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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: HARLINGEN, TX

Date: JUN 05 2008

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 Field Office Director, Harlingen, Texas denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I600.) The matter was certified to the Administrative Appeals Office (AAO) for review. The field office director's decision will be affirmed. The petition will be denied.

The petitioner is a seventy-six-year-old married citizen of the United States. The petitioner's wife is a fifty-five year old U.S. lawful permanent resident. The beneficiary was born in Mexico on August 27, 2006, and she is presently one-year-old. The record reflects that the petitioner's wife is the beneficiary's maternal grandmother.

The field office director determined that the beneficiary did not meet the definition of an orphan, as set forth in section 101(b)(1)(F) of the Act (the Act), 8 U.S.C. § 1101(b)(1)(F), because the beneficiary's natural mother did not irrevocably release the beneficiary for adoption, and because the petitioner failed to establish that the beneficiary's natural mother was incapable of providing proper care to the beneficiary.

The petitioner makes no assertions on certification.

Section 101(b)(1)(F) of the Act defines the term, "orphan" 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.)

The regulation provides at 8 CFR 204.3(b) that:

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.¹

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

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.

Under Article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her parents. *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949.) *See also, Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981.) The beneficiary's birth certificate contains no paternity information, and statements contained in the record indicate that the beneficiary's natural mother did not marry her father. The sole parent definition contained in 8 C.F.R. § 204.3(b) therefore applies to the present matter.

The record contains the following evidence relating to the beneficiary's status as an orphan:

A Mexican birth certificate, registered on August 29, 2006, reflecting that the beneficiary () was born in Ciudad Miguel Aleman, Tamaulipas, Mexico, on August 27, 2006, to ()

A September 19, 2006, Miguel Aleman, Tamaulipas, Mexico, court decree reflecting that the beneficiary's mother agreed that the petitioner and his wife be granted adoption of the beneficiary. The decree clarifies that:

[F]ull adoption terminates all the relationship between the adopted child and his/her biological parents. Only in case of the adoptive parents have an agreement [*sic*] with the natural parents; the natural relationship would not terminate. The full adoption is irrevocable. In order for the adoption to have legal effect, it has to include the adopting persons named in the article 366 of the Code and the father or mother needs to give his/her consent. The lack of signature is accepted only on a declaration of neglect. Persons who have a blood relationship cannot adopt. . . .

The court decree indicates that the Judgment contained therein is for a Simple Adoption proceeding for the beneficiary. The decree reflects the petitioner and his wife's desire to have a child together, and the decree reflects that the petitioner and his wife have a desire to provide maintenance and education to the beneficiary. The decree reflects that: legal guardianship over the beneficiary was transferred to the petitioner and his wife; the beneficiary's name was changed to (); and that the beneficiary acquired all rights, duties and obligations, as if she were the petitioner's biological child.

Documentation obtained by the field office director, Harlingen, Texas, reflecting under that Article 372 of the State of Tamaulipas, Mexico, Civil Code, the rights and obligations that come from natural kinship are not extinguished by a simple adoption, with the exception of

conform to these changes.

legal authority, which shall be transferred to the adoptive parent, unless, he or she is married to one of the biological parents of the adoptee.

2006 and 2007, bank receipts reflecting that the petitioner's wife has sent money to the beneficiary's natural mother in Mexico.

An untranslated letter signed by the beneficiary's natural mother, and an untranslated document containing the petitioner's signature and two additional signatures.

The regulation provides at 8 C.F.R. § 103.2(b)(3) that:

Any document containing foreign language submitted to the USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The untranslated documents fail to comply with the requirements set forth in 8 C.F.R. § 103.2(b)(3). They therefore serve no evidentiary purpose in the present proceedings.

The AAO finds, upon review of the evidence, that the petitioner has failed to establish that the beneficiary meets the definition of an orphan. Although the evidence establishes that the beneficiary is an illegitimate child, as set forth in the sole parent definition contained in 8 C.F.R. § 204.3(b), the court decree and money transfer evidence contained in the record fail to indicate, or establish, that the beneficiary's natural mother is incapable of providing for the basic needs of the beneficiary, consistent with the local standards in Mexico.

The AAO finds that the record also contains no evidence to establish that the beneficiary's mother has, in writing, irrevocably released the beneficiary for adoption, as required by section 101(b)(1)(F) of the Act.

In addition, the petitioner failed to establish that the simple adoption decree, transferring legal guardianship over the beneficiary to the petitioner and his wife, constitutes an irrevocable full adoption of the beneficiary. State of Tamaulipas civil Code documentation obtained by the field office director, reflects that a simple adoption transfers legal authority over a child to another. It does not, however, terminate the natural parent's parental rights and obligations over the child. Moreover, United States Department of State adoption procedure guidance for Mexico, found at <http://www.travel.state.gov> reflects that the:

State System for the Full Development of the Family (Desarrollo Integral de la Familia, or DIF) is a government institution in each Mexican state that handles family matters. . . .The DIF and the Mexican Foreign Relations are assigned responsibility to study each child's eligibility for international adoption and arrange adoptions

The record contains no evidence that the DIF and Mexican Foreign Relations were involved in adoption proceedings for the beneficiary. The petitioner therefore failed to demonstrate that the beneficiary was adopted in accordance with the requirements contained in the Act.

Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of an orphan as defined in section 101(b)(1)(F) of the Act.

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 failed to meet his burden of proof in the present matter. The Form I600 petition will therefore be denied.

ORDER: The field office director's decision is affirmed. The petition is denied.