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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI, FLORIDA

Date: JUL 03 2008

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, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on November 14, 2007. The beneficiary, [REDACTED], was born in the Dominican Republic on July 1, 1992. The beneficiary's parents, as stated on his birth certificate, are [REDACTED] (the petitioner's late son) and [REDACTED]. The petitioner is a 61-year-old, naturalized U.S. citizen. She seeks to classify her grandson as an "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

The district director denied the petition finding that the petitioner was ineligible to adopt in the Dominican Republic. The director's findings were based on information found in the U.S. Department of State website indicating that the Dominican Republic does not allow children to exit the country until their adoption has been finalized, and that the prospective adoptive parent must be married and between 30 and 60 years of age. Finding that the petitioner was over 60 years old, and had not adopted the beneficiary, the director denied the petition.

On appeal, the petitioner maintains that her grandson qualifies as an "orphan" and that the Dominican Republic would permit his adoption because of their familial relationship. The petitioner indicates that additional evidence would be submitted within 30 days of filing the appeal. To date, no such evidence has been received by this office.

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: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States . . . ; or

(ii) subject to the same provisos as in clause (i), a child who:

(I) is the natural sibling of a child described in clause (i) . . .

(II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause . . . ; and

- (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)...

8 C.F.R. § 204.3 provides in pertinent part:

(b) *Definitions. . . .*

*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*.

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

. . . .

(d) *Supporting documentation for a petition for an identified orphan. . . .*

(1)(iii)(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption . . .

8 C.F.R. § 204.3(a)(2) clarifies that:

[P]etitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan. The second determination concerns the orphan petition which focuses on whether the child is an orphan under section 101(b)(1)(F) of the Act . . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

8 C.F.R. § 204.3(e)(2)(ii) provides in pertinent part that the petition must be accompanied by a home study, which must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.

The record reflects that the beneficiary was born in the Dominican Republic on July 1, 1992 and that his father died on January 29, 2001. The beneficiary resides with his mother in the Dominican Republic. His grandmother is a 61-year-old naturalized U.S. citizen. The beneficiary has not been adopted. The beneficiary's mother has executed a release stating that she is incapable of providing care for her son because of her "critical financial situation and poor health."

The AAO affirms the director's finding that the petitioner is ineligible to adopt the beneficiary under the law in the Dominican Republic, given her age and marital status. See [www.travel.state.gov/family/adoption/country/country\\_375.html](http://www.travel.state.gov/family/adoption/country/country_375.html). The AAO also agrees that the law in the Dominican Republic requires that the beneficiary must be adopted prior to exiting the country. *Id.* Although the petitioner maintains that these legal requirements are inapplicable in the case of a family member seeking to adopt, she has provided no evidence in support of her claim. Thus, the AAO concludes that the petition was properly denied by the director on this basis.

The AAO further notes that the petitioner has not submitted any documentation from "a competent authority" as evidence that the sole parent is "incapable of providing proper care." The release executed by the biological mother to that effect is not to be disregarded, but if not supported by the conclusions of a competent authority or other objective evidence, it is afforded little weight. See, e.g., *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."). In this case, there is no documentation from a competent authority to support the biological mother's release, and as a result, it cannot be given much weight. It is further noted that the beneficiary's father passed away in 2001, and that the beneficiary has been residing in his mother's custody since that time.

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the beneficiary's mother is incapable of providing for the beneficiary's basic needs in a manner consistent with the local standards in the Dominican Republic. Accordingly, the AAO finds that the beneficiary does not meet the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

Finally, the AAO notes that the petition is not accompanied by a home study, and that the evidence in the record does not establish that the petitioner would be capable of properly parenting the beneficiary.

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

**ORDER:** The appeal is dismissed.