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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

OFFICE: CHICAGO, IL (INDIANAPOLIS, IN)

DATE: **AUG 07 2006**

IN RE:

Petitioner:

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois 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) in January 2006. The petitioner is a forty-one year old married U.S. citizen. The beneficiary was born in India on September 15, 1992, and she is presently thirteen-years old.

The I-600 petition was denied on April 5, 2006, based on a finding that the beneficiary's natural mother had specifically transferred her parental rights over the beneficiary to the petitioner and his spouse, and that the beneficiary therefore did not meet the "abandonment" and "orphan" definitions contained in Volume 8 of the Code of Federal Regulations (8 C.F.R.) and section 101(b)(F)(1) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(F)(1).

Counsel concedes on appeal that the beneficiary's natural mother specifically transferred her parental rights over the beneficiary to the petitioner and his wife. Counsel asserts, however that the beneficiary's natural father is deceased, and that accordingly, the district director erred in applying "abandonment by both parents" requirements rather than "surviving parent" requirements to the petitioner's case. Counsel asserts that the beneficiary's natural mother is incapable of caring for the beneficiary, and counsel concludes that the beneficiary therefore meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

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).

8 C.F.R. section 204.3(b) provides in pertinent part that:

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.

The AAO finds that the district director erroneously applied 8 C.F.R. § 204.3(b), “abandonment by both parents” requirements to the petitioner’s case. The AAO notes that where it is established that the beneficiary has only one surviving parent, the definition of “abandonment by both parents” found at 8 C.F.R. 204.3(b) should not be referred to or relied upon in the adjudication of the I-600 petition. Rather the definitions of “surviving parent” and “incapable of providing proper care” are the relevant definitions in 8 C.F.R. 204.3(b). These definitions state 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*.¹

Neither definition cited above specifically prohibits a surviving parent from relinquishing or releasing his or her child to a specific individual in preparation for an adoption. Accordingly, any evidence in the record which shows that the beneficiary’s natural mother relinquished her parental rights for a specific adoption does not bear on the determination of whether the beneficiary, who has only one surviving parent, may be classified as an “orphan”.

The evidence relating to the beneficiary’s natural mother’s ability to provide proper care to the beneficiary, and the beneficiary’s status as an “orphan” consists of the following:

A birth certificate reflecting that the beneficiary was born in India on September 15, 1992, to [REDACTED] (mother) and [REDACTED] (father).

A death certificate reflecting that the beneficiary’s natural father died in India on August 13, 1998.

An Affidavit signed on December 9, 2005, by the beneficiary’s natural mother, stating that she does not have a job, and that without an education she has difficulty finding one. The affidavit states further that it is extremely difficult to raise the beneficiary and to fulfill her basic needs, that the beneficiary lives with her uncle because she is unable to care for him, and that she consents to the beneficiary’s adoption by the petitioner and his wife and irrevocably releases her parental rights over the beneficiary.

¹ 8 C.F.R. § 204.3(b) provides that:

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 AAO finds that the evidence contained in the record fails to establish that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in India, as set forth in 8 C.F.R. § 204.3(b). The AAO notes that the affidavit written by the beneficiary's natural mother lacks material details regarding her inability to provide proper care to the beneficiary. Moreover, the AAO notes that the record is devoid of any corroborative evidence to support the assertion that the beneficiary does not live with her natural mother, or that her natural mother is incapable of providing for the beneficiary's basic needs according to local standards in India.

The AAO notes further that United States Department of State (DOS) adoption procedure guidance for India, found at <http://www.travel.state.gov> reflects in pertinent part that the documents required for an orphan petition include:

A Court Order. A) For Hindu petitioners, a court order granting them the permission to adopt the child. The order requires them to execute and register an adoption deed within 7 days of the order. The deed must be registered with the Office of Sub-registrar. (Usually a copy of the deed with proof of fees paid will suffice).

The present record contains no Adoption Deed.

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.