U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

F-1

File: [redacted] Office: FRANKFURT, GERMANY Date: AUG 02 2004

IN RE: Petitioner: [redacted]
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 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC) of the American Consulate General, Frankfurt, Germany office 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 Petition to Classify Orphan as an Immediate Relative (Form I-600) with the OIC on November 27, 2003. The petitioner is a 45-year-old married citizen of the United States. The beneficiary is allegedly 18 months old at the present time and was born in Iran on January 20, 2003.

The OIC denied the petition, in part, because the petitioner failed to establish that the beneficiary meets the definition of an orphan as outlined in the Immigration and Nationality Act and the regulations.

On appeal, counsel for the petitioner submits a brief and additional evidence.

In a Notice of Intent to Deny, the OIC informed the petitioner that he had failed to establish that the beneficiary meets the definition of an orphan, that a "full and final" adoption was completed with both parents having seen the child before or during the adoption process, or that the child is free to emigrate from the foreign-sending country to be adopted abroad. The OIC further found that the petitioner had failed to establish that all pre-adoption requirements had been met.

In response to the Notice of Intent to Deny, the petitioner submitted additional evidence.

In his decision, the OIC dismissed the petition for the reasons stated in the Notice of Intent to Deny.

Section 101(b)(1)(F)(i) 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 . . . .

One component of meeting the statutory definition of an orphan is establishing that the child was either adopted abroad by a United States citizen and spouse jointly, or is coming to the United States for adoption by a United States citizen and spouse.

On the Form I-600 petition, the petitioner indicated that both he and his spouse personally saw and observed the beneficiary prior to or during the adoption proceedings and that they had adopted the beneficiary abroad.

The OIC stated that the petitioner and his wife were awarded guardianship by proxy and that at no time prior to or during the proceedings did the petitioner and his wife personally observe the beneficiary. On appeal, counsel for the petitioner submits a copy of two pages of the petitioner's passport indicating that he entered another country on November 22, 2003 and departed on December 8, 2003. Counsel for the petitioner also submitted copies of the beneficiary's itinerary and the petitioner's spouse's plane ticket receipt.

According to the evidence in the record, on November 10, 2003, the Judge of the Tehran General Court awarded the petitioner and his spouse temporary guardianship of the beneficiary for six months. The record also contains a document from the Tehran Legal Court addressed "to whom it may concern" indicating that the beneficiary was awarded as the adopted child to the petitioner and his wife on December 31, 2003.

In review, the petitioner failed to establish that he and his wife personally observed the beneficiary either prior to or during the adoption proceedings. The plane ticket submitted on appeal is illegible. The petitioner's passport indicates that he entered Iran (or some other country) on November 23, 2003 and departed on December 8, 2003. This is not conclusive evidence that the petitioner and his wife observed the beneficiary prior to or during the adoption proceedings.

Since the petitioner failed to establish that he and his wife observed the beneficiary before or during the adoption proceedings, the petitioner must establish that he and his wife will jointly adopt the beneficiary in the United States, and that they meet all preadoption requirements of California, their home state.

On the Form I-600, the petitioner indicated that the beneficiary has no parents.

The petitioner submitted an affidavit written by a social worker named Maheh Manie, stating that she found the beneficiary abandoned in a park in Tehran in January 2003, and then notified the petitioner and his wife.

In an interview with the OIC on January 28, 2004, the petitioner's wife informed the OIC that the information in the social worker's affidavit was incorrect. The petitioner's wife told the OIC that the social worker met the beneficiary's mother in a park when the latter was pregnant with the beneficiary. Supposedly sometime after the woman gave birth, the social worker encountered the child's mother again and the mother gave the child to the social worker saying that she (the mother) was going to visit a sister in Tehran because it was cold in the park, while expressing her wish to give the child away.

The petitioner has failed to establish that the beneficiary has been abandoned by both parents. On this issue, 8 C.F.R. § 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 beneficiary cannot be considered to have been abandoned by both parents as that term is defined in 8 C.F.R. § 204.3(b) because the record is devoid of evidence that the beneficiary's biological parents have willfully forsaken their parental rights. Further, there is no evidence that the beneficiary was given unconditionally to an orphanage.

The regulation at 8 C.F.R. § 204.3(b) states in pertinent part:

> *Desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.
>
> *Disappearance of both parents* means that both parents have unaccountable or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

In review, the record does not establish that the beneficiary's birth parents deserted him. There is no evidence that the beneficiary became a ward of a competent authority in Iran.

Similarly, the evidence does not establish that the beneficiary's parents have both disappeared because there is no evidence that there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of Iran.

In the absence of evidence about the beneficiary's birth parent(s), the record is insufficient to establish that the beneficiary is the child of a sole or surviving parent.

The facts in the record indicate that the petitioner and his wife were informed by their family friend/social worker that a child had become available for adoption. The record does not establish when the beneficiary was born or to whom.

There is no documentation in the record to show that a third party (e.g., a government agency, a court of competent jurisdiction, an adoption agency or an orphanage) that was authorized under the child welfare laws of Iran to act in such a capacity ever had custody of the beneficiary because the biological parents relinquished or released their parental rights to such a third party, as required by the regulations.

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.