



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY

Date: AUG 24 2005

IN RE: Petitioner: [REDACTED]
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)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Newark, New Jersey, 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 (I-600 petition) on January 5, 2005. The petitioner is a forty-four-year old married citizen of the United States. The beneficiary was born in Pakistan on May 20, 2003, and she is two-years-old.

The officer in charge determined the petitioner had failed to establish that the beneficiary was abandoned, or that the beneficiary's birth father had disappeared and the beneficiary had only one surviving or sole parent, as defined in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3. The officer in charge concluded that the beneficiary failed to meet the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The officer in charge determined further that the petitioner had failed to provide proof of the beneficiary's identity and age, and had failed to provide a valid home study. The officer in charge concluded that regardless of the lack of required initial evidence, the I-600 petition was deniable pursuant to 8 C.F.R. § 103.2(b)(8), based on the evidence of ineligibility contained in the record.

On appeal, the petitioner submits a valid home study report and a copy of the beneficiary's birth certificate. The petitioner asserts that the beneficiary's birth father is her brother, and she does not dispute that both of the beneficiary's birth parents are alive. The petitioner indicates further that the beneficiary's birth parents agreed to her adoption of their child, and the petitioner requests that her I-600 petition be granted.

Section 101(b)(1)(F)(i) of the Act defines an "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 . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence. (Emphasis added).

Abandonment by both parents is a defined term in the regulations. 8 CFR 204.3(b) states in pertinent part:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, **without intending to transfer, or without transferring, these rights to any specific person(s)**. Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. **A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.** Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a

governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned. (Emphasis added).

The record contains the following evidence relating to the beneficiary's status as an orphan:

A birth certificate, reflecting that the beneficiary, [REDACTED], was born to [REDACTED] (mother) and [REDACTED] (father) in Pakistan, on May 20, 2003.

A September 24, 2003, Declaration/Affidavit signed by the beneficiary's birth parents stating that they cannot afford the expenses of their five children, and that they consent to the petitioner's adoption of their birth daughter, [REDACTED].

A December 6, 2003, written statement signed by the beneficiary's birth parents and submitted to the [REDACTED] Pakistan Court, stating that the petitioner adopted their daughter, [REDACTED] and that they have no objection to the petitioner's taking legal and physical custody of the beneficiary.

An August 25, 2004, [REDACTED] signed by the beneficiary's birth parents, stating that they have given their daughter, [REDACTED] to the petitioner and her spouse for adoption purposes.

A September 23, 2004, [REDACTED] Court Order appointing the petitioner as [REDACTED] legal guardian for all purposes.

The AAO finds that a review of all of the evidence in the record establishes that in surrendering their parental rights over the beneficiary, the beneficiary's birth parents intended to, and did transfer their parental rights specifically to the petitioner. The evidence establishes further that the beneficiary's natural parents maintained all parental rights, obligations and claims to the beneficiary prior to the petitioner's appointment as the beneficiary's guardian. The petitioner has therefore failed to establish that the beneficiary was "abandoned" by her parents, as defined in 8 C.F.R. § 204.3, and the petitioner has failed to establish that the beneficiary meets the definition of an "orphan" as set forth in section 101(b)(1)(F)(i) of the Act.

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 not met her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.