

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

F
DE

[REDACTED]

FILE:

[REDACTED]

OFFICE: GUATEMALA CITY

Date:

FEB 05 2009

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)

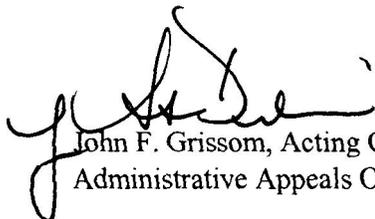
ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Guatemala City, denied the petitioner's Form I-600, Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act (I-600 Petition), on July 22, 2008. The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner and his spouse are U.S. citizens. The beneficiary was born in Guatemala on June 22, 2007. The petitioner filed an I-600A, Application for Advance Processing of Orphan Petition, on August 8, 2007, which was approved on September 19, 2007. The petitioner filed the I-600 Petition in person with U.S. Citizenship and Immigration Services (USCIS) in Guatemala City on June 2, 2008. As required, USCIS conducted an I-604 investigation before adjudicating the I-600 Petition.

The regulation at 8 C.F.R. § 204.3(k)(1) provides in pertinent part:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a [USCIS] office overseas, in which case it must be completed by a [USCIS] officer. An I-604 investigation shall be completed before a petition is adjudicated abroad. . . . In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate [USCIS] office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate [USCIS] office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

Based on information obtained from the I-604 investigation, specifically an interview by a USCIS officer on March 24, 2008 with [REDACTED] (also referred to as [REDACTED]), the birth mother of the beneficiary, the director issued a Notice of Intent to Deny (NOID). *NOID*, June 20, 2008. At her interview [REDACTED] admitted to having made numerous misrepresentations during the adoption process, among them: (1) she had used a false identity document in the name of [REDACTED] and misrepresented who she was and her age throughout the process to relinquish her baby; (2) she had failed to divulge the identity of the beneficiary's biological father, [REDACTED] and that she lived in a common-law marriage with him; (3) she failed to divulge that she had been promised fifteen thousand quetzals (Q15,000) or approximately US\$2,000 by [REDACTED] in an effort to convince her to give up her baby for adoption and emigration to the United States; and that (4) "[REDACTED]" had obtained the fraudulent identity document for her so that she could pose as an adult and authorize the adoption of the beneficiary; and (5) she had failed to reveal that her mother and common-law husband were not aware of the decision she had made to give up her son for adoption. The director noted that [REDACTED] also stated at the interview that she wanted to revoke her original decision to give up her son and wanted to recover his custody. *Id.* Upon review of the documentation submitted in support of the I-600, the director also noted that the true identity of the beneficiary had not been established as his birth certificate had been obtained fraudulently by his birth mother, who used a fake personal identification document and a fake birth report to register his birth; and that the birth

mother, as a minor, did not have her parent's authorization to relinquish her child as required under Guatemalan law. *Id.* The director concluded, therefore, that the petitioner had not established that the beneficiary had been irrevocably released for emigration and adoption so as to meet the definition of an orphan under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). *Id.*

In response, the petitioner, through counsel, submitted a request for additional time to rebut the NOID but failed to respond to the director's findings. The I-600 Petition was, therefore, denied for the reasons set forth in the NOID. *Denial of Petition*, July 22, 2008.

On appeal, the petitioner, through counsel, claims that he is providing evidence establishing the identity of the beneficiary and his birth mother and providing in writing a sworn, notarized statement from the birth mother and her legal guardian irrevocably releasing the beneficiary for emigration and adoption. *Form I-290B, Notice of Appeal*, August 20, 2008. In support of this claim the petitioner submits the following documents: Guatemalan birth certificate for [REDACTED] showing her date of birth as January 15, 1992 and her mother's name as [REDACTED] Guatemalan birth certificate for [REDACTED], showing his date of birth as June 22, 2007 and his mother's name as [REDACTED] (the translation includes additional information that the child was attended at birth by [REDACTED]; Guatemalan birth certificate for [REDACTED] showing her date of birth as June 20, 1953 and her mother's name as [REDACTED] and an identity card for [REDACTED] issued in 1978; a "Request to Dismiss the Case in the Prosecutor's Division Against Organized Crime" in regards to an irregular adoption, prepared by the legal advisor to [REDACTED] (*Petition to Dismiss Case*, July 9, 2008), accompanied by witness statements from [REDACTED].

