged for [him] to live in their Lahore house, under the supervision of their sister." *Id.*

A year later, in January 2005, "the Syeds applied for a formal decree of guardianship to the High Court of Lahore. The court investigated the matter and called to the witness stand [REDACTED] and [REDACTED]'s parents. After verification of the facts, the Court granted a Decree of Guardianship to [REDACTED] M.D. in February 2005." *Id.*

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 (emphasis added).

"Abandonment by both parents" is a defined term in the regulations. 8 CFR 204.3(b) states in pertinent part:

***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. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.** A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or

otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned (emphasis added).

This AAO finds that the information submitted on appeal neither clarifies former inconsistencies nor supports the petitioner's assertions that the beneficiary was abandoned by his biological parents as that term is defined by regulation

1. Inconsistencies in the record

At various times during the processing of this case, inconsistencies have been noted by CIS, and the petitioner has been given an opportunity to explain them. These include:

Information on the I-600 Petition (September 24, 2004) notes that the beneficiary was living with the petitioner's father in Lahore, Pakistan, when in reality, the petitioner's father was residing at that time in California with the petitioner.

The Home Study states that the [redacted] visited the family of S [redacted] on five or six occasions and discussed plans for adoption; this statement is later contradicted on appeal in the Home Study Addendum, *supra*.

The petitioner's explanations of the inconsistencies in the record are no more than admissions that prior information was provided in error. *See, e.g., Home Study Addendum, supra; Letter to CIS from [redacted] undated, submitted in response to October 4, 2004 request for information from CIS; Letter to CIS from [redacted] and [redacted], February 23, 2005.*

On appeal, petitioner provides further erroneous information by mischaracterizing the role of the High Court Judge at Lahore and stating that it granted a Decree of Guardianship. The Home Study Addendum states that the facts reported by petitioners about the beneficiary were established by the High Court Judge at Lahore and, after an investigation and verification of the facts, the Court granted a Decree of Guardianship to the petitioner. These statements are misleading and are not supported by the evidence, as it was the petitioners who provided the information to the Court in the form of an affidavit, and there is nothing in the record to indicate that any investigation or verification of the information was undertaken.

The referenced "Decree" is actually entitled "Suit for Declaration with Consequential Relief," dated January 19, 2005, which was filed in the Court of Senior Civil Judge, Lahore, by the petitioner and his wife (listed as plaintiffs) and the beneficiary's biological parents and [redacted] (listed as defendants). It is a statement by the parties that summarizes events as described by them, ending with a request to the court that, *inter alia*, "the suit be decreed and a declaration be granted to the effect that the [beneficiary] has been given under the Permanent Guardianship of the plaintiffs" and that the court declare that the beneficiary had been abandoned by his biological parents from the year 1993, and that abandonment was not made with the intent of transferring their parental rights to any person. *Statement of Parties, January 19, 2005. Attached to the Statement of Parties is an additional page with a typed paragraph dated February 10, 2005 noting in its entirety, "The defendants made conceding statement and after conceding statement of the defendants nothing remains disputed, so, this suit is hereby disposed of in the light of the statement. File be consigned to the record room after its due completion." Id.* It is this document that is referred to on appeal by both the

petitioner and the home study agency as a “Decree of Guardianship.” *Reasons for Appeal, supra; Home Study Addendum, supra*. There is, however, no indication that the document is more than a declaration and request for relief, and confirmation that the parties have agreed to their joint statement.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not provided such evidence.

