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**U.S. Citizenship
and Immigration
Services**

FI

FILE:

Office: ATLANTA, GA

Date: **NOV 15 2005**

IN RE: Petitioner:
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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia denied the immigrant visa petition. 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 (I-600 petition) on October 23, 2003. The petitioner is a thirty-six year old married U.S. citizen. The beneficiary was born in India on December 22, 1989, and he is presently fifteen years old.

The district director concluded the petitioner had failed to establish that the beneficiary's natural father is incapable of providing for the basic needs of the beneficiary, or that he has irrevocably released the beneficiary for adoption and emigration purposes.

On appeal, the petitioner asserts that the legal guardianship and affidavit evidence contained in the record establishes that the beneficiary's natural father suffers poverty and mental disability, and that he is incapable of providing for the basic needs of the beneficiary. The petitioner additionally asserts that the legal guardianship evidence and a written affidavit from the beneficiary's natural father establish that the beneficiary's natural father has irrevocably released the beneficiary for adoption and emigration purposes.

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 (Emphasis added).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides that:

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*.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to

which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The evidence relating to the beneficiary's status as an "orphan" consists of the following:

A birth certificate reflecting that the beneficiary was born in India on December 22, 1989, to [REDACTED] (father) and [REDACTED] (mother).

A death certificate reflecting that the beneficiary's natural mother, [REDACTED] died in India on February 18, 2002.

A Guardianship Order ("Order") issued on February 15, 2005, by the Family Court, Thodupuzha, India, reflecting that the petitioner was appointed as the beneficiary's guardian. The Order states in pertinent part on page 3, that:

[A]fter the death of the mother, the father of the & [sic] minor is not capable of looking after the child. The father of the child is not capable of giving proper education to the minor boy. After the death of the mother of the minor, the father has become mentally and physically weak and he is totally disinterested in the education and welfare of the minor son. If the petitioner is appointed as guardian, he has got sufficient means to give better education to the minor. The petitioner is ready and willing to abide by any conditions that the court may impose.

The Order indicates generally on page 4-5, that the beneficiary's natural father and his older sister, a nursing student, were deposed regarding the petitioner's fitness to act as the beneficiary's guardian and regarding the natural father's incapacity to bring up the child in a proper manner. The Order states on page 6, that:

[T]he minor's father is not capable of bring [sic] up the child properly due to his financial difficulties and mental shock consequent to the death of wife. In these circumstances it is only just and proper to appoint petitioner as the guardian of the person of the minor.

The Order states further on page 7 that, the petitioner will present the beneficiary before the court when called for, that until the beneficiary reaches the age of majority, the petitioner will file a report with the court every six months regarding the general conditions of the beneficiary, and the petitioner will "[i]nform his change of address, if any, the father [sic] of minor child without any delay."

Two letters signed by the petitioner's attorney on February 17th and February 28th, 2005, stating in pertinent part that after the beneficiary's mother's death, his natural father was:

[N]ot capable of looking after the minor child [REDACTED] and maintain him and educate him in a proper manner conducive to the welfare of the minor . . . the father has become mentally and physically weak and he is totally disinterested in the education and welfare of the minor. Further due to various debts he is not financially sound enough to educate the child in a proper manner, suitable to the status of the family and the local standards of India.

A September 6, 2003, letter signed by [REDACTED] of St. George Church, stating in pertinent part that the beneficiary's natural father became financially weak and depressed after the death of his wife, and that without the help of the petitioner, the beneficiary's natural father, "[i]s not in a position to educate his children properly. Hence [REDACTED] [the petitioner] wishes to take [REDACTED] [the beneficiary] to the USA and educate him there. It is a commendable attempt and I do recommend it."

A second, April 29, 2005, letter signed by [REDACTED] of St. George Church stating that since the death of the beneficiary's mother, the beneficiary's natural father faces financial difficulties and is under mental stress and strain to educate and bring up the beneficiary.

A January 29, 2005, letter signed by [REDACTED] of the Idukki District Co-operative Hospital, stating that since the death of his wife, the beneficiary's natural father suffers from endogenous depression and mental shock, and psychological upset which has resulted in an inability to care for his children, and disinterest in looking after his children, their education and other activities.

An April 30, 2005, letter from the Headmistress of Vimala Matha High School stating that it is her understanding that the beneficiary's natural father lacks sufficient financial resources and ability to provide for the basic needs of the beneficiary.

An April 29, 2005, letter signed by [REDACTED] stating that it is his understanding that the beneficiary's natural father is under stress due to his wife's death, and that he lacks sufficient financial resources and is unable to provide for the beneficiary's basic needs.

An April 30, 2005, letter signed by [REDACTED] President of Kodikulam Grama Panchayat, a May 2, 2005 letter signed by [REDACTED] of the Elamdesam Block Panchayat, and an April 30, 2005 letter signed by advocate [REDACTED] each stating that he knows the beneficiary and his natural father, and that the beneficiary's natural father's financial status is poor, and that the beneficiary's natural father is suffering mental deficiency and is thus unable to provide for the basic needs of the beneficiary.

A September 10, 2003, letter signed by the beneficiary's natural father stating that his wife died on February 18, 2002, and that his son, [REDACTED] resides with him. The beneficiary's natural father states that he spent a large amount of money on his wife's medical treatment, and that "[d]ue to various debts I am not financially sound enough to educate the child in a proper manner, suitable to the status of the family." He states that his younger brother, the petitioner is ready to adopt his son, and that the motive behind the adoption is not financial, but rather for the welfare of his son.

A May 3, 2005, sworn statement signed, for U.S. adoption purposes, by [REDACTED] [REDACTED] Biological and legal father" stating in pertinent part that he is incapable of providing for the basic needs of the beneficiary, and that he has irrevocably released the child for emigration and adoption.

A May 3, 2005, letter signed by the beneficiary's natural father stating that he forever irrevocably releases the beneficiary for emigration and adoption purposes, that after the death of the beneficiary's natural mother, he has become mentally and physically weak, and that he is "[n]ot capable of providing for the basic necessities of the beneficiary and cannot maintain him and educate him in a proper manner conducive to the beneficiary's welfare.

The AAO finds that the Court Order, as well as the doctor's letter and other letters and statements in the record provide only general statements relating to the beneficiary's father's inability to provide care to the beneficiary, and that none of the documents contain detailed information or corroborative evidence to support the assertion that the beneficiary's natural father suffers from mental health or financial problems that make him incapable of providing for the beneficiary's basic needs in India. To the contrary, the statements contained in the record, including the court Order, the letters and the beneficiary's natural father's statement, indicate that the beneficiary presently lives with his natural father and that it is his natural father's inability to provide a proper education to the beneficiary that motivated him to have the petitioner appointed as the beneficiary's guardian.

Accordingly, the AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural father is incapable of providing for the basic needs of the beneficiary, consistent with the local standards in India. Because the petitioner has failed to establish that the beneficiary's natural father is incapable of providing proper care to the beneficiary, the AAO finds it is unnecessary to address other eligibility issues raised on appeal.

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 petitioner has failed to meet his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.