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U.S. Citizenship
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MAY 01 2007

FILE:

Office: MEXICO CITY (PANAMA CITY)

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:

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, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], along with his wife, [REDACTED], filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on July 27, 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 (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 (NOID), issued by the US CIS Officer-in-Charge in Panama, and the District Director's Decision found that there were significant inconsistencies in the record, including conflicting evidence as to whether the beneficiary had two biological parents who had abandoned him or whether he had a sole parent who was unable to provide proper care. *NOID*, November 21, 2005; *District Director's Decision*, March 2, 2006. The NOID also found specifically that the beneficiary was not considered an orphan because he had not been irrevocably released by his biological parents for emigration and adoption (*NOID*, *supra*, p.3); while the District Director's Decision noted that the biological parents had signed a release for adoption but not for emigration. *District Director's Decision*, *supra*, p.2.

On appeal, the petitioner, through counsel, states that "when the American Consulate and staff investigator interviewed S [REDACTED] [the beneficiary's biological mother] and [REDACTED] they claimed to be the biological parents. . . . [and the Consular Officer and US CIS] requested DNA from [them] to resolve the issue of fatherhood." *Notice of Appeal to the Administrative Appeals Office (AAO)(Form I-290B)*, dated March 30, 2006. The petitioner requested an extension to submit a brief and secure DNA evidence, asserting that the request for DNA had not previously been disclosed to the petitioner and that the petitioner was not aware that paternity would be an issue since [REDACTED] had repeatedly claimed that he was not the beneficiary's father. *Id.* An Appeal Brief was later submitted, but no DNA results are in the record. Petitioner asserts that the record demonstrates that the beneficiary is an orphan under the Act because "he has been abandoned and deserted by his biological parents, and that the biological parents have clearly relinquished the child. . . . [and] the petitioner has not, at any time, made willful misrepresentations to the USCIS." *Appeal Brief*, May 18, 2006. The petitioner also asserts that DNA was not available because [REDACTED] and the beneficiary's biological mother had left Guyana for Suriname, "because the Guyana police were looking for them," but that DNA could be obtained from [REDACTED] father, and that the petitioner had requested that a laboratory move forward with this testing. *Id.* The petitioner also asserts that the biological father is unknown and that "[REDACTED] is a surviving parent who is incapable of caring for the child under the standards of Guyana and has provided an irrevocable release for emigration." *Id.* The AAO notes that the petitioner later supplemented the record with an affidavit by [REDACTED] prepared on January 27, 2007 in Suriname, affirming that he "may be the biological father of [the beneficiary]" and that he had consented to the beneficiary's adoption by the [REDACTED]s on July 15, 2005 and that he irrevocably releases the beneficiary for emigration purposes so that he may join his adoptive parents in the United States. *Release of [REDACTED]* January 27, 2007. The entire record was reviewed and considered in coming to a decision on this appeal.

The AAO notes that one significant inconsistency pervades the record, whether the beneficiary has two known biological parents or whether he has a sole parent. The petitioner claims that both situations are possible, and provides evidence of both. The petitioner has also claimed, since March 30, 2006, that DNA testing would

resolve this issue and, on May 18, 2006, stated that DNA testing was underway. *Appeal Brief, supra*. To date, however, the results of such testing have not been submitted. The 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, or in the alternative, that the beneficiary has a sole parent who is incapable of providing proper care to the beneficiary. Both of these alternatives are considered in this decision.

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).

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

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.

Sole parent means the mother when it is established that the child is illegitimate¹ 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.² In all cases, a sole 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.

In this case, the record reflects that the beneficiary, [REDACTED] was born on June 24, 2003 in Guyana. His birth certificate does not state the name of his father and lists [REDACTED] as his mother. The petitioner and his wife, [REDACTED], applied to the Guyanese Adoption board to adopt [REDACTED] on June 30, 2004. Based on the [REDACTED] subsequent application to the Guyanese High Court of the Supreme Court of Judicature, the Court ordered that the Adoption Board be appointed as [REDACTED] guardian *ad litem*; both [REDACTED] and [REDACTED], listed as [REDACTED] father, consented to the adoption in a Statement to the Adoption Board on June 29, 2005. The Court issued a final adoption order on July 13, 2005. Both [REDACTED] and [REDACTED] signed affidavits irrevocably releasing [REDACTED] for emigration purposes so that he may join his adoptive parents, [REDACTED] and [REDACTED], in the United States. Release of [REDACTED] January 27, 2007; Release of [REDACTED] May 18, 2006.

