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U.S. Citizenship
and Immigration
Services

F1

FILE: [REDACTED] Office: ATLANTA, GA

Date: **OCT 26 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:

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 District Director, Atlanta, Georgia denied the immigrant visa petition. The matter has been certified to the Administrative Appeals Office (AAO). The district director's decision will be affirmed and the appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on December 6, 2000. The petitioner is a forty-one year old married U.S. citizen. The beneficiary was born in Hong Kong on November 30, 1984, and he is presently twenty years old.

The district director denied the I-600 petition on April 27, 2004, based on a finding that the beneficiary was sixteen years old when the I-600 petition was filed, and that he therefore did not meet the age requirements set forth in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). On appeal, the AAO found that the I-600 petition had been filed prior to the beneficiary's sixteenth birthday. The AAO remanded the matter to the district director, however, for determination regarding whether the petitioner had established that the beneficiary's natural mother was unable to provide for the basic needs of the beneficiary in accordance with the local standards of the foreign sending country, and for determination regarding whether the beneficiary's natural mother had irrevocably released the beneficiary for adoption and emigration purposes. On remand, the district director denied the I-600 petition on the basis that the petitioner had failed to respond to requests for additional information, and had failed to establish that the beneficiary's natural mother was unable to provide for the basic needs of the beneficiary, or that she had irrevocably released the beneficiary for adoption and emigration purposes. The decision was certified to the AAO on December 18, 2004. The AAO affirmed the district director's decision. The district director subsequently found new evidence that had been received from the petitioner in a timely manner. The new evidence was considered, however the district director found that the new evidence failed to establish that the beneficiary's natural mother was incapable of providing for the beneficiary's basic needs or that she had irrevocably released the beneficiary for adoption and emigration purposes. The district director redenedied the I-600 petition on May 10, 2005, and the decision has been recertified to the AAO for review.

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 Hong Kong on November 30, 1984 ([REDACTED] father) and [REDACTED] (mother).

A death certificate reflecting that the beneficiary's natural father, died in Hong Kong on December 19, 1989.

A Guardianship Order issued on August 8, 2001, by the District Court of the Hong Kong Special Administrative Region Family Court, reflecting that, along with the beneficiary's natural mother [REDACTED], the petitioner and her husband were appointed as additional guardians for the beneficiary, to act "[s]ingly or jointly with one another or with the Applicant [REDACTED]

A Statutory Declaration signed by the beneficiary's natural mother on September 5, 2001, stating that she has been the sole guardian of her son (the beneficiary), and that her younger sister and her brother-in-law (the petitioners) have been appointed additional guardians of her son, to act as such singly or jointly with one another or with her. The declaration additionally states that the beneficiary graduated from 11th grade in Hong Kong, but that due to her financial and health condition, she is incapable of maintaining and supporting the beneficiary. The beneficiary's natural mother states that she consents to any adoption application by her younger sister and brother in law, and that she agrees to relinquish all of her rights as the natural mother and guardian of the beneficiary upon his adoption by the petitioners.

An affidavit dated December 15, 2004, signed by the beneficiary's natural mother, stating that her mother [REDACTED] and father [REDACTED] have been the sole caretakers and providers for her son [REDACTED] since he was three years old. The beneficiary's natural mother states that she has been unable to find employment since 1998, and that she relies on her mother for housing and financial assistance. She states further that due to her emotional condition and her lack of finances she is unable to care for her son. She considers her sister, the petitioner, and her sister's husband to be the primary people responsible for the care of her son [REDACTED]

An affidavit signed by [REDACTED] on December 15, 2004, stating that her daughter (the beneficiary's natural mother) has not been able to provide for the beneficiary emotionally or financially, that she and her husband have cared for the beneficiary since he was three years old, and that she and her husband have supported the beneficiary's natural mother financially. She states further that her husband passed away in July 2002, that her own health is deteriorating due to her age, and that she wants to make sure the beneficiary will be able to maintain the family he has established with her other daughter (the petitioner) and her family in the United States.

Copies of financial receipts reflecting 2002 and 2003 transfer payments to the beneficiary's natural mother's bank account.

A December 2004, doctor's letter and a school letter reflecting that the beneficiary's maternal grandmother brought him to most of his doctor's appointments and that his school record reflects his guardian was Mrs. [REDACTED] (his grandmother).

A September 6, 2001, opinion letter written by [REDACTED] of [REDACTED] Solicitors & Notaries. The letter states in pertinent part that it is the writer's opinion that the Guardianship of Minors Ordinance (the law relating to child custody in Hong Kong) does not allow the petitioners to remove the beneficiary's natural mother as a guardian over the beneficiary, and that the petitioners thus cannot become sole guardians over the beneficiary.

The AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural mother is unable to provide for the beneficiary's basic needs, consistent with the local standards in Hong Kong. The record contains no evidence to support the assertion that the beneficiary's mother suffers from health problems that make her incapable of providing for the beneficiary's basic needs in Hong Kong. The AAO notes further that the indication that the beneficiary's natural mother is unable to provide for the beneficiary's needs because she relies on her mother for housing is contradicted by Home Study information reflecting that the petitioner and her family also live in a home owned by the beneficiary's maternal grandmother. *See* Home study at 9. In addition, the financial receipt evidence submitted on appeal fails to establish the source or purpose of the payments or that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs. The AAO finds further that the school and doctor letters submitted on appeal fail to address or demonstrate that the beneficiary's natural mother is in any way incapable of providing for the basic needs of the beneficiary.

The evidence in the record also fails to corroborate the affidavit statements made on appeal by the beneficiary's natural mother and maternal grandmother. As noted in the district director's decision, although the affidavits submitted on appeal claim that the beneficiary has been in the sole care of his maternal grandparents since his natural father died when he was three years old, these claims are contradicted by the beneficiary's natural mother's September 5, 2001, Statutory Declaration statement that she has been the sole guardian of her son since her late husband's death. The claims additionally contradict evidence reflecting that the beneficiary's natural mother is recognized, along with the petitioner's, as the beneficiary's legal guardian.

The AAO finds further that the petitioner has failed establish that the beneficiary's natural mother has irrevocably released the beneficiary for emigration and adoption. To the contrary, the Guardianship Order evidence contained in the record demonstrates that the beneficiary's natural mother has maintained all parental rights, obligations and claims to the beneficiary, and that her rights are equal to those of the petitioners. The AAO additionally notes that the indication on appeal that Hong Kong law does not allow a natural parent to be divested of legal rights over their child contrasts with information discussed by the U.S. Department of State at <http://travel.state.gov>, reflecting a clear adoption process and authority in Hong Kong, which allows for the adoption of a child in that country.

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 her burden in the present matter. The appeal will therefore be dismissed

ORDER: The district director's decision is affirmed and the appeal is dismissed.