

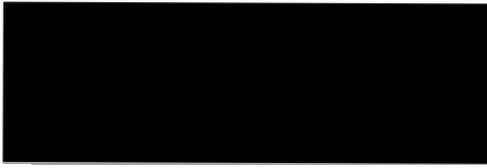


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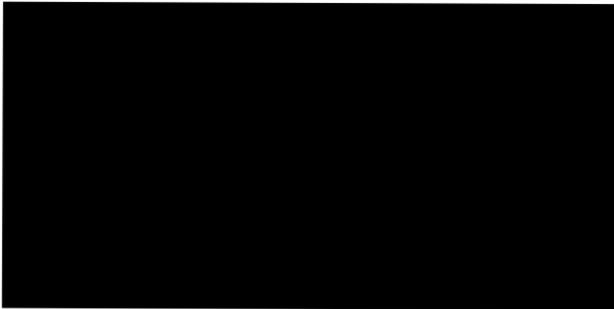


FILE: OFFICE: GUATEMALA CITY Date: **MAY 11 2009**

IN RE: PETITIONER: [REDACTED]
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:



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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on February 5, 2009. The matter is now before the AAO on a motion to reopen and or reconsider filed by the petitioner's counsel. The motion will be treated as a motion to reopen. We grant the motion to reopen; the previous decisions of the Director and the AAO will be affirmed. The petition will be denied.

The petitioner's appeal to the AAO was dismissed (1) because the identity of the beneficiary had not been established and there was, therefore, no conclusive evidence to establish that the beneficiary meets the definition of an orphan; and (2) the record lacked sufficient evidence regarding the parentage of the beneficiary to establish that the biological mother was a "sole parent" or that the beneficiary was an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here.

The record shows that the beneficiary's birth mother registered her son's birth and authorized his adoption using a fraudulent identity. Using the name of [REDACTED], she granted consent for the emigration of her son and adoption by the petitioner and his wife; she provided a birth registration document for [REDACTED] showing that he was born at home on June 22, 2007, and that his birth was registered on June 26, 2007 by his mother, [REDACTED], aged 27. She later admitted to having made numerous misrepresentations during the adoption process, among them: (1) her name was [REDACTED] (spelled "[REDACTED]" in her statement) [REDACTED] born on January 29, 1992, and 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 had lived in a common-law marriage with him; (3) she failed to divulge that she had been promised fifteen thousand quetzales (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) 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 the birth mother stated during her interview with U.S. Citizenship and Immigration Services (USCIS) that she wanted to revoke her original decision to give up her son and wanted to recover his custody.

In his I-290B, Motion to Reopen and or Reconsider, filed on March 9, 2009, counsel claims that the identities of the beneficiary, his birth mother and his grandmother have been established. He submits the same birth certificates for the birth mother and grandmother that were submitted previously along with a copy of a document from the Hellen Lossi de Laugerud Regional Hospital in Coban, Altaverapaz, Guatemala, related to the beneficiary's birth. Counsel also submits his own statement and a statement from the grandmother of the beneficiary, claiming that, as the beneficiary's birth mother is a minor, his grandmother can speak for her. Counsel also submits some of the same documents submitted previously, including a statement by the beneficiary's birth mother, but with a different translated version.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.¹ Counsel claims that the beneficiary's identity, as well as that of his mother and his grandmother, have been established and submits supporting evidence, and we have granted his motion to reopen. However, we find that the evidence does not establish the beneficiary's identity, resolve the multiple inconsistencies in the record or overcome the bases for denial of the petition set forth in the AAO's decision of February 5, 2009.

Identity of the beneficiary

In our decision of February 5, 2009, we held that, 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. In support of his motion to reopen, counsel did not provide a valid birth certificate; instead he submitted a copy of a document, dated October 30, 2007 but certified on March 4, 2009, from the Coordinator of the Guatemalan National Council of Adoptions. The document contains the same admittedly fraudulent information initially offered in support of the proposed adoption, listing a false name, date and place of birth and other identifying data for the birth mother and child.