The petitioner claims that the beneficiary's biological mother, Sheila Persaud, was a neighbor of his wife, whom she had known her whole life. *Affidavit of [REDACTED]*, December 20, 2005. She gave [REDACTED] to his wife when he was a few weeks old; she was drinking excessively at that time and refused to take the child back. *Id.* When [REDACTED] was one year old, in June 2004, the petitioner and his wife spoke to [REDACTED] and about adopting [REDACTED] and they agreed. *Id.* The [REDACTED] applied to the Guyana Adoption Board that same

¹ 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.

² Guyana's Removal of Discrimination Act of 1983 was intended to eliminate discrimination against children born out of wedlock, but it did not eliminate all legal distinctions between legitimate and illegitimate children. *See Gorsira v. Loy*, 357 F. Supp. 2d 453, 458-64 (D.Conn.2005), *reconsidered on other grounds sub nom. Gorsira v. Chertoff*, 364 F. Supp. 2d 230 (D.Conn.2005); *In re Lawrence Rowe*, 23 I&N Dec. 962 (BIA 2006) (under Guyanese law, the sole means of legitimating a child born out of wedlock is the marriage of the child's natural parents), overruling *Matter of Goorahoo* 20 I&N Dec. 782 (BIA 1994).

month. The petitioner and his wife at times stated that it was not known wh _____ father was, but that when it suited him, _____ stated he was _____'s biological father, and more than once demanded payment for _____ in exchange for agreeing to the adoption. *Id.* The petitioner and his wife also claimed that _____ and _____ mother abused drugs and alcohol. *Id.*; *New York Home Study*, June 16, 2005. Numerous affidavits from relatives or neighbors of _____ and _____ confirmed this, as well as a Guardian *ad litem* Report for the Adoption Board, or Case Note prepared by a Probation & Family Welfare Officer on June 16, 2005 (Report for the Adoption Board). The petitioners also provided contradictory statements, claiming that _____'s father is "unknown" (on the I-600 Petition) and that _____ only parent is an unfit mother (*Affidavit of _____ supra*). The District Director's Decision, *supra*, correctly summarizes these inconsistencies; it also raises concerns about the willingness of the beneficiary's biological parents to give up their child for adoption:

In many of the statements presented, the Service has been led to believe that the child's father was not the biological father, the real father was unknown, and that the Petitioner or Spouse was not biologically related. There has been no evidence submitted by the Petitioner that would refute such a claim, such as DNA testing. On August 30, 2005 when the American Consulate [sic] and a staff investigator interviewed _____ and _____ on a surprise visit, they claimed to be the biological parents. The Consular Officer and investigator were advised by the parents that they did not fully understand the adoption proceeding because they were uneducated and that they wanted their child back.

Decision, supra, at 2, referring, *inter alia*, to a field investigation in this case. The field investigation also contradicted reports that the biological parents were unfit parents, noting that neighbors were not aware of anyone in the neighborhood with a reputation for drunkenness or drug abuse; that both parents were at home during the field visit; that their baby daughter was wearing a clean diaper and looked well fed and happy; and that they both stated that, although they had signed adoption papers, they had been promised compensation, which they never received. They stated that they wanted their child back, though it was noted that their motives could not be determined by the investigator.

1. Abandonment

One of the petitioner's claims is that he is an orphan because his biological parents abandoned him, noting correctly that, in such a case, a written release for emigration is not required. Abandonment under the Act can only be a consideration when the child's two biological parents have been identified. In this case, although this issue has not been resolved, there is objective evidence in the record to support this conclusion. Despite the absence of a father's name on the beneficiary's birth certificate, competent authorities in Guyana, the **Adoption Board and the High Court of the Supreme Court of Judicature**, refer to _____ and _____ as the biological parents of the beneficiary. See Adoption Order, July 19, 2005; Statement by the Adoption Board to the High Court of the Supreme Court of the Judicature (Form C), June 29, 2005; and Consent to Adoption Order, July 7, 2004, signed by _____ and _____

However, 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. [REDACTED] and [REDACTED] consented specifically to the adoption of [REDACTED] by the [REDACTED]s in their Consent to Adoption Order, July 7, 2004, and in affidavits releasing [REDACTED] for emigration, *supra*; the Court Order appointing the Adoption Board as guardian *ad litem* was done at the request of the [REDACTED]. These documents all refer to the adoption of the beneficiary by the [REDACTED]. In addition, [REDACTED] confirmed in his affidavit that he and his wife discussed the adoption and [REDACTED] and [REDACTED] agreed to it before they filed the Adoption Application. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Moreover, the Release of [REDACTED], *supra*, submitted on appeal does not resolve former inconsistencies, but rather restates one of the contradictory claims, *i.e.*, that he, as a biological parent consents to [REDACTED] adoption. There is also conflicting evidence in the record as to whether [REDACTED] and [REDACTED] have willfully forsaken all parental rights, though their motives for asking for their child back are suspect..

