U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 2 3 2012 Office: NATIONAL BENEFITS CENTER File: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition to Classify Convention Adoptee as an Immediate Relative Pursuant to Section 101(b)(1)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(G)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The National Benefits Center Director (the director) provisionally approved the Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) but ultimately denied the petition after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks classification of the beneficiary as an immediate relative pursuant to section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(G). The director denied the petition because both of the beneficiary's parents are living and the record does not establish that the parents are incapable of providing care for the child. On appeal, the petitioner submits a brief and additional documentation.

Applicable Law

For the purpose of classifying an intending Convention adoptee as a "child," so that the child may be subsequently classified as an immediate relative for the purpose of emigrating to the United States, section 101(b)(1)(G) of the Act provides, in pertinent part, the following definition:

> (i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at the Hague[1]. . . or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, Provided, That –
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> (I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;
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> (II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;
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> (III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;
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> (IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under

[1] *See Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (May 29, 1993). The United States signed the Hague Convention on March 31, 1994 and ratified it on December 12, 2007, with an effective date of April 1, 2008.

this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents)[.]

The regulation at 8 C.F.R. § 204.301 states, in pertinent part, the following:

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State. Except as specified in this Part, "Central Authority" also means, solely for purposes of this Part, an individual who or entity that is performing a Central Authority function, having been authorized to do so by the designated Central Authority, in accordance with the Convention and the law of the Central Authority's country.

Competent authority means a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

* * *

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

* * *

Sole parent means: (1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life; or (2) The child's father, when the competent authority has determined that the child's mother has abandoned or deserted the child, or has disappeared from the child's life; except that (3) A child's parent is not a sole parent if the child has acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

Facts and Procedural History

The petitioner is a citizen of the United States. The beneficiary was born in China on January 1, 1996 and is the petitioner's spouse's niece. The petitioner filed the instant Form I-800 on September 28, 2010 which was provisionally approved on November 18, 2010. Upon subsequent review, the director issued a Notice of Intent to Revoke (NOIR) the provisional approval on December 28, 2011, as well as a Notice of Intent to Deny (NOID) the petition on May 7, 2012. Upon review of the record, including the petitioner's responses to the NOIR and NOID, the director denied the petition, determining that both of the beneficiary's biological parents were living and that it had not been established that the parents are incapable of providing proper care to the beneficiary. The director acknowledged the petitioner's claim that the beneficiary's biological mother was the beneficiary's sole parent; however, the director concluded that the Central Authority of China had not made such a determination. The director concluded that the beneficiary did not meet the definition of a child at section 101(b)(1)(G) of the Act.

On appeal, the petitioner asserts that the regulations require only that a competent authority determine that a biological parent is a sole parent. The petitioner references two previously submitted documents: a "Certificate" from the Tianhenan Sub-district office of Tianhe District in Guangzhou, China (Tianhenan sub-district); and the China Center of Adoption Affairs' "Letter of Seeking Confirmation from Adopter 2009-1136-01-2302" (Confirmation Letter). The petitioner also includes a new document from the Tianhe sub-district, describing the beneficiary's situation.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility to be classified as a child under section 101(b)(1)(G) of the Act.

The initial record in support of the Form I-800 included a certified translation of a document titled "Certificate," dated August 10, 2010, from the [redacted] sub-district. The document identified the beneficiary and her biological mother as residents of [redacted] District and indicated that the beneficiary's mother had not had a stable job or income and that "[h]er ex-husband has almost never been in touch with his daughter, [the beneficiary]. Nor has he paid any child support since the divorce."

The record also included a translated Confirmation Letter, dated September 3, 2010. The letter indicated that based on the petitioner and his spouse's application and in accordance with China's Adoption Law, the China Center of Adoption Affairs matched a child with the petitioner and his spouse. The document identified the beneficiary by name and date of birth and identified her as the petitioner's niece.

The record further included a translated copy of the beneficiary's parent's divorce record. The record indicated that the divorce was granted based on the willingness of both spouses and noted that the couple has "already come to an arrangement with respect to child and the division of their conjugal property." The divorce record did not include further information regarding the custodial arrangements made for the beneficiary. The beneficiary's mother's September 13, 2010 translated statement indicated that since the divorce, the beneficiary's father had not been involved in her life and that the beneficiary's father had not given any child support payments.

On appeal, the petitioner provides a translated document titled "Report on [the beneficiary's] Family Information" (Family History Report) that is stamped by the [redacted] sub-district. The document is dated July 2012 and identifies the beneficiary and her biological mother as residents and citizens within the sub-district's jurisdiction. The report notes that after the beneficiary's parents' divorce in 2005, the beneficiary's biological mother did not have regular employment and income and "her ex-husband has almost not [sic] contact with the daughter or pay upbringing expense." The report also indicates that the beneficiary's biological mother works in [redacted] and only goes home to [redacted] twice each month and accordingly, no one takes cares of the beneficiary. The reports states: "we agree [that the beneficiary] to be adopted by [the petitioner's wife] and the [petitioner]."