There are multiple issues on appeal that remain unresolved. As shall be discussed in further detail, because the identity of the beneficiary has not been established, there is no conclusive evidence to establish that the beneficiary meets the definition of an orphan. The record lacks sufficient evidence to show that the biological mother is a "sole parent" or that the beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents.

Section 101(b)(1)(F) of the Act defines the term, "orphan," 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) [of the Act], 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.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3 provides in pertinent part:

(b) *Definitions. . . .*

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. . . .

Sole parent means the mother when it is established that the child is illegitimate¹ 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.² 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

¹ It is noted that the provisions of Public Law 104-51, which changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, replaced the words "legitimate child" with the words "child born in wedlock," and replaced "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The regulatory definition of "sole parent" contained in 8 C.F.R. § 204.3 has not been amended to conform to these changes.

² Article 50 of the Guatemalan Constitution provides for the equal treatment of all children, regardless of the situation of their parents at the time of birth. UNHCR Refworld, <http://www.unhcr.org/refworld/docid/3ae6a6a340.html> (accessed 15 January 2009).

(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 . . .

Identity of the beneficiary

The record includes a packet of information submitted to USCIS by the petitioner's Guatemalan representative on November 20, 2007 to initiate the adoption process for the beneficiary. It includes a "Consent Confirmation of the Birth Mother [REDACTED] to Give Her Child [REDACTED] in Adoption," dated November 15, 2007. The document states that [REDACTED] grants consent for the emigration of her son and adoption by the petitioner and his wife. It is accompanied by a birth registration for [REDACTED] showing his date of birth as June 22, 2007 and that his birth was registered on June 26, 2007 by his mother, [REDACTED] aged 27, and that the birth was attended by the midwife [REDACTED]. It notes that the results of DNA testing indicate that [REDACTED] is the biological mother of [REDACTED].

This information is contradicted by the birth mother at her interview with a USCIS official on March 24, 2008, noted above. At the interview she stated that her true name was [REDACTED] and that she had used a false identity document in the name of [REDACTED] and misrepresented who she was and her age throughout the process to relinquish her baby; and that a woman named [REDACTED] had obtained the fraudulent identity document for her so that she could pose as an adult and authorize the adoption of the beneficiary. She also stated that she was born on January 2 and was the daughter of [REDACTED] and [REDACTED]. On appeal, the contradictions continue. The documents submitted on appeal include (1) a Guatemalan birth certificate for [REDACTED] showing her date of birth as January 15, 1992 and her mother's name as [REDACTED] and her father's name as [REDACTED] and (2) a Guatemalan birth certificate for [REDACTED], showing his date of birth as June 22, 2007 and his mother's name as [REDACTED]. The latter birth certificate for the beneficiary provides the same admittedly fraudulent information initially offered in support of the proposed adoption. Also on appeal, both [REDACTED] and [REDACTED] (who claims to be [REDACTED]'s mother) provide affidavits affirming that [REDACTED] is the beneficiary's mother; however, the record lacks any documentary proof of the claimed relationship. Lacking a valid birth certificate or other document for the beneficiary showing the true name of his birth mother, the identity of the beneficiary has not been established.

The beneficiary's parentage

The record includes three contradictory accounts: the first contained in the original packet of information submitted on November 20, 2007 to initiate the adoption process; the second contained in the USCIS interview of the birth mother; and the third contained in documents submitted on appeal. In the original packet of information submitted in support of the I-600 Petition, the birth mother, [REDACTED], admittedly used false identification papers and the false name of [REDACTED]. Under that name and identity she signed several forms, including a Deed of Consent dated February 9, 2007, indicating her consent to release the beneficiary for emigration and adoption by

the petitioner and his wife. In the Deed of Consent, she also stated that the beneficiary's father was unknown.

