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U.S. Citizenship
and Immigration
Services

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MA 06 2005

FILE: [Redacted] Office: MIAMI (TAMPA), FL Date:

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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Miami (Tampa), Florida denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on September 21, 2004. The petitioner is a 56-year-old married citizen of the United States. The beneficiary was born in Bangladesh on December 13, 1989, and he is fifteen-years-old.

The district director issued a Notice of Intent to Deny the I-600 petition on September 28, 2004. The I-600 petition was denied on November 18, 2004, based on a finding that the petitioner had failed to establish the beneficiary was an "orphan." The district director subsequently discovered that information submitted by the petitioner on October 18, 2004, had been misplaced and not considered for purposes of the November 18, 2004 decision. As a result, the matter was reopened for consideration of the additional evidence. The I-600 petition was re-denied on November 24, 2004 based on a finding that the petitioner had failed to establish the beneficiary met the definition of "orphan" for immigration purposes.

On appeal, the petitioner asserts that the beneficiary meets the definition of an "orphan" based on new evidence establishing he was abandoned by his parents.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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

"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.

The district director found that the beneficiary had not been abandoned by both of his parents, as defined in the regulations, and that his parents had instead released their parental rights for purposes of a specific adoption by the petitioner. The petitioner asserts that the beneficiary's natural parents were unable to care for the beneficiary when he was born, and that his sister took physical custody of the beneficiary after his birth, while he provided for the child's expenses. The petitioner asserts further that new evidence establishes that prior to his sister's taking physical custody of the beneficiary, the local Faridpur Municipality briefly took custody of the beneficiary. The petitioner additionally asserts his sister died in early 2002 and that the local Municipality subsequently retook custody of the beneficiary. The petitioner indicates that he did not discuss the municipality's custody over the beneficiary previously because he only recently obtained documentation establishing the municipality's custody over the beneficiary.

The evidence in the record relating to the beneficiary's status as an "orphan" consists of the following:

The beneficiary's birth certificate, registered on January 4, 2004, reflecting that [REDACTED] was born to [REDACTED] (mother) and [REDACTED] (father) in [REDACTED] Faridpur, Bangladesh on December 13, 1989.

An application for guardianship (with illegible date), filed by the petitioner requesting guardianship over the beneficiary for purposes of maintaining necessary expenditures, for receiving higher education and to protect the child's body and property. The application states that the petitioner's relationship to [REDACTED] is that of a grandfather, and that [REDACTED] father is [REDACTED] and his mother, [REDACTED]

A notarized affidavit signed by the beneficiary's natural father, Mr. [REDACTED] on April 15, 2004, stating that [REDACTED] (the petitioner) has paid for his son, [REDACTED] expenses since his son's childhood. Mr. [REDACTED] states that he gives up his parental rights over [REDACTED] and he consents to [REDACTED] adoption by [REDACTED] to provide for [REDACTED] expenses and his higher education.

A second notarized affidavit signed by [REDACTED] on May 9, 2004, stating in pertinent part that he is sick and has no income, and that he is unable to care for his son, [REDACTED]. Mr. [REDACTED] states that [REDACTED] has paid for his son's expenses since his son's childhood, and Mr. [REDACTED] states that he gives up his parental rights and consents to [REDACTED] adoption of, or guardianship over, [REDACTED] for his ensuing future in the U.S.A.

A Court Order from the Court of Asstt. Judge Court and Family Court Boalmari, Faridpur, Bangladesh, signed by Judge Paribaric Adalat on August 30, 2004, appointing the petitioner

as [REDACTED]'s guardian, for maintaining necessary expenditures and receiving higher education and property.

The petitioner's Form I-600 petition stating, in question #17, that the beneficiary's parents gave the beneficiary to him after his birth.

A letter submitted with the petitioner's Form I-600 petition and signed by the petitioner on September 12, 2004, stating that the beneficiary is his sister's grandson, that the beneficiary's parents gave him to the petitioner to take care of him, and that the beneficiary's parents gave up their parental rights in court when the petitioner was appointed as [REDACTED]'s guardian.

A notarized affidavit signed on October 3, 2004 by the beneficiary's mother, Mrs. [REDACTED] stating that [REDACTED] has provided for her son [REDACTED] expenses since his childhood, that she has no income and that her husband is incapable of taking care of their family's expenditures. [REDACTED] states that she gives up her parental rights and consents to [REDACTED] adoption of, or guardianship over [REDACTED] for maintenance of his expenditures and his receiving higher education.

A letter dated February 9, 2002, and authenticated by a notary public on December 5, 2004, signed by the Commissioner, Faridpur Municipality [REDACTED] and the Chairman, Faridpur Municipality [REDACTED] stating that for several months prior to the petitioner's appointment as [REDACTED] guardian [REDACTED] was under the guardianship and supervision of the Commissioner of the Faridpur Municipality.

A letter dated October 5, 2004, and authenticated by a notary public on December 6, 2004, signed by Urban Social Service Officer, [REDACTED] stating that relevant documents indicate [REDACTED] is the adopted child of [REDACTED] and that [REDACTED] presently living with [REDACTED]

The AAO finds that the letters from the Commissioner of the Faridpur Municipality and the Urban Social Service Officer fail to establish that the beneficiary was in the custodial care of the local government. The Urban Social Service Officer letter does not discuss or state that the beneficiary was at any time under municipality custodial care. Moreover, the Commissioner's letter lacks detailed information regarding the circumstances and dates of such custodial care and the letter is uncorroborated by any evidence, official or otherwise, to substantiate the custody claim. Furthermore, the claim that the beneficiary was in the custodial care of the local government prior to the petitioner's appointment as his guardian is contradicted by the parental affidavit, guardianship order and I-600 petition information contained in the record.

The AAO finds that a review of all of the evidence demonstrates that the beneficiary's natural parents maintained all parental rights, obligations and claims to the beneficiary prior to the petitioner's August 30, 2004, appointment as the beneficiary's guardian. The AAO finds further that a review of all of the evidence establishes that in surrendering their parental rights in 2004, the beneficiary's natural parents intended to, and did transfer their rights specifically to the petitioner. The petitioner has therefore failed to establish that the beneficiary meets the definition of an "orphan" as set forth in the Act and in the regulations.

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 petitioner has not met his burden. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.