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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BALTIMORE DISTRICT OFFICE Date: JUL 28 2004

BAL 03 148 50003

IN RE: Petitioner:
Beneficiary: [redacted]

Application: 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:

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 District Director of the Baltimore, Maryland district 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 district director on May 6, 2003. The petitioner is a 49-year old married citizen of the United States. The beneficiary was born on March 19, 1990 in Ethiopia and is now 14 years old. The beneficiary is in the custody of her birth mother. The petitioner adopted the beneficiary in Ethiopia on February 19, 2003.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary met the definition of an orphan according to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

On appeal, counsel states the reason for the appeal and indicates that he would submit a brief and or additional evidence within 30 days of filing the appeal. More than nine months have lapsed since the filing of the appeal and nothing further has been submitted for the record.

Section 101(b)(1)(F) of the Act, defined the term *orphan* as follows:

> 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.

In a July 22, 2003 Notice of Intent to Deny, the director informed the petitioner that the Form I-600 petition could not be approved because the record did not contain a full and final adoption for the beneficiary or a death certificate for the birth father. The director further informed the petitioner that she had failed to establish that the surviving parent is incapable of providing for the beneficiary's basic needs, consistent with the local standards of the foreign sending country.

In response to the Notice of Intent to Deny, the petitioner submitted a death certificate for the beneficiary's birth father and established that she had obtained a full and final adoption of the beneficiary.

The director denied the petition, finding that the petitioner had failed to establish that the birth mother was incapable of providing for the beneficiary's basic needs, consistent with the local standards of the foreign sending country. In particular, the director stated that:

> The record contains statements from you and statements from the beneficiary's birth mother that the birth mother has no income and is poor. [CIS] notes that these statements are self-serving given the nature of the case, and the statements are not supported by objective, credible evidence. The only supporting evidence that you submitted are two letters from local Kebeles stating that the birth mother is jobless and poor. The only basis

> for the Kebele's issuance of these letters is the presence of three witnesses to testify to their content. No objective evidence was reviewed by the Kebele prior to its issuing the two letters. As such, you have failed to submit credible evidence to support your claim that the beneficiary's birth mother is unable to provide for the beneficiary's basic needs, consistent with the standards of the foreign sending country. The statements from the birth mother and from you have been considered, as have the letters from the local Kebele. However, because they are not supported by independent, objective evidence, they are given less evidentiary weight.

On appeal, counsel for the petitioner asserts that the evidence is sufficient to establish that the birth mother is incapable of caring for the beneficiary and that the beneficiary should be classified as an orphan for immigration purposes.

As the record is presently constituted, the petitioner has not met her burden of establishing that the biological mother is unable to provide for the beneficiary's proper care according to the local standards in Ethiopia.

The record contains the death certificate of the beneficiary's birth father. Therefore, upon the biological father's death, the biological mother became a surviving parent. The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part:

> *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.

The director did not give any weight to the affidavits or statements.

Information contained in an affidavit should not be disregarded simply because it appears to be hearsay or self-serving. In administrative proceedings that fact merely affects the weight to be afforded such evidence, not its admissibility. *Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972). Here, the weight to afford the affiants' statements should be determined by other relevant evidence in the record regarding the birth mother's ability to care for the beneficiary.

The record of proceeding, as presently constituted, does not contain sufficient information to establish that the biological father is unable to provide for the beneficiary's basic needs, consistent with the local standards of Ethiopia. In the absence of a social welfare agency study in Ethiopia verifying that the beneficiary's mother is unable to provide proper care for the beneficiary, or comparable evidence, the evidence is insufficient.

In review, the record is devoid of independent objective evidence regarding the birth mother's ability to care for the beneficiary. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.