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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

F₁

FILE:

Office: SAN ANTONIO, TEXAS

Date:

APR 19 2010

IN RE:

Petitioner:
Beneficiary:

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

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative. However, upon receipt of correspondence from the United States Consulate in Beirut, Lebanon, the field office director issued a notice of intent to revoke, and ultimately revoked, approval of the petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. The field office director re-opened the matter on his own motion, and again revoked approval of the petition. The matter is again before the AAO on appeal. The appeal will be dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The field office director revoked approval of the petition on the basis of her determination that the petitioner had failed to establish that the beneficiary's surviving parent is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon. Accordingly, the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan as that term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), defines an 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) of this title, 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[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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.

* * *

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels



temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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.

* * *

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.

The regulation at 8 C.F.R. § 204.3 states, in pertinent part, the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

* * *

- (iii) Evidence that the child is an orphan as appropriate to the case:
 - (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or
 - (B) The death certificate(s) of the orphan's parent(s), if applicable;
 - (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. . . .

The regulation at 8 C.F.R. § 204.3(k)(1) states, in pertinent part, the following:

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 Service office overseas, in which case it must be completed by a Service officer.

An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. 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 Service 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 Service 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.

The petitioner is a forty-two-year-old citizen of the United States. The beneficiary was born in Lebanon on October 13, 1991. The petitioner filed the instant Form I-600 on September 12, 2007, and it was approved on January 10, 2008. The I-604 investigation conducted by the consulate officer pursuant to 8 C.F.R. § 204.3(k)(1) revealed derogatory information, and the U.S. consulate in Beirut returned the file to the field office director with the recommendation that the approval be revoked. The field office director issued a notice of intent to revoke (NOIR) approval of the petition on July 8, 2008. Finding the petitioner's response to the NOIR inadequate, the field office director revoked the petitioner's approval on March 27, 2009. Although the petitioner filed an appeal, it was filed after the filing deadline, and the AAO rejected the appeal as untimely filed on June 16, 2009. The field office director reopened the matter on July 6, 2009. On September 11, 2009, the field office director again revoked approval of the petition. Counsel filed a timely appeal on September 25, 2009.

The sole issue before the AAO on appeal is whether the petitioner has established that the beneficiary's birth mother, his surviving parent, is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon, pursuant to 8 C.F.R. § 204.3(b).

At the time of the field office director's January 10, 2008 decision to approve the petition, the record contained minimal information regarding the incapability of the surviving parent to provide proper care to the beneficiary, consistent with local standards in Lebanon. In a December 4, 2007 affidavit, [REDACTED] stated that the beneficiary's birth mother is a housewife; that she does not work; that she is "not healthy assured"; that she does not possess a house, apartment, or land; that she is unable to assure provision for the beneficiary and his brother; and that the petitioner's husband is her source of financial support. In another December 4, 2007 affidavit, [REDACTED] stated that the birth mother is not registered with the Lebanese social security system and therefore does not benefit from that fund. In his July 30, 2007 affidavit, the petitioner's husband stated that the birth mother is incapable of providing proper care to the beneficiary. Finally, in her June 28, 2007 "Acknowledgement," the birth mother stated that she was "not able to support the expenses of these children" following the death of their birth father. The birth

mother noted that she had “not worked in all my life,” as well as “the disturbed security situation in this country.”

As noted previously, the I-604 investigation revealed derogatory information. In his July 8, 2008 NOIR, the field office director stated that the investigation had indicated, in relevant part, the following:

- The beneficiary lives with his birth mother in a two-story, 280-square meter home built by the birth father prior to his death, and that the birth mother is able to provide for the beneficiary’s basic needs, consistent with local standards;
- The birth mother inherited \$31,000 as a pension settlement after the death of the birth father, and that the beneficiary and his brother each inherited \$26,000;
- The beneficiary inherited a 100-square meter property described as an apartment after the death of the birth father;
- The birth mother inherited 12,000 meters of land adjacent to the home after the death of the birth father;
- The birth mother receives supplemental income from her adult children;
- The beneficiary and his brother both attend private school; and
- The birth mother has been providing for the basic needs of the beneficiary and his brother, and there is no evidence to suggest that she would not continue doing so.

