U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: ANCHORAGE, ALASKA Date: NOV 26 2004

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The District Director of the Citizenship and Immigration Services (CIS) Anchorage, Alaska, 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) on January 26, 2001. The petitioner is a 54-year-old married citizen of the United States. The beneficiary is 16 years old at the present time and was born in Sampaloc, Manila, Philippines, on July 9, 1988.

On February 1, 2001, the district director requested the petitioner to submit evidence of "abandonment/relinquishment papers of parent of child," as well as "adoption paperwork" if the petitioner had already adopted the beneficiary.

The petitioner submitted a response on February 12, 2001, which indicated that the petitioner would submit the requested documents as soon as he received them from the Philippines.

On May 21, 2001, the petitioner submitted an affidavit from the beneficiary's mother and the death certificate of the beneficiary's father.

On May 15, 2003, the district director issued a notice of intent to deny the petition based on the petitioner's failure to provide evidence that the beneficiary is an orphan. The district director specifically noted that no "legal document of abandonment or release" of the beneficiary had been submitted.

On March 15, 2004, the petitioner resubmitted a copy of the father's death certificate, the mother's affidavit, and the beneficiary's birth certificate.

On April 30, 2004, the district director denied the petition, finding the petitioner failed to establish the beneficiary qualified as an orphan.

The petitioner files a timely appeal with additional evidence.

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 . . .

Further, the regulation 8 C.F.R. § 204.3(b) provides the following definitions:

> *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.
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> *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 birth certificate contained in the record indicates that the beneficiary was born to s Lee and The record of proceeding contains a death certificate showing that the beneficiary's father died on January 20, 1993.

The record also contains an affidavit from the beneficiary's mother, which states:

> I am the mother of [the beneficiary] who was born on July 9, 1988 in Manila whom I begot out of wedlock with the late Leopoldo Adriano;
>
> That my father, [the petitioner and his wife], who are both American citizens, would like to adopt [the beneficiary];
>
> That I hereby given [sic] my maternal consent to have [the beneficiary] be adopted by the [petitioner and his spouse].

Contrary to the mother's claim that the beneficiary was "begot out of wedlock," we note the beneficiary's birth certificate indicates that the beneficiary's parents were married on January 20, 1980. We further note, the beneficiary's father's death certificate lists as his "surviving spouse." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Though the conflicting evidence in the record casts doubt on the veracity of the mother's statement, the issue of whether the beneficiary is considered an orphan as the child of a sole parent or a surviving parent, can be resolved

independent of the mother's statement.

In order for the beneficiary to qualify as the child of either a sole parent or a surviving parent, it must be first be established that her mother is incapable of providing proper care and has, in writing, irrevocably released the beneficiary for emigration and adoption.

In her affidavit, the mother states that she gives her "maternal consent" for the beneficiary to be adopted by the petitioner and his spouse. The statement makes no reference to the irrevocable release or emigration of the beneficiary.

On appeal, the petitioner submits a issued by the Honorable on May 13, 2004. In the certification states that the certification "is being issued upon the request of [the beneficiary's mother] for indigency." We do not find this certification to be suitable evidence that the mother is unable to care for the beneficiary. We note that the certification was "issued upon the request" of the beneficiary's mother. There is no evidence which shows that conducted any investigation to confirm that the mother was, indeed, indigent, prior to issuing the certification. Further, the certification contains an expiration date of December 20, 2004. Given this expiration date, we note that the mother's indigency is not considered a permanent status, but instead, a legal fiction created for these proceedings.

Regardless, the petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The certification of the mother's "indigency" was issued more than three years after the petition was filed. Therefore, even if we found the certification to be sufficient evidence that the mother was incapable of providing for the beneficiary, it does not establish that she was incapable of providing care at the time the petition was filed.

On appeal, the petitioner also submits a "Social Case Study Report," prepared by a case worker in the Philippines on May 27, 2004. In the report, the caseworker indicates that the mother "provides for the family all by herself." The caseworker further states, the mother finds it "difficult for her to feed [four] children or send them to school." The case worker concludes:

> It is recommended that the [beneficiary] be placed and raised in a good community. It is recommended that the [beneficiary] be adopted by a person with parenting capability and who could provide the minor with better chances in life.

As indicated in the caseworker's report, the mother has cared for the beneficiary, despite the death of the beneficiary's father, from the time of the father's death, to the present. Though the mother finds it difficult to provide for her family, the record does not demonstrate that she cannot provide for the beneficiary's basic needs, consistent with the local standards of the Philippines. Further, the fact that the petitioner may be able to "provide the [beneficiary] with better chances in life," does not establish that the mother is incapable of providing proper care.

Beyond the decision of the district director is the fact that the petitioner has not established that he and his spouse have adopted the beneficiary abroad, or that they have secured custody of the beneficiary in accordance with the laws of the Philippines.[1] For this additional reason, the petition cannot be approved.

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)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

ORDER: The appeal is dismissed.

[1] *See* Supporting documentation for a petition for an identified orphan 8 C.F.R. § 204.3(d)(1)(iv).