During her interview with USCIS on March 24, 2008, she contradicted this information and revoked her consent to the adoption. She stated that she lived in a common-law marriage with [REDACTED], the biological father of the beneficiary; that she had been promised by "[REDACTED]" money to relinquish her baby for adoption; that her mother and the father of her child were not aware of the decision she had made to give up the child for adoption; and that she wanted to revoke her original decision to give up her son and wanted to recover his custody. She also claimed that she was 17 years old, born on January 2, a minor, and that she was the daughter of [REDACTED] and [REDACTED].

On appeal, more contradictory evidence was submitted, including a Guatemalan birth certificate for [REDACTED] showing her date of birth as January 15, 1992 and her mother's name as [REDACTED] and her father's name as [REDACTED]. On appeal, witness statements by [REDACTED] and [REDACTED] claiming to be [REDACTED] mother, were submitted as part of the Petition to Dismiss Case, *supra*. [REDACTED] stated that she wants to irrevocably release the beneficiary for emigration and adoption, and [REDACTED] gives her consent. However, these witness statements, indeed the entire Petition to Dismiss Case, which comprises the appeal, does not explain the prior contradictions, does not address the existence of "[REDACTED]" and her offer of money, and does not address the rights of the biological father identified by [REDACTED].

Neither the birth mother's identity nor the identity of her mother have been established by a preponderance of the evidence, as no birth certificate or other document has been submitted for [REDACTED]. Additionally, whether "[REDACTED]" or "[REDACTED]" is [REDACTED] mother remains unclear. Certainly, neither [REDACTED] agreement to relinquish her baby nor [REDACTED]'s statement giving consent to this relinquishment, in light of these multiple contradictions, establishes that [REDACTED] meets the definition of a "sole parent," particularly since the identity of the beneficiary's biological father has been revealed, and [REDACTED] claims that he was unaware of the relinquishment. There is no evidence that he has given up his parental rights, obligations, and claims to the child.

The packet of information submitted to USCIS by the petitioner's Guatemalan representative on November 20, 2007 to initiate the adoption process has been described above; the documents included in the packet cannot be relied on as evidence in this case because of the falsified identity and minor status of the birth mother. On appeal, the record includes statements by counsel and the mother of the beneficiary's birth mother indicating that the birth mother lacks economic means to raise the beneficiary and lives in an isolated village. While it appears that this evidence was submitted to establish that the birth mother meets the definition of a "sole parent," the AAO notes that no such conclusion about the biological mother may be reached because there is an identified biological father in this case. Even without an identified biological father, there are contradictory statements by the birth mother regarding whether she consents to the emigration and adoption of her child. The record also lacks any documentary evidence that the beneficiary's mother, if she were to be considered a sole parent, is incapable of providing for the beneficiary's basic needs in a manner consistent with local standards in Guatemala. The birth mother's actual income or earning capacity is not documented or assessed, and official reports regarding local standards of living in Guatemala are absent from the record. References to financial difficulties do not lead to a conclusion that a single

parent is incapable of providing for her child's basic needs in a manner consistent with local standards.

Conclusion

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989) If the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, multiple contradictions and inconsistencies remain in the record. There are contradictory statements and contradictory evidence regarding the identity of the beneficiary and his birth mother. Even the identity of his grandmother, who would need to provide her consent to the beneficiary's adoption, as the birth mother is a minor, is not established. Moreover, there are contradictory statements by the birth mother regarding whether she consents to the emigration and adoption of her child. The record also lacks any evidence that the beneficiary's biological father has severed his parental ties or irrevocably released the beneficiary for emigration and adoption, making his mother a “sole parent.” The record also lacks any documentary evidence that the beneficiary's mother, if she were to be considered a sole parent, is incapable of providing for the beneficiary's basic needs in a manner consistent with local standards in Guatemala. In light of these unresolved inconsistencies and lack of evidence there are questions as to whether either or both parents have abandoned the beneficiary or irrevocably released him for emigration and adoption.

Upon review of all of the evidence contained in the record, and for the reasons noted above, the AAO finds that the petitioner has failed to establish by a preponderance of the evidence 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 not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.