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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: SAN FRANCISCO (FRESNO)

DATE: NOV 24

IN RE:

PETITIONER:
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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California, revoked the approved 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 (Form I-600). The petitioner is a seventy-eight year-old married citizen of the United States. The beneficiary's birth certificate reflects that he was born in Peru on March 31, 1990.

The district director found that the evidence on the record did not establish that the beneficiary's sole surviving parent is unable to provide for his basic needs, consistent with the local standards of the foreign sending country. The district director therefore determined that the petitioner had failed to establish that the beneficiary met the definition of an orphan as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). **The approval of the Form I-600 was revoked accordingly.** See *Decision of the District Director* dated September 9, 2005.

On appeal, the petitioner asserts that U.S. Citizenship and Immigration Services (CIS) erred in finding that the beneficiary was not an orphan as defined in section 101(b)(1)(F) of the Act because it had not been established that the beneficiary's mother was unable to provide for his basic needs. The petitioner states that the beneficiary's mother never provided for his basic needs and that her grandmother took responsibility for providing for the beneficiary until her death in 2001. See *Petitioner's Statement in Support of Appeal*. The petitioner further asserts that he and his wife took over this responsibility after the beneficiary's great-grandmother died and provided financial support for the beneficiary. *Petitioner's Statement in Support of Appeal*. The petitioner also claims that he arranged for a neighbor in Peru to provide meals for the beneficiary because he was being neglected by his mother and left alone without food. *Petitioner's Statement in Support of Appeal*. The petitioner additionally asserts that CIS erred in determining that the beneficiary's mother could provide for his needs consistent with the local standards in Peru. He states that the apartment they lived in lacked electricity and running water because she could not afford these services. *Petitioner's Statement in Support of Appeal*. Further, the beneficiary's mother turned physical custody over to the petitioners in 2004 when the adoption was finalized, and after that the beneficiary was placed in a boys' home in Lima, Peru. See *Former Counsel's Letter in Response to the Notice of Intent to Revoke* dated March 7, 2005. In support of these assertions the petitioner submitted a declaration from the petitioner; a copy of the beneficiary's birth certificate; a psychological and social report of the beneficiary and his mother; bank statements, checks, and receipts documenting money sent to Peru to support the beneficiary; a letter from a neighbor in Peru hired to provide the beneficiary with meals; and a letter from the director of a boys' home in Lima, Peru where the beneficiary was residing at the time the appeal was filed. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 pre-adoption requirements, if any, of the child's proposed residence. (Emphasis added.)

The regulation at 8 C.F.R. § 204.3(d) provides 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; or

(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 AAO notes that in visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Reg. Comm. 1989.)

The district director issued a Notice of Intent to Revoke that noted that the beneficiary had resided with his mother his entire life and it therefore appeared that his sole surviving parent was able to provide for his basic needs. In response to the Notice of Intent to Revoke, the petitioner submitted bank statements and other documentation indicating they were sending money to Peru, a letter from a neighbor stating she was hired by the petitioner to provide meals to the beneficiary, a letter from the beneficiary's mother stating she consented to the adoption because she did not have the ability to provide for her son, and a letter from the Boys home stating that the beneficiary was residing there pending the completion of the adoption. The district director found that the evidence on the record was insufficient to establish that the beneficiary's mother was unable to provide for the beneficiary's basic needs and revoked the approved petition.

The record reflects that the beneficiary, who is now eighteen years old, resided with his mother in her grandmother's apartment in Lima, Peru until moving to a boys' home after his adoption by the petitioner was finalized in 2004. A letter from the petitioner and a report prepared by Peruvian authorities in connection with adoption proceedings state that the beneficiary's mother, who was fifteen years old when he was born, was never able to provide for his needs and relied on the support of her grandmother. *See Petitioner's Statement in Support of Appeal; Superior Court of Justice of Callao, Second Family Court, Social Report, December 2002.* After the death of the beneficiary's great-grandmother in 2001, the petitioner and his wife learned from relatives in Peru that the beneficiary's mother was unable to provide for him, and they began sending money to the beneficiary's

mother to provide him with food, clothing, and other necessities. *See Petitioner's Statement in Support of Appeal; Superior Court of Justice of Callao, Second Family Court, Social Report, December 2002.* They provided this support through transfer of funds to an account in Peru and later by writing checks to a relative in the United States who then transferred the money to Peru. Documentation of the money transfers and the check payments was submitted in response to the Notice of Intent to Revoke. A letter from a neighbor was also submitted stating that the beneficiary's mother would leave him alone in the apartment for days without food, and she was hired by the petitioner to provide the beneficiary with three meals a day. *See undated letter from* [REDACTED]

[REDACTED] A letter from the beneficiary's mother consenting to the adoption further states that she did not have sufficient means to educate and financially support the beneficiary. *See letter from* [REDACTED]

dated March 20, 2002. Documentation related to adoption proceedings in Peru submitted with the petition also states that the apartment the beneficiary lived in with his mother "has neither water nor light facilities because of failure to pay" and that the furniture was badly damaged and in bad condition. *See Superior Court of Justice of Callao, Second Family Court, Social Report, December 2002.* The report further states that the beneficiary's mother has no fixed income and "sometimes she has no food at all and that her partner comes twice a week and it is her son who is impaired and because of that he does not attend school." The report additionally states that the petitioner and his wife, who is the aunt of the beneficiary's mother, helped her with expenses and are presently providing for the beneficiary.

The AAO finds that the evidence on the record is sufficient to establish that the beneficiary's mother is unable to provide for his basic needs, consistent with the local standards of the foreign sending country. The district director based the decision to revoke the approved petition on the fact that the beneficiary had been living with his mother until the time he was adopted. The AAO notes, however, that the evidence on the record indicates that the beneficiary's mother never had the financial means to support the beneficiary, and first relied on her grandmother and then the petitioner and his wife to provide support. Evidence on the record further establishes that the beneficiary's mother had no income and was often not able to provide food for the beneficiary, and that there was no electricity or running water in their home due to her inability to pay for these utilities. Further, since the beneficiary's needs were not provided for by his mother, he is no longer residing with her, but was placed in a boys' home pending the processing of his immigrant visa petition.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present matter, the petitioner has met his burden of establishing that the beneficiary's sole surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. Accordingly, the petitioner has established that the beneficiary is an *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be sustained and the decision of the district director revoking the petition is withdrawn.

ORDER: The appeal is sustained. The decision of the district director is withdrawn.