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U.S. Citizenship  
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FILE:

Office: COLUMBUS, OH

Date:

NOV 06 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:

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 Field Office Director, Columbus, Ohio, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted and the previous decision to deny the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition), will be withdrawn. The petition will be approved.

The petitioner filed the I-600 petition on July 17, 2007. The petitioner is a forty-two year old married U.S. citizen. The beneficiary was born in India on April 22, 1999, and she is presently nine years old.

The field office director denied the I-600 petition on January 8, 2008, based on a finding that the beneficiary's biological mother had specifically transferred her parental rights over the beneficiary to the petitioner, and that the beneficiary therefore did not meet the orphan definition contained in section 101(b)(F)(1) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(F)(1).

On appeal the petitioner conceded, through former counsel, that the beneficiary's biological mother specifically transferred her parental rights over the beneficiary to the petitioner and her husband. The petitioner asserted, however, that the beneficiary's biological father was deceased, and that accordingly, the field office director erred in applying the two biological parent requirements, rather than the sole surviving parent requirements, to the petitioner's case. Through counsel, the petitioner asserted that the beneficiary's biological mother was incapable of providing proper care for the beneficiary, and the petitioner concluded that the beneficiary meets the definition of orphan, as set forth in section 101(b)(1)(F) of the Act.

On appeal, the AAO found that the field office director erroneously applied 8 C.F.R. § 204.3(b), "abandonment by both parents" requirements, to the petitioner's case because the biological mother was a surviving parent. The AAO, however, found that the evidence contained in the record failed to establish that the beneficiary's biological mother was 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).

On motion, counsel submits copies of evidence previously submitted as well as new evidence. The new evidence consists of: (1) a letter from a chartered accountant in India who provides a financial assessment of the biological mother's income and compares it to the minimum monthly cost of food and shelter; and (2) a letter from [REDACTED] of the Punjab State Welfare Society, who discusses the beneficiary's living conditions.

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).

The evidence submitted on motion sufficiently clarifies the biological mother's inability to provide for the beneficiary's basic needs according to local standards in India. This evidence, combined with the evidence previously submitted, establishes that the beneficiary meets the definition of an orphan because the biological mother is incapable of providing for her child's basic needs.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* Section 291 of the Act; 8 U.S.C. § 1361. In the present matter, the petitioner has established that the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F) of the Act.

**ORDER:** The motion is granted. The previous decision to deny the Form I-600 is withdrawn. The petition is approved.