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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PHILADELPHIA

Date:

NOV 24 2006

IN RE: Petitioner:  
Beneficiary:

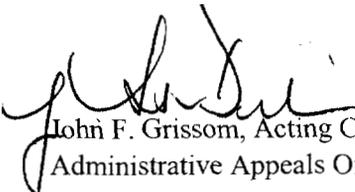
PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

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.

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Philadelphia, denied the Petition to Classify Orphan as an Immediate Relative. 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 October 12, 2007. The director concluded that the beneficiary 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 Notice of Denial, as well as a prior Notice of Intent to Deny, indicated that the petitioner had not submitted sufficient evidence to establish that the beneficiary's sole parent was "incapable of providing proper care" as that term is defined in Title 8, Code of Federal Regulations (8 C.F.R.) § 204.3(b). *Notice of Intent to Deny*, December 11, 2007; *Notice of Denial*, March 24, 2008. The director also indicated that the petitioner had not met the requirements of adoption law in Grenada and the beneficiary's sole parent had not released the child for emigration and adoption. *Id.*

In response to the Notice of Intent to Deny, the petitioner submitted additional documents: (1) a "Guardian Ad-Litem Report," dated October 26, 2007, by [REDACTED], a Social Worker with the Ministry of Social Development in Grenada, based on interviews with the petitioner and his wife, the beneficiary and her mother; (2) an affidavit, dated December 21, 2007, by the beneficiary's mother, the sole parent in this case; and (3) four receipts for Western Union money transfers from the petitioner to the beneficiary's mother. The petitioner stated that the documents he submitted were "evidence that the sole parent is incapable of providing proper care of the child, and that the child has been irrevocably released for emigration and adoption." *Rebuttal Letter*, dated December 29, 2007. He also stated that at the Adoption Hearing on October 26, 2007, "[t]he court issued an Adoption order stipulating that the child live with the adoptive parents, overriding any conditional legal restrictions." *Id.*

In the Notice of Denial, *supra*, the director considered the additional evidence submitted in rebuttal to the Notice of Intent to Deny. The director noted that the affidavit by the beneficiary's birth mother, in which she stated that she was incapable of providing proper care for the beneficiary and that the beneficiary was irrevocably released for emigration and adoption, was not supported by any evidence. The director also noted that the Guardian Ad Litem Report indicated that the beneficiary's mother preferred that her child live with the petitioner because "she sees that the hard times that they go through [in Grenada] can encourage [the beneficiary] to get into negative behaviours." The director noted that the evidence showed that the beneficiary and her mother were residing in the same household and maintaining a parent/child relationship, indicating that her mother has continuously remained her custodian and provided care. The director added that the four Western Union money transfer receipts, one dated in 2003 and the others in 2007, had a total value of \$600.00 and there was no evidence of how the funds were utilized. The director also challenged the probative value of the Adoption Order, as it did not appear to be based on the requirements of adoption law in Grenada, which includes residence and custody requirements not met by the petitioner.

On appeal, the petitioner submits his statement; an affidavit by the beneficiary's mother, dated June 23, 2003, in which she consents "to the making of an Adoption Order" by the petitioner in respect of her daughter; and a letter, dated February 26, 2007, addressed to the petitioner's attorney in Grenada from [REDACTED] Secretary," on letterhead of the Grenada Adoption Board, in which she states that the attorney's application for the adoption of the beneficiary has been recommended by the Grenada Adoption Board at its meeting held February 20, 2007.

*Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, with attachments, dated April 16, 2008. In his statement on appeal, the petitioner claims that he, his wife, the beneficiary's mother and the social worker, [REDACTED], have all made statements supporting the fact that the beneficiary's mother is incapable of providing proper care to the beneficiary. He also claims that because the prospective adoptive parents had treated the beneficiary for many years as a relative, the residence and custody requirements for adoption in Grenada do not apply.

The issue on appeal is whether the beneficiary meets the definition of "orphan" as defined in the Act, specifically whether the sole parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. Also at issue is whether the orphan has been adopted abroad. The above noted documents have been reviewed and taken into consideration in rendering this decision.

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. § 204.3 provides in pertinent part:

(b) *Definitions.* . . .

*Sole parent* means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole 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; and

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country . . .

