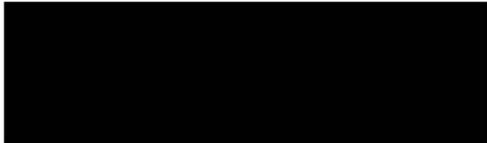




U.S. Citizenship
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FILE: [REDACTED] Office: BOSTON (HARTFORD)

Date: MAR 30 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, Boston. 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 June 9, 2006. The district director found that the petitioner had not established 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). He concluded, therefore, 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. *District Director Decision*, August 15, 2006.

On appeal, the petitioner asserts:

This is not a situation where the natural mother simply wishes to remarry and put her child up for adoption. . . . the natural mother has no means to support herself independently and care for herself and the child. Therefore because she was unable to provide basic needs for herself and the child, she had to remarry so that her new husband could support her . . . however based on local custom the child is not able to live with them and be provided for. In short, the natural mother was unable to care for the child or provide basic necessities for the child.

Notice of Appeal to the Administrative Appeals Office (Form I-290B), dated September 15, 2006. Also submitted on appeal is an affidavit from the beneficiary's biological mother, dated August 30, 2006, confirming that she cannot keep her daughter with her as she has no source of income, and that she is totally dependent on her present husband and in-laws, who do not accept the beneficiary as their daughter and do not want to take care of her. The record also contains a Deed of Adoption, issued on July 11, 2005, and stamped with the Seal of the Joint Sub-Registrar of Nasik, Maharashtra, India. The Deed of Adoption indicates that after the death of her husband, the biological mother of their daughter (the beneficiary) "wishes to remarry" and has agreed to give her daughter, who was one and a half years old, to the petitioner.¹ The Deed of Adoption indicates that it serves as an authentic record of the adoption having taken place. 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

¹ The AAO notes that the petitioner is the sister of the beneficiary's biological father.

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 India on November 9, 2003; her father died on May 26, 2005. The petitioner adopted the beneficiary on July 11, 2005 according to a Deed of Adoption in the record. The beneficiary's biological mother remarried on November 3, 2005.

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 biological mother is incapable of providing for the beneficiary's basic needs in a manner consistent with the local standards in India. In fact, the documents submitted fail to address local standards in India, although the petitioner refers to local customs regarding remarriage and custody. The record lacks objective evidence of customary law or practice in India that would affect the ability of the surviving parent to support her daughter. Moreover, no competent authority has provided information regarding the specific circumstances of the surviving parent in this case, other than that she was widowed and remarried; there is no evidence of her ability to work or her past employment or future opportunities for employment. Affidavits alone will not suffice to meet the petitioner's burden of proof. Affidavits from the biological mother and from the petitioner are not to be disregarded, but they must be supported by the conclusions of a competent authority. *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 statements of the biological mother or of the petitioner, and, as a result, they cannot be given much weight. 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)).

Given the lack of evidence in the record that the surviving parent is incapable of providing proper care for the beneficiary, 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 her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.