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FILE:

Office: SAN FRANCISCO (FRESNO) Date: **JAN 09 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:

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 sustained.

The petitioner, (Mrs. [REDACTED]) filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on October 25, 2005. The District Director concluded that the beneficiary, [REDACTED] 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 decision of the District Director noted that the petitioner had not submitted required documentation regarding the fact that the beneficiary's biological mother was a "sole parent" or that, as a sole parent, she was incapable of caring for her child. *District Director Decision*, May 8, 2006. The decision stated:

On November 29, 2005 you were sent a request to submit the missing documentation. The I-72 request for evidence stated the following:

1. Information regarding the father of [the beneficiary] was not provided with your application. If the father cannot be located, submit evidence that the competent authority made an effort to locate the father and properly notify him of the decision to adopt.
2. Evidence was not submitted with the application that would suggest that the mother [REDACTED] is not able to properly care for the child. **Please** submit documentation from the competent authority stating whether or not [REDACTED] Aguilar Ponce is able to properly care for the child consistent with the local standards.

...  
The evidence submitted . . . is insufficient to prove the biological mother cannot provide proper care for the beneficiary consistent with local standards of the foreign sending country. A statement alone from the biological mother fails to meet the threshold of burden of proof. No evidence was provided from a competent authority to substantiate the claim of the biological mother. Also no evidence was provided from a competent authority as to the local standard of living in Mexico compared to the biological mother's current situation.

On appeal, the petitioner states that proper documentation was previously submitted to establish that the father of the beneficiary is unknown and that the mother is unable to provide proper care; the petitioner also submits on appeal (1) a copy of the beneficiary's birth certificate, which lists only the name of the mother; and (2) declarations by three officials of the State System for the Full Development of the Family (DIF), Office of the Municipality of Jalpa: the President, the Director and an attorney from the DIF's Attorney's Office for the Defense of the Child, attesting to the fact that the beneficiary's father is unknown and that the beneficiary's biological mother lives in extreme poverty and cannot care for the beneficiary. *Notice of Appeal to the Administrative Appeals Office (AAO)*, dated May 16, 2006; *DIF Declarations*, dated May 11 and May 23, 2006. The record also contains (1) a previously submitted letter from the DIF confirming that the biological mother of the beneficiary stated that she granted the adoption of the beneficiary to the adoptive couple owing to the poverty in which she lives and which does not allow her to provide him the necessities of life and that she cannot count on the support of his father, as he is unknown (*DIF Letter*, dated March 16, 2006); (2) the Judgment of the Family Court of the Judicial District of Jalpa, Zacatecas, granting the adoption petition of June 2, 2004, and confirming that the petitioner and her husband have complied with the adoption laws of that judicial district, and that the

biological mother of the child has consented to the adoption as “the only one that has rights over said minor and custody and . . . [that] she signed her consent before the judicial [sic]” on June 10, 2005 (*Special Judgment of Adoption*, Jalpa, Zacatecas, July 11, 2005); (3) a declaration by the beneficiary’s biological mother, dated October 12, 2005, confirming that, even though she is not obligated to make any declaration, as she has no rights over the beneficiary, she is “ratifying her authorization, consent and conformity” to the adoption and to the beneficiary’s travel, and stating that she has no interest over the beneficiary; and (4) a certificate of registration of the adoption, dated September 29, 2005. All of 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).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides in pertinent part:

*Sole parent* means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.<sup>1</sup>

*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*.

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<sup>1</sup> It is noted that the provisions of Public Law 104-51, which changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, replaced the words "legitimate child" with the words "child born in wedlock," and replaced "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The regulatory definition of “sole parent” contained in 8 C.F.R. § 204.3 has not been amended to conform to these changes.

*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.