Counsel submitted a timely response to the NOIR. In her October 1, 2008 letter, counsel asserted that the I-604 investigation conducted by the consulate was “based on assumptions, misconceptions, and untruths.” Counsel conceded that the birth mother, the beneficiary, and his brother are living in the home built by the birth father prior to his death, and that the beneficiary’s basic needs are being provided for. However, counsel disputed that she was able to provide proper care to the beneficiary, consistent with local standards.

Counsel asserted that the beneficiary’s basic needs are being taken care of only by virtue of the fact that the petitioner and her spouse are supporting the beneficiary financially. As evidence of such financial support, counsel submitted several Western Union money transfer receipts.¹ As further evidence that the birth mother cannot support the beneficiary, counsel submitted a July 15, 2008 affidavit from a Lebanese notary public attesting to such incapability. According to the notary, the birth mother testified to him that she is unemployed and has no support other than received from the beneficiary and her husband. With regard to the birth mother’s other adult children, the notary public stated that they were also unable to assist the birth mother in supporting the beneficiary.² Counsel

¹ These documents indicate that the petitioner transferred \$550 on August 21, 2004; \$350 on September 7, 2006; \$350 on September 9, 2006; \$300 on November 2, 2006; \$300 on November 4, 2006; \$400 on November 19, 2006; \$250 on February 17, 2007; \$400 on April 5, 2007; \$150 on December 3, 2007; and \$1,100 on March 6, 2008. Although several ATM receipts were also submitted, there is no evidence linking those receipts to the petitioner, his wife, the beneficiary, or the birth mother. As such, the AAO will not consider the ATM receipts as evidence of financial support to the birth mother.

² The notary discussed the employment and salaries of four of the birth mother’s adult children. One works for the “Lebanese General Security,” two are teachers, and one is a homemaker.

asserted that the birth mother has no education, that she has never worked, and that she lacks the skills necessary to obtain a job.

With regard to the home built by the birth father prior to his death, counsel stated that although the home consists of 280 square meters, it was partitioned in 2003 into two separate homes, with each home consisting of 140 square meters. Counsel stated that the birth mother lives on the first floor of the home in an area consisting of four rooms and a balcony that has been converted into a kitchen. The birth mother's adult son lives with his family in the other 140-square meter home. According to counsel, the birth father, rather than leaving his property to his wife, left it to his brother. Counsel stated that although that decision is being contested, the legal dispute has been further complicated by the fact that the birth father's brother has now died as well. Counsel stated that the litigation has been very lengthy and expensive, and remains unresolved. Counsel submitted copies of what appear to be legal documents relating to said litigation.

With regard to the birth mother's receipt of \$31,000 as a pension settlement after her husband's death, counsel stated that the information was "taken out of context." According to counsel, the money was not disbursed until 2003. Between 1999 and 2003, she had been living on borrowed money and, by the time the pension settlement was disbursed, the full amount was used to repay debts: in the words of counsel, it was "born dead."

With regard to the beneficiary's receipt of \$26,000, and his brother's receipt of \$26,000,³ from his birth father's estate, counsel stated that this information was also "taken out of context." According to counsel, all monies from the birth father's pension were taken as one lump sum payment, and all money to the family was pooled together to repay debts. After all debts were repaid, the family lived on the remainder, which came to \$22,005, from 2003 until 2005, and there is no longer any money remaining from the birth father's pension.

With regard to the beneficiary's inheritance of a 100 square meter apartment, counsel stated that the apartment, as well as the 12,000 square meters of real estate upon which it is located (which also includes the home in which the family presently resides), are owned by the beneficiary's cousin, and is still the subject of litigation.

With regard to the birth mother's inheritance of real estate, counsel contended that the due to Islamic Shiite religious law, she did not actually inherit the property, and that she does not own it.

With regard to the I-604 investigation's determination that the birth mother received supplemental income from her adult children, counsel asserted that such was the case, and reiterated her contention that the birth mother's sole source of income is the beneficiary and her husband. *See also* footnote 5.

