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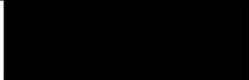
U.S. Citizenship
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Services

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FILE:



Office: PHILADELPHIA (PITTSBURGH)

Date: NOV 02 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Philadelphia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on March 27, 2006. The District Director concluded that the beneficiary, [REDACTED] currently known as [REDACTED] Gravatt, did not meet the requirements of the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F). The petition was denied accordingly.

The decision of the District Director included the definition of "orphan" under the Act and explained that the documents submitted in support of the I-600 Petition revealed that the beneficiary is the child of a "surviving parent" who had irrevocably consented to the release of her child for adoption, but that the parent did not provide evidence that she was incapable of properly caring for the child, as required under the Act for a child to meet the definition of "orphan." *District Director Decision*, July 26, 2006. The decision stated:

You have failed to submit any evidence from an outside authority that [REDACTED] [the biological mother of the beneficiary] is incapable of providing for [REDACTED] [sic] basic needs consistent with the standards of the Philippines. In her affidavit of consent, [REDACTED] states that she, 'Could not perform my parental obligations to him especially in providing his needs for his total growth and development such as food, clothing, decent shelter and most of all I could not support his financial needs for his studies especially when he will go to college.'

The adoption decree submitted states that you, the petitioners for adoption, are the aunt and uncle of the minors [REDACTED] and his cousin. . . . It also states that [REDACTED] wanted her son to be adopted as shown by her Affidavit of Consent she executed, . . . because she could not give him a bright future and that she is very sure that the petitioners can give him the proper support he needed financially, spiritually and morally.'

The District Director concluded that "[t]he surviving parent's statements alone do not establish that she is unable to provide for her child's basic needs consistent with the local standards of the foreign sending country, the Philippines." *Id.*

On appeal, the petitioner states that the District Director, failed to consider that the petitioner and his wife have "for the past few years sent support for [the beneficiary]." *Statement in Support of Notice of Appeal to the Administrative Appeals Office (AAO)*, filed August 24, 2006. The petitioner also submits an updated Adoption Child Study Report from a Social Welfare Officer of the Philippines Regional Trial Court of Ilocos Sur, which states that the beneficiary's biological mother gave the beneficiary for adoption because "she could not perform her parental obligations especially in providing his needs for his proper nourishment and she could not support his education considering that she is a solo parent with no stable source of income. . . . [and] an irregular farm laborer, who is being hired in a seasonal basis." *Adoption Child Study Report*, August 15, 2006. The Social Welfare Officer reported that the beneficiary had been supported by his aunt (the petitioner's wife) since birth and personally cared for by her since 1997; that his financial and material needs are met by his adoptive parents (the petitioner and his wife) who provide a monthly allowance; and that his biological mother, as an "irregular farm-laborer," is paid "P 100.00 per day which is not enough to meet the daily needs of the family." *Id.* The Social Welfare Officer concludes that the beneficiary's biological mother has no stable source of income; that she is hired when her services are needed; and that she is sometimes unable to work due to her health. *Id.*

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 in pertinent part 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*.

The District Director's decision states that the beneficiary's biological mother is a “surviving parent” but that she failed to submit any evidence from an outside authority that she is “incapable of providing proper care” and that her statements alone are insufficient evidence. The District Director's decision, however, fails to recognize that the conclusions of the social worker in the Adoption Child Study Reports and the conclusions of the judge approving an Adoption Order in the record, both of which are “evidence from an outside authority,” indicate that the beneficiary's biological mother is unable to provide proper care; the decision also fails to give any weight to the statements of the biological mother and the petitioner, which in this case are supported by the conclusions of outside authorities and should be given appropriate weight. *See Matter of Rodriguez*, 18 I & N Dec. 9 at 11 (BIA 1980) (concluding that the beneficiary is an orphan, where, *inter alia*, the beneficiary's mother, a sole parent, “has declared and a social welfare agency study in Peru has verified that she is unable to provide proper care for the beneficiary”); *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”).

The record reflects that the petitioner and his wife adopted the beneficiary in the Philippines, a process that became final on October 13, 2005. Official adoption documents in the record include a decision of the Regional Trial Court of Ilocos Sur, Republic of the Philippines, ordering that the petition for adoption of both the beneficiary and his cousin by the petitioner and his wife be approved. In connection with the petition for adoption, a prior Adoption Child Study Report is included in the record from the same Social Welfare Officer noted above. *Adoption Child Study Report*, January 29, 2004. It notes that the beneficiary's biological mother had worked in Manila for four years and had finished a two-year secretarial course, but that after marriage in 1984, she centered her life around her family and had no source of income after her husband died. *Id.* The report

concluded that the beneficiary's biological mother, "being a solo parent is hard up performing dual role to her 2 children especially in providing their daily needs, and for their financial needs in their studies" and recommends approval of the adoption. *Id.* The Regional Trial Court order approving the adoption notes that from the time the petitioner met the beneficiary in 1996, he provided financial support and material assistance; and that, per testimony from the beneficiary's biological mother, she is 44 years old and a housekeeper, and wants her son to be adopted "because she could not give him a bright future." *Order of the Trial Court of Ilocos Sur, Republic of the Philippines, Approving Petition for Adoption*, June 4, 2005.

Although details regarding local standards of living are absent from the record, the conclusions of relevant authorities in the Philippines who are well aware of such standards, *i.e.*, both the social worker and the judge of a Regional Trial Court, support a determination that the "surviving parent" in this case cannot meet the basic needs of her child; these conclusions also support and give added weight to the information contained in affidavits by the petitioner and the beneficiary's biological mother, which should not be disregarded. The AAO finds that the evidence in the record is consistent, both from outside authorities and from the statements of the petitioner and the beneficiary's biological mother, and the evidence indicates that the beneficiary's "surviving parent" is unable to provide for the child's basic needs, consistent with the local standards of the Philippines. Accordingly, the AAO finds that the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met his burden in the present matter. The appeal will therefore be sustained.

ORDER: The appeal is sustained.