The AAO finds that the evidence listed above supports the conclusion that the beneficia has not been abandoned, but rather has been released by his parents specifically to the [REDACTED]. Significant inconsistencies in the record have not been resolved, also raising concerns about whether this release is entirely voluntary, or whether, regardless of motive, the beneficiary’s biological parent or parents do not wish to have their child adopted.

2. Sole Parent

The petitioner also asserts, in the alternative, that the beneficiary is an orphan because his father is unknown and his mother is a sole parent who is not capable of taking care of him and has signed an irrevocable release for him to emigrate to the United States. [REDACTED]’s paternal parentage is unclear; he was born out of wedlock and is considered to have a sole parent if his “father has severed all parental ties, rights, duties, and obligations to the child, or . . . has, in writing, irrevocably released the child for emigration and adoption. 8 C.F.R. section 204.3(b), *supra*. In all cases, a sole parent must be “incapable of providing proper care,” *i.e.*, “unable to provide for the child’s basic needs, consistent with the local standards of the foreign sending country.” *Id.* Both [REDACTED] and [REDACTED] have signed an irrevocable release for [REDACTED] to emigrate to the United States.

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 Guyana. In fact, the documents submitted fail to address local standards in Guyana. The record lacks objective evidence of living standards in Guyana.

Moreover, no competent authority has provided information regarding the specific circumstances of [REDACTED]. [REDACTED] there is no evidence of her ability to work or her past employment or future opportunities for employment or her alleged alcohol or drug abuse. Although the petitioner refers to a Report by the Supreme Court of Judicature in Guyana confirming that the biological parents were alcoholics and addicted to drugs and that their home was not a good environment for children; and that [REDACTED] made statements in Court that she wanted the petitioner to buy her a store in exchange for her child, there are no official court documents in the record to support these assertions. The Guardian *ad litem* Report for the Adoption Board, or

Case Note prepared by a Probation & Family Welfare Officer on June 16, 2005 (Case Note), is **not** a “Report by the Supreme Court”; nor is there any evidence that it is, as claimed by counsel for the petitioner, a copy of an “Authorized Government Report.” The report is not on letterhead and does not indicate whether it was prepared under the auspices of a government agency; the Adoption Board was appointed as [REDACTED] guardian *ad litem* in 2004, yet this Case Note includes a title of Guardian *ad litem* Report for the Adoption Board. It states, however, that during a home visit, [REDACTED] claimed to have the flu and was in bed, and the one-bedroom house was unkempt and dirty dishes and leftover food were strewn about; it also states that “reports indicate” that both parents are alcoholics and the father abuses hard drugs. *Case Note*, June 16, 2005. The Probation & Family Welfare Officer concludes that “[t]he home and surroundings of [REDACTED]’s birth parents is not healthy for the upbringing of children.” *Id.* There is no indication of the source of any of the information it contains, other than what was provided by the petitioner and his wife, and one home visit. A different assessment was made during the home visit conducted by USCIS during the field investigation, *supra*, and the AAO notes that neither report is conclusive as they are both based on a limited interaction with the biological parent or parents.

It is, however, 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, and the inconsistencies have not been explained. The evidence does not support a finding that the beneficiary’s sole parent is incapable of providing proper care consistent with the local standards of Guyana. Neither the unsupported conclusions of the Probation & Family Welfare Officer nor numerous affidavits can be given much weight. Affidavits alone will not suffice to meet the petitioner’s burden of proof. Affidavits 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, the findings in the Case Note and the affidavits in the record cannot be given much weight absent supporting documentary evidence and in light of inconsistent evidence. 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)).

3. Conclusion

There are unresolved inconsistencies and a lack of independent objective evidence in the record. The evidence does not support a conclusion that the beneficiary has been abandoned by both parents as that term is defined by U.S. regulations. The two biological parents identified in this case agreed to the beneficiary’s adoption by the petitioners and intended for the petitioners to adopt the beneficiary. In addition, the two biological parents have also indicated that they want their child returned to them. Regardless of their motives, which are allegedly a desire for monetary gain, this indicates that they have not willingly relinquished their parental rights. In the alternative, if the beneficiary’s biological mother is considered a sole parent, the evidence does not support a conclusion that she is unable to care for the beneficiary in a manner consistent with the local standards in Guyana. Based on 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. The AAO notes that, as in the case of

the District Director's Decision, *supra*, this decision does not come to any conclusion regarding the validity of the petitioner's adoption of [REDACTED] in Guyana.³

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.

³ Although it is not an issue on appeal, the AAO notes that if the beneficiary has been legally adopted in Guyana, his parents may be eligible to file an Immediate Relative Petition (Form I-130) on his behalf as the child of a U.S. citizen once custody and residence requirements are met. *See section 101(b)(1)(F) of the Act; 8 C.F.R. §204.2(d)(2)(vii).* There is no requirement in that case that the child be classified as an "orphan."