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

F2

[Redacted]

FILE: [Redacted]

Office: ATLANTA, GA

Date: **MAR 10 2005**

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 APPLICANT:

[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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia denied the immigrant visa petition. The matter was appealed to the Administrative Appeals Office (AAO) and subsequently remanded to the district director to determine whether the beneficiary's mother was incapable of caring for the beneficiary and whether the beneficiary's mother had irrevocably released the beneficiary for adoption and emigration. The matter has now been certified to the AAO. The district director's decision will be affirmed and the appeal will be dismissed.

The petitioner, a forty-year-old married citizen of the United States, filed the Petition to Classify Orphan as an Immediate Relative (Form I-600 petition) on November 29, 2000. The beneficiary was born on November 30, 1984 in Hong Kong, and is presently twenty-years-old.

The district director initially denied the Form I-600 petition on April 27, 2004, based on a finding that the beneficiary was over the age of sixteen when the petition was filed. On November 5, 2004, the AAO determined on appeal that the beneficiary was under the age of sixteen when the petition was filed. However, because the record contained incomplete information regarding whether the beneficiary's natural mother was incapable of providing for the beneficiary and whether she had irrevocably released the beneficiary for emigration and adoption, the AAO was unable to determine whether the petitioner met the definition of "orphan" as defined in section 101(b)(10)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). Accordingly, the matter was remanded to the district director for further information.

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.

On November 18, 2004, the district director requested that the petitioner submit evidence establishing that the beneficiary's mother was incapable of providing for the beneficiary's' basic needs consistent with the local standards of her country. In addition, the district director requested that the petitioner submit evidence to establish that the beneficiary's mother had irrevocably released the beneficiary for emigration and adoption purposes. The petitioner was provided thirty days to submit the requested evidence. The petitioner did not respond to the district director's request for evidence. On December 22, 2004, the district director determined that based on the evidence in the record, the petitioner had failed to establish that the beneficiary met the definition of an "orphan, as set forth in section 101(b)(1)(F) of the Act.

The AAO notes that the petitioner was notified on December 22, 2004, that she had thirty days to provide a brief or written statement to the AAO for consideration. No brief or written statement was submitted.

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 the evidence in the record fails to establish that the beneficiary is eligible for classification as an orphan under section 101(b)(1)(F) of the Act. The district director's decision will therefore be affirmed and the appeal will be dismissed.

ORDER: The appeal is dismissed.