The petitioner contends that a competent authority in China has deemed the beneficiary to be the child of a sole parent and, therefore, he is not required to demonstrate that the beneficiary's biological parents are incapable of providing her with proper care. The record, however, does not contain any evidence that a competent authority found the beneficiary to be the child of a sole parent based upon her father's abandonment or desertion of her, or his disappearance from her life.

As explained in the preamble to the *Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention* (Hague Rule): "A child will be deemed to be the child of a sole parent if the child has only one legal parent, based on the competent authority's determination that the other legal parent has either abandoned or deserted the child, or has disappeared from the child's life." 72 Fed. Reg. 56832-01, 56839 (Oct. 4, 2007).

The Confirmation Letter, dated September 3, 2010, does not indicate that a competent authority determined that the beneficiary was the child of a sole parent; the letter only identifies the beneficiary as the niece of the petitioner. No supporting evidence is attached to the Confirmation Letter regarding what determination the competent authority made, if any, regarding the beneficiary's social welfare or the circumstances surrounding her placement for adoption.

Similarly, while the petitioner relies upon the Family History Report from the [redacted] sub-district to demonstrate that a competent authority has determined the biological mother to be a sole parent, the [redacted] sub-district cannot be considered a competent authority as that term is defined at 8 C.F.R. § 204.301. In the Family History Report, the [redacted] sub-district is identified as: "an authority appointed by the people's government of . . . China . . . and there are several residents committee of community under its jurisdiction . . . with the duties to assist local citizens to handle public affairs and public benefits." The [redacted] sub-district does not meet the regulatory definition of *competent authority* because it is not "a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption." 8 C.F.R. § 204.301. As the [redacted] sub-district is not a competent authority, its findings about the biological parents' present living and employment situations, as well as their interactions with the beneficiary, are insufficient to demonstrate that the beneficiary is the child of a sole parent. More importantly, even if the [redacted] sub-district could be considered a competent authority under the regulation, the Family History Report does not establish that the biological father abandoned or deserted the beneficiary, or disappeared from her life. The Report states only that the biological father "has almost no contact" with the beneficiary and has not paid any child support; however, neither of these actions constitutes abandonment, desertion or disappearance. In addition, the biological parents jointly executed a statement on August 21, 2009, agreeing to terminate their parental rights once the beneficiary's adoption was finalized, and that they mutually came to this decision "after discussing." This joint statement also fails to establish that the beneficiary is the child of a sole parent because she was abandoned or deserted by her biological father, or that he had disappeared from her life. Consequently, the record lacks sufficient evidence that the beneficiary is the child of a sole parent.

Because the beneficiary has two living biological parents, the petitioner must demonstrate that they are incapable of providing proper care for her. Section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III). Accordingly, the petitioner must demonstrate that the beneficiary's biological parents are not able to provide for her basic needs, consistent with the local standards of China. *See* 8 C.F.R. § 204.301 (definition of *Incapable of providing proper care*). Factors considered by USCIS include, but are not limited to, economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration of the biological parent(s). *Id.*

Other than the Family History Report, the only evidence relating to the beneficiary's living and schooling arrangements and her relationship with her biological parents consists of: a September 13, 2010 Social Report written by the biological mother; the biological parents' joint statement, dated August 21, 2009; and the Certificate, dated August 10, 2010, from the [redacted] District Residence Committee. These letters and reports indicate generally that the beneficiary and her biological mother live together and that the biological father does not pay child support. The evidence also indicates that the biological mother was once unemployed but as of July 2012 she had found employment in another city in China so she is only able to go home to see the beneficiary twice each month, but the record lacks any documentation of the biological mother's income and how it compares to that of the general population in Guangzhou. The Family History Report also does not provide any probative details about the beneficiary's living arrangements while her mother is away, or elaborate on the statement that "nobody takes of the [beneficiary]" while the biological mother is working. While the letters and reports claim that the biological father has been absent from the beneficiary's life, his execution of a joint statement with the biological mother in August 2009 as well as the Family History Report's statement that he had "almost no contact" with the beneficiary indicates that he has played some type parental role in the beneficiary's life. Overall, the evidence is deficient in establishing that the biological parents are incapable of providing proper care to the beneficiary consistent with the local standards in China.

Conclusion

The record does not contain evidence that a competent authority determined that the beneficiary's biological father had abandoned or deserted her, or disappeared from her life so that she could be classified as the child of a sole parent. Consequently, the beneficiary has two living natural parents, and the record does not demonstrate they are incapable of providing her proper care. Accordingly, the petitioner has not sustained his burden of establishing that the beneficiary may be classified as a child at section 101(b)(1)(G) of the Act. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.