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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

Office: COLUMBUS, OH

Date: **MAY 12 2008**

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:

[Redacted]

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, Columbus, Ohio, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) will be denied.

The petitioner filed the I-600 petition on July 17, 2007. The petitioner is a forty-two year old married U.S. citizen. The beneficiary was born in India on August 21, 2004, and she is presently three years old.

The field office director denied the I-600 petition on January 8, 2008, based on a finding that the beneficiary's natural mother had specifically transferred her parental rights over the beneficiary to the petitioner, and that the beneficiary therefore did not meet the orphan definition contained in section 101(b)(F)(1) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(F)(1).

On appeal the petitioner concedes, through counsel, that the beneficiary's natural mother specifically transferred her parental rights over the beneficiary to the petitioner and her husband. The petitioner asserts, however, that the beneficiary's natural father is deceased, and that accordingly, the field office director erred in applying the two natural parent requirements, rather than the sole surviving parent requirements, to the petitioner's case. Through counsel, the petitioner asserts that the beneficiary's natural mother is incapable of providing proper care for the beneficiary, and the petitioner concludes that the beneficiary meets the definition of orphan, as set forth in section 101(b)(1)(F) of the Act.

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 age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence (Emphasis added).

The AAO finds that the field office director erroneously applied 8 C.F.R. § 204.3(b), "abandonment by both parents" requirements to the petitioner's case.

The regulation provides in pertinent part at 8 C.F.R. section 204.3(b) that:

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.

In the present matter, the record contains a death certificate reflecting that the beneficiary's natural father died on February 27, 2007. Where it is established that the beneficiary has only one surviving parent, the definition of "abandonment by both parents" found at 8 C.F.R. 204.3(b) should not be referred to, or relied upon in the adjudication of the I-600 petition. Rather the definitions of "surviving parent" and "incapable of providing proper care" are the relevant definitions in 8 C.F.R. 204.3(b). These definitions state that:

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*.¹

Neither definition cited above prohibits a surviving parent from relinquishing or releasing his or her parental rights to a specific individual in preparation for an adoption. Accordingly, any evidence in the record which shows that the beneficiary's natural mother relinquished her parental rights for a specific adoption does not bear on the determination of whether the beneficiary, who has only one surviving parent, may be classified as an orphan.

The evidence relating to the beneficiary's natural mother's ability to provide proper care to the beneficiary, and the beneficiary's status as an orphan consists of the following:

A birth certificate reflecting that the beneficiary was born in India on August 21, 2004, to [REDACTED] (mother) and [REDACTED] (father).

A death certificate reflecting that the beneficiary's natural father [REDACTED] died in India on February 27, 2007.

An affidavit signed by the beneficiary's natural mother on May 28, 2007, stating that her husband died in an accident on February 27, 2007, and that she is a widow with two minor daughters. She indicates that the beneficiary and her sister live with her. She

¹ 8 C.F.R. § 204.3(b) provides that:

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

indicates further that it was her husband's earnest desire that their children have a good quality of life and that they should have the best possible education. The beneficiary's natural mother indicates that she consents to the adoption of her daughters by the petitioner and her husband because they can provide a better education and brighter future to them than she, a widow who is not well-educated, would be able to provide.

A December 18, 2007, guardianship order from the Court of Ravinder Singh, Civil Judge, Guardian Judge, Jalandhar, India, reflecting that the petitioner and her husband were appointed as guardians for the beneficiary and her sister. The Order indicates that the children's mother has no source of income to provide a good education for the beneficiary, and that the petitioners have sufficient income to provide a good education and all other amenities of life to the beneficiary and her sister. The Order reflects that it is un rebutted and undisputed that the beneficiary's mother is stated to be unemployed and that she has insufficient income to maintain the beneficiary and her sister. The Order indicates further that the beneficiary and her sister resided with their mother at the time of the decision, and the Order states, upon conclusion, that "the petitioners are financially well off and they can give better education and other necessities of life to the minors, and look after them properly."

A January 15, 2008, letter signed by [REDACTED], reflecting that he holds power of attorney for the petitioners, and that the beneficiary and her sister have lived at his home since December 18, 2007. He indicates that he is temporarily responsible for the care and well-being of the beneficiary and her sister, and he states that the beneficiary's natural mother has moved back to her village to live with her parents and has had no contact with the children since December 18, 2007.

A January 15, 2008, letter signed by [REDACTED], indicating that he is the beneficiary's paternal grandfather, and that the beneficiary and her sister and natural mother lived at his home after his son died. He states that the beneficiary's natural mother had no income to support the beneficiary and her sister, and he states that he provided for all of their housing, clothing, food and educational needs, using money provided to him by the petitioners.

A February 22, 2008, letter signed by [REDACTED] stating that the beneficiary and her sister continue to live with him, and stating that he undertook the responsibility to care for them on a temporary basis only. He states that he is 61-years old, and is dependent upon his son for his own financial well-being. He states that at this time the beneficiary and her sister do not have a good means of education and parental guidance, and that he is concerned for their well-being if they are not united with the petitioners soon.

The AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in India, as set forth in 8 C.F.R. § 204.3(b). The letters written by [REDACTED] and the beneficiary's paternal grandfather are uncorroborated by independent evidence, and they lack material details regarding the

beneficiary's mother's inability to work or provide for the basic needs of the beneficiary. Moreover, although the court guardianship order indicates that the beneficiary's natural mother is unable to care for the beneficiary, the Order reflects that its conclusions were reached based on unrebutted and undisputed statements by the parties involved, that the beneficiary's mother is unemployed and has insufficient income to maintain the beneficiary and her sister. The court did not independently investigate whether the statements were true. Furthermore, the court order indicates several times that the petitioner's ability to provide a better education and quality of life to the beneficiary motivated the beneficiary's natural mother to consent to the adoption of her children by the petitioners. The affidavit written by the beneficiary's mother also emphasizes her deceased husband's desire that their children have a good quality of life and the best possible education, and she states that she consents to the adoption of her daughter by the petitioner and her husband because they can provide a better education and brighter future to them than she, a widow who is not well-educated, would be able to provide

Upon review of the totality of the evidence, the AAO finds that the petitioner has failed to establish that her natural mother is incapable of providing for the beneficiary's basic needs according to local standards in India.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* Section 291 of the Act; 8 U.S.C. § 1361. In the present matter, the petitioner has failed to establish that the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed and the I-600 petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.