The record reflects that the beneficiary, [REDACTED] was born in Grenada on [REDACTED]. No father is listed on the beneficiary's birth certificate. According to [REDACTED], the father left Grenada when the beneficiary was a baby and has had no contact with them since that time. [REDACTED] is, thus, the sole parent in this case, and the petitioner must provide evidence that she is incapable of providing for the beneficiary's care and that she has irrevocably released the beneficiary for emigration and adoption. In this case, as the petitioner claims to have adopted the beneficiary in Grenada, the petitioner must also provide evidence of this adoption.

Evidence that the sole parent is incapable of providing proper care

Evidence in the record regarding [REDACTED] capacity to provide for the beneficiary is comprised of her own statements, the statements of the petitioner and his wife, and the Guardian Ad Litem Report, *supra*, which is based on interviews with [REDACTED] and the petitioner and his wife. These statements express a preference by all concerned that the beneficiary be adopted and refer to the hard times the beneficiary and her mother experience in Grenada. The record reflects, however, that the beneficiary has always resided with and been cared for by her mother. In fact, the record shows that although [REDACTED] consented to the "making of an Adoption Order" in her 2003 affidavit, *supra*; and she signed an additional affidavit on December 21, 2007, *supra*, in which she stated that she was incapable of providing proper care for her child, throughout this period, she has continued throughout this process to care for and reside with the beneficiary.

The petitioner asserts that the statements described above are sufficient evidence that the sole parent is incapable of providing proper care for the beneficiary. He has not, however, submitted any documentation from "a competent authority" as evidence that the sole parent is incapable of providing proper care. An affidavit from the beneficiary's 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 not afforded much 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 documentary evidence to support the biological mother's affidavits, and as a result, they cannot be given

much weight. Evidence in the form of Western Union Money Transfers amounting to \$600 from 2003 to 2007 shows that the petitioner sent that amount to [REDACTED]; it does not indicate that [REDACTED] used those funds to care for her daughter or was incapable of providing proper care for her. The Guardian Ad Litem Report, *supra*, does not address whether [REDACTED] can provide proper care; it rather reports on interviews with [REDACTED], the beneficiary and the petitioner and his wife. It concludes that that the petitioner would provide better living conditions for the beneficiary and that all parties would prefer that the petitioner adopt the beneficiary, but it fails to provide objective evidence regarding living standards in Grenada or assess the sole parent's capacity to provide proper care for her daughter in light of those standards and her specific living conditions.

Details regarding local standards of living in Grenada are absent from the record. An assertion that the sole parent is unemployed or has depended on help from others to raise her children is not objective evidence that she cannot find employment or cannot continue to care for her children. There is no evidence that the beneficiary's mother is unable to care for the beneficiary given her individual circumstances. The beneficiary's mother has been her sole parent since she was born and has been responsible for raising her and three older siblings for 16 years. Although the petitioner and the beneficiary's mother claim that the petitioner and his wife provided support for the beneficiary for many years, there is no documentary evidence of this other than the \$600 noted above. Indeed the evidence in the record indicates that the beneficiary's mother continues to care for her daughter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

#### Evidence of adoption abroad

The record also includes an "Adoption Order" authorizing the petitioners to adopt the beneficiary, which was filed in the Supreme Court of Grenada on October 26, 2007. This document, which is prefaced by "Suit No. [REDACTED] and filed by the petitioner's attorney in Grenada, is signed by the "Registrar." Although it carries the title of "Adoption Order," it cannot serve as proof that the beneficiary was adopted, as there is no evidence that it is an official court order signed by an official of the court, other than the registrar. It is rather an indication that the petitioner's attorney has initiated an adoption process in court. Moreover, as noted above, the beneficiary continued to live with her birth mother beyond the date the "Adoption Order" was filed in court, showing that the birth mother continued to provide care for the beneficiary and maintain physical custody.

The AAO notes further that the director cited to guidance from the United States Department of State regarding adoption procedures in Grenada, which require that applicants for adoption be resident and domiciled in Grenada, and the child – the beneficiary in this case – must be in the continuous physical care of the applicant – the petitioner in this case – for at least three consecutive months immediately preceding the adoption order. In this case, the petitioner neither alleges nor provides evidence that he has met these requirements. There is no evidence in the record that the beneficiary has been adopted as claimed.

Conclusion

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 Grenada. The AAO also finds that the petitioner has failed to establish that he has adopted the beneficiary in compliance with the relevant law of Grenada. 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.

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

**ORDER:** The appeal is dismissed.