The only other relevant document submitted in support of the instant motion is a copy of a document from the Hellen Lossi de Laugerud Regional Hospital in Coban, Altaverapaz, Guatemala. It is dated June 22, 2007 and repeats information from the hospital's birth records, indicating that [REDACTED] gave birth to a baby boy on that date; no name is given for the child. A note at the end of the document states, "According to the document number [REDACTED] issued in Purulha, Baja Verapaz, the correct name is [REDACTED]." The signatures that follow are illegible and have no typed version that would identify the names of the signers; there is no indication as to when the note was written, whether at the time of the birth or later. The document numbers cited in the note refer to the birth mother's birth certificate. The hospital document does not resolve the inconsistencies in the record. Moreover, it raises additional questions. There is no explanation as to why this document was not provided previously, as the birth mother's identity has been at issue since June 2008, when the petitioner was issued a Notice of Intent to Deny (NOID) the I-600 Petition to Classify Orphan as an Immediate Relative. Moreover, there is no explanation of why the hospital, apparently in possession of the birth mother's birth certificate, would register her under a different name. As the names of the individuals who signed the document are unknown, the authenticity of the document cannot be verified. For these reasons, the document lacks credibility and has little weight as evidence of the identity of the beneficiary in this case.

In his own statement, dated March 3, 2009, the petitioner's counsel asserts that "the birth entry of the adopted minor, [the beneficiary], will be cancelled in the proper time due to judicial order and will be registered again in the true place where his birth happen[ed] under [his correct name]." To date,

¹ According to the regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. Counsel does not allege any legal error. Thus, the motion is not a proper motion to reconsider.

no valid birth certificate has been submitted to prove the identity of the beneficiary. We note that even if a valid birth certificate were submitted, multiple contradictions in the record, as set forth in our decision of February 5, 2008, would remain unresolved.

The beneficiary's parentage

Whether the beneficiary's birth mother is a "sole parent," and, if so, whether she has irrevocably released him for emigration and adoption; and whether the beneficiary's biological father has given up his parental rights remain unresolved issues in this case and the bases for denial of the I-600 Petition. As noted above, the beneficiary's birth mother admitted to having made numerous misrepresentations during the adoption process, including that she used a false identity to register her son's birth, had received money to give him up for adoption, and that the beneficiary's father was not aware of her decision to give up their son for adoption. She also stated that she wanted to revoke her original decision and wanted to recover her son's custody. 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).

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. The instant motion to reopen provides no relevant evidence to resolve the noted contradictions other than a statement by [REDACTED]. This statement alone does not suffice to resolve the inconsistencies in the record.

While there is evidence in the record that the beneficiary's birth mother is [REDACTED] and her mother is [REDACTED], [REDACTED] statement denying prior testimony and asserting new facts does not resolve prior contradictions or establish by a preponderance of the evidence that the beneficiary meets the statutory definition of an orphan as required under section 101(b)(1)(F) of the Act. The evidence does not establish that the birth mother meets the definition of a "sole parent," particularly since she revealed the identity of the beneficiary's biological father and claimed that he was unaware of the relinquishment of the child for adoption. She also indicated her wish to keep her baby. In her statement submitted in support of the instant motion to reopen, [REDACTED] asserts that her daughter has always wanted to give up her child for adoption and that her daughter lied during her interview at USCIS regarding the identity of the biological father and her wish to keep her child, among other lies. [REDACTED] statement comprises another contradiction in the testimony of record; it does not resolve the pending issues. The record continues to lack evidence that the biological father has given up his parental rights, obligations, and claims to his child. It also lacks evidence regarding whether the beneficiary's birth mother, if considered a "sole parent," would be capable of providing for the beneficiary's basic needs in a manner consistent with local standards in Guatemala. Whether payment was received as an inducement to relinquish the beneficiary remains a question. The additional statement by [REDACTED], which was submitted in support of the instant motion, does not provide any new or material evidence to resolve these issues.

Moreover, while Guatemalan law requires that a minor have the consent of a parent to relinquish custody of a child, the minor's statements and wishes are not to be ignored; nor are the rights of the

father of the child. In this case, there is no evidence that the father of the beneficiary has relinquished his rights and there is contradictory evidence that, if he has relinquished his rights, the beneficiary's birth mother has irrevocably released the beneficiary for emigration and adoption.

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). 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. No valid birth certificate or other credible document has been submitted to resolve the contradictory evidence in the record regarding the circumstances of the beneficiary's birth. 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. 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, including additional evidence submitted in support of the instant motion to reopen, 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

ORDER: The motion is granted. The decision of the AAO of February 5, 2009 dismissing the appeal is affirmed, and the petition is denied.