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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATLANTA, GEORGIA Date: NOV 05 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 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The District Director of the Citizenship and Immigration Services Atlanta, Georgia, district office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to the district director for further consideration and entry of a new decision.

The issue to be determined on appeal is whether the petition was filed before the beneficiary turned 16 years of age. In her decision, the district director determined that the petition was filed on December 6, 2000. The December 6, 2000 date is recorded on the Form I-600 as the date the fee was processed and receipt generated.

On appeal, counsel states that the petition, and appropriate fee, were received by the Atlanta district office on November 29, 2000, one day before the beneficiary turned 16. On appeal, counsel submits a copy of the return receipt showing that [redacted]' signed for the petition on November 29, 2000.

A review of the record of proceeding confirms counsel's assertion. The Form I-600 contained in the record indicates that the petition was date-stamped as received on November 29, 2000. This date is stamped on the bottom of the petition in a box noting "Received." Thus, we find that November 29, 2000, rather than December 6, 2000, is the appropriate filing date.

Though this was the only issue to be determined on appeal, a review of the record reveals additional issues that must also be addressed. We must, therefore, remand the case to the district director for action in accordance with the following discussion.

The beneficiary is the petitioner's nephew. The record of proceeding contains a guardianship order, the beneficiary's birth certificate, the beneficiary's parents' marriage certificate, and the death certificate for the beneficiary's father.

Because the beneficiary's birth father is deceased, in order for the beneficiary to be classified as an orphan in accordance with the Act, it must be shown that the beneficiary's biological mother is considered a surviving parent as defined by regulation.

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 . . .

[Emphasis added.]

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

> *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.
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> *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 record contains a "Statutory Declaration," signed by the beneficiary's biological mother. In this document, the beneficiary's biological mother states that since the death of the beneficiary's father, she has been the "sole guardian" of the beneficiary. The beneficiary's biological mother further states, "[D]ue to my financial and health condition, I am incapable to maintain and support my son." Though the beneficiary's biological mother alludes to her "financial and health condition," there is no documentary evidence that she has any financial or health problems.

Further, the petitioner's home study states:

> **Motivation and Attitudes Toward Adoption**
> [The petitioner and her spouse] are seeking to adopt their nephew . . . because of the economic situation in Hong Kong, [the petitioner's sister] is unemployed and cannot provide a higher education for her son, [the beneficiary].
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> * * *
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> The [petitioners] have observed the friction between [the beneficiary] and his mother as [the beneficiary] has reached adolescence. [The beneficiary] is mature for his age, and his mother often acts immature. [The beneficiary's maternal grandparents have been a big part of his life. [The beneficiary's father died when [the beneficiary] was 3 or 4 years old and his mother never remarried. So [the beneficiary] has grown up without a father figure.

The fact that the beneficiary's biological mother is unable to "provide a higher education" for the beneficiary, and that there is "friction," does not demonstrate that the beneficiary's biological mother is unable to provide for the beneficiary's basic needs, consistent with the local standards of the foreign sending country, as required by regulation. Both the home study and the beneficiary's biological mother's own statement indicate that she has been able to provide for the beneficiary since his father's death, and continuing up to the date of the filing of the petition.

The only evidence provided related to whether the beneficiary's biological mother is able to care for the beneficiary is from the beneficiary's biological mother herself. Though we cannot simply disregard the biological mother's statement as self-serving, we find that it carries less weight than if corroborated by other relevant evidence.[1] In this instance, the record does not contain any other relevant evidence related to the beneficiary's biological mother's ability to care for the beneficiary, such as child welfare agency or other competent government authority. The fact that the court granted the petitioner and her spouse guardianship of the beneficiary is not sufficient evidence that the beneficiary's biological mother is incapable of providing proper care.

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[1] 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).

Accordingly, on remand the district director should request further evidence from the petitioner to establish the beneficiary is eligible for classification as an orphan because he is the child of a surviving parent, who is incapable of providing for his basic needs, consistent with the local standards of the foreign sending country.

The remaining issue to be determined on remand is whether the beneficiary has been irrevocably released by his biological mother. Though she states in her "Statutory Declaration" that she consents to the beneficiary's adoption by the petitioner and the petitioner's spouse, and to the beneficiary "leaving Hong Kong and immigrating to the States permanently," the beneficiary's biological mother only agrees to "relinquish all [her] rights as the natural mother and guardian of [the beneficiary] *upon the adoption*" of the beneficiary.

[Emphasis added.]

That the beneficiary's biological mother predicates her relinquishment of parental rights upon the adoption of the beneficiary, does not satisfy the requirements of the statute which requires the child to be irrevocably released *for* adoption, not after the adoption has taken place.

Moreover, the beneficiary's biological mother's declaration that she intends to "relinquish all [her] rights as the natural mother" of the beneficiary is directly contradicted by the statements made by the petitioners in their home study. As noted in their home study, the petitioners indicate:

With this adoption, [we] plan to act as [the beneficiary's] guardians. His mother in Hong Kong will always be his mother . . . [we] will encourage [the beneficiary] to maintain contact with his mother and will do what [we] can to help that relationship develop healthily . . . with visits back to Hong Kong, he will not experience any loss.

Though the Act expressly prohibits the natural parent from gaining some immigration-related benefit vis-à-vis an international adoption,[2] it is silent as to whether the beneficiary may maintain contact with a birth parent. In this instance, we find the evidence does not adequately establish that the beneficiary's biological mother has irrevocably released the beneficiary or intends to do so. Accordingly, on remand the district director should request the petitioner to submit evidence to establish that the beneficiary's has in writing irrevocably released the child for emigration and adoption. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

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[2] *See* Section 101(b)(1)(F)(i) of the Act.