## 2. Abandonment

There is no evidence of “abandonment” by both parents as defined in the regulations outlined above. In fact, the evidence reflects an intention by both parents to **transfer their rights over their child to the petitioner**, which is expressly prohibited under the definition. Evidence in the record includes the following:

Based on interviews with [REDACTED] and other family members, the Intercountry Adoption Home Study by the Independent Adoption Center reported that “[w]hile in Pakistan, [REDACTED] discussed with [REDACTED] and his parents the possibility of him returning with them to the United States. [REDACTED] and his parents agreed [sic], therefore [REDACTED] initiated the international adoption process.” *Home Study, September 21, 2004, p. 3*. “The [REDACTED] have visited Sajid’s family on five or six occasions. They have discussed with them their plan to adopt Sajid and move him to the United States. According to the [REDACTED] his parents have agreed with this plan.” *Id.*, p.9. After the Home Study was completed, it was sent to the Syeds and, in the accompanying cover letter from the Independent Adoption Center, the [REDACTED] were asked to review the Home Study for factual errors; there is no evidence that they made revisions to the above remarks. On appeal, the Home Study Addendum simply states that the [REDACTED] met with [REDACTED] family only once.

The beneficiary’s biological parents signed two affidavits, one on January 13, 2004 entitled “Affidavit Pertaining to Termination of Parental Rights” (Affidavit 1) and the other, containing more details, “Affidavit Pertaining to Relinquishing of Parental Rights and Adoption of child by The [REDACTED] Family” (Affidavit 2, with inconsistent internal dates of January 13, 2004, but with stamp indicating “attested” November 1, 2004). Included at the end of Affidavit 2 is a statement, signed and stamped by a Judicial Magistrate of Lahore, Pakistan, affirming that the parental rights of the beneficiary’s biological parents, “as willfully relinquished by them above, are hereby regarded as terminated. The child has been accepted for legal adoption by [REDACTED] and [REDACTED]. Legal adoption of [REDACTED], is therefore established and that there is no objection or condition under the Law of the Government of Pakistan, to bar this child from permanently immigrating to the USA.” Affidavit 2 also contains the following statements by the beneficiary’s biological parents:

[W]e as biological parents, legally relinquished/terminated our parental rights on our biological child, [REDACTED]. Because of adverse family circumstances, poverty and besides having six other children, we had not been able to take care of the needs of this child.

We also state that on this date of January 13th, 2004 [the AAO notes that the date may have been mistakenly recorded, and should have been November 1, 2004] [redacted] was taken for adoption by [redacted] and [redacted]. . . He has moved to permanently live with them, and we are not responsible for him in any respect.

This affidavit is being given to further affirm that we have no objection if [redacted] immigrates permanently to the United States to live with his new parents.

In response to the Notice of Intent to Deny, *supra*, the petitioner wrote a letter in which he stated that after he received the initial request for information from CIS in October 2004, “we actually had the person with whom the child had been living from 1993 onwards, [redacted] trace the parents and had them sign an Affidavit drafted by us.” *Letter to CIS from [redacted] and [redacted]* February 23, 2005. The petitioner also stated, “Because formal guardianship of an abandoned child is a lengthy process, we had [redacted] track the parents and obtain at least an affidavit from them” for the purpose of enrolling the beneficiary in a private school under the petitioner’s informal guardianship. *Id.*, referring to Affidavit 1, *supra*.

The AAO finds that the evidence listed above supports the conclusion that the beneficiary has not been abandoned, but rather has been released by his parents specifically to [redacted]. The record clearly indicates that [redacted] has had contact with the beneficiary’s biological parents, that guardianship and adoption were discussed, that the Affidavit Pertaining to Termination of Parental Rights, was prepared by the petitioner and signed by the biological parents at the request of the petitioner, and that another Affidavit Pertaining to Relinquishing of Parental Rights **and Adoption of child by the [redacted] Family**, by its very title indicates that the petitioner and the biological parents were anticipating a relinquishment for a specific adoption. Regardless of signed statements in which the biological parents of the beneficiary relinquished all rights over their son, the record indicates that such statements were made in anticipation of the planned adoption by the petitioner in this case. The evidence shows that since January 2005 there has been a continuous intention by the beneficiary’s biological parents to transfer parental rights over the beneficiary to the petitioner.

Based on the record and the unresolved inconsistencies, the District Director found that the applicant had not abandoned the beneficiary. Lacking sufficient evidence in the record to the contrary, the AAO agrees with this decision. Given the evidence in the record, 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.