The record indicates that the beneficiary's biological parents were not married at the time of his birth. Evidence of this includes the beneficiary's birth certificate, which lacks any information regarding the identity of his biological father, and the declaration of the biological mother that his father is unknown. In addition, the declarations of officials of the DIF explain that the father is unknown; that "not one child [of the beneficiary's biological mother] has been recognized by any of their fathers, so each has father 'unknown'" and that the beneficiary's birth certificate reflects this by showing that the child was given only the surname of his mother. *DIF Declarations, supra*. In addition, the Family Court of Jalpa, Zacatecas, concluded that the beneficiary's mother was the only one who had rights over the child. *Special Adoption Judgment, supra*. A child who is born out of wedlock in a country that has not eliminated all legal distinctions between "legitimate" and "illegitimate," and who has not been legitimated under the laws of the child's or the biological father's residence or domicile, has a sole parent – his or her biological mother – unless the child has or had a *bona fide* relationship with the biological father. According to a June 2003 advisory opinion from the Library of Congress (LOC 2003-14451), all Mexican children have equal rights regardless of whether they were or were not born within a union bound by marriage. Since Mexico abolished the legitimate and illegitimate categories of children in 1979, children born of those unions not bound by marriage are designated as being born out of wedlock. Under Mexican law the issue as to the status of a child in such a case relates to whether parentage has or has not been established. Parentage is governed by the provisions of the civil code of each state.

In this case, the beneficiary was born out of wedlock, and the identity of the father has not been established; the evidence indicates that the beneficiary's father is unknown and has had no contact with the beneficiary. Under the civil code of Zacatecas State, the Family court of Jalpa concluded that the biological mother of the beneficiary exercised exclusive rights over the beneficiary before his adoption by the petitioner. The AAO finds, therefore, that the petitioner has submitted sufficient evidence to support the conclusion that the biological mother of the beneficiary is a "sole parent."

In all cases, it must be evident that the sole parent is incapable of providing proper care for the child according to the local standards of the foreign-sending country, and that she has, in writing, irrevocably released the child for emigration and adoption. *See* 8 C.F.R. § 204.3(b) (definition of "sole parent").

The District Director's decision states that the petitioner failed to submit documentation from the competent authority as evidence that the sole parent is "incapable of providing proper care" and that the affidavit from the biological mother to that effect can be considered self-serving and carry less weight. *District Director's Decision, supra*. In Mexico, the competent authority is the DIF. The DIF is a government institution in each Mexican state that handles family matters; it acts as the legal representative for abandoned children, provides foster care for abused or orphaned minors; and can give up for adoption children who are abandoned or orphaned. <http://www.travel.state.gov> (adoption procedure guidance, last updated May 2006).

On appeal, the petitioner submits additional declarations from the DIF to further clarify the institution's role in the determination that the biological mother of the beneficiary is unable to provide proper care. *See DIF Declarations, supra*. The DIF delegates state that they went to the beneficiary's home to view the living

conditions there and can verify that “they live in extreme poverty, for which there is no fixed salary, and [the biological mother] can hardly obtain enough food to feed the four other children who live with her . . . though the two eldest are of school age, they do not attend.” *Id.* The statements of the biological mother, which in this case are supported by the conclusions of competent authorities, should be given appropriate weight. See *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.”).

The record reflects that the petitioner and her husband adopted the beneficiary in Mexico, a process that was finalized on September 7, 2005. Official adoption documents in the record and the sworn statement of the beneficiary’s biological mother indicate that she irrevocably consented to the beneficiary’s adoption and travel out of the country. The beneficiary’s mother declared, and the DIF confirmed, that she and her children live in poverty, that the father of the beneficiary is unknown, and that she has no fixed salary and is unable to provide the basic necessities of life to her children.

Although details regarding local standards of living are absent from the record, the conclusions of competent authorities in Mexico who are well aware of such standards, *i.e.*, the President, the Director and an attorney from the DIF’s Attorney’s Office for the Defense of the Child, attesting to the fact that the beneficiary’s father is unknown and that the beneficiary’s biological mother lives in extreme poverty and cannot care for the beneficiary, support a finding that the sole parent in this case cannot meet the basic needs of her child. These conclusions also support and give added weight to the information contained in affidavits of the beneficiary’s biological mother, which should not be disregarded.

The AAO finds that the evidence in the record is consistent, both from the competent authority and from the statements of the beneficiary’s biological mother, and the evidence indicates that the beneficiary has a “sole parent” who is unable to provide for the child’s basic needs consistent with the local standards of Mexico. Accordingly, the AAO finds that the beneficiary meets 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 met her burden in the present matter. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.