With regard to the I-604 investigation's determination that the beneficiary and his brother attend private school, counsel asserted that although such is indeed the case, the petitioner and his wife pay for the fees and expenses.

³ The beneficiary's brother is also the beneficiary of a Form I-600 filed by the petitioner and her husband.

The field office director found the petitioner's response insufficient to establish that the birth mother is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon, and revoked approval of the petition on March 27, 2009. In his revocation notice, the field office director found that, regardless of the ultimate ownership of the land or the home, the birth mother has nonetheless lived in the home for several years, and continues to live in the home. The field office director also noted that, regardless of whether he contributes to the financial support of the beneficiary, the birth mother's adult son and his family lives with the birth mother and contributes to the maintenance of the household by virtue of his status as a household member. The field office director found further that although the birth mother may be unskilled and has never before held employment, "that does not change the fact that she has been caring well for the beneficiar[y]." The field office director also found that the petitioner's financial support of the beneficiary does not, alone, establish that the birth mother is incapable of providing proper care to the beneficiary.

Counsel submitted an appeal after the filing deadline, which the AAO rejected as untimely filed on June 16, 2009. On July 6, 2009, the field office director issued a notice informing the petitioner that he was reopening the matter on his own motion. According to the field office director, after review of the official record of proceeding he had come to the conclusion that his March 27, 2009 revocation notice had failed to address the entire record of proceeding, as the entire record had not been before him at the time the initial decision was issued, and he notified the petitioner that he would issue a new decision on the matter.

The field office director issued a new decision on September 11, 2009 and, after considering the entire record of proceeding, affirmed his decision to revoke approval of the petition. Counsel filed a timely appeal on September 25, 2009. On the Form I-290B, counsel stated that a careful evaluation of the facts and law of the instant case clearly establishes that the surviving parent, the beneficiary's birth mother, is incapable of providing proper care to the beneficiary consistent with local standards in Lebanon. In her appellate brief, counsel states that the field office director based his decision on assumptions made by the U.S. Department of State personnel who conducted the I-604 field investigation.

On appeal, counsel reiterates her assertions that the birth mother is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon; that the petitioner and her husband have been supporting the birth mother and the beneficiary financially; that the birth mother is unemployed and is incapable of steady employment; that there are no funds remaining from the inheritance that the birth mother and the beneficiary received; that the birth mother does not own the home in which she lives; and that the birth mother's other adult son, who lives in the same house (which has been divided into two separate apartments) as the birth mother and the beneficiary, does not contribute financially to the maintenance of the beneficiary; and that the birth mother is not healthy.

Upon review of the entire record of proceeding, the AAO agrees with the field office director's decision to revoke the approval of this petition, as the record does not establish that the beneficiary's birth mother is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon. In order to establish that the birth mother is incapable of providing proper care, the record must demonstrate that she is unable to provide for the child's basic needs, consistent with local standards. First and foremost, the petitioner has submitted no evidence whatsoever regarding "local

standards” in Lebanon. The petitioner, therefore, has provided USCIS with no basis on which to compare the situation of the birth mother with that of similarly-situated individuals in Lebanon.

Nor has the petitioner submitted any evidence to support the assertions of record regarding the birth mother’s purported incapability of obtaining employment. Although counsel states on appeal that the birth mother is “not healthy,” no documentation to support that assertion was submitted. Although there is a great deal of testimony in the record that the birth mother has never before held a job, and that she lacks any skills, there has been no explanation as to why such previous lack of job experience precludes her from obtaining any sort of job at this point in time. At only 56 years of age (54 at the time the petition was filed, and the assertions were initially made), it is unclear to the AAO why she cannot seek employment, and no evidence has been submitted to indicate that unskilled jobs are unavailable in Lebanon.

With regard to the home in which the beneficiary lives with his birth mother, the AAO takes counsel’s point that the birth mother does not own it. However, the fact that a birth parent is not a homeowner does not establish that he or she is incapable of providing proper care to his or her children. As noted by the field office director, the birth mother is presently living in a home with the beneficiary. While she may not own that home, it is nonetheless sheltering her children. While counsel has demonstrated that the birth mother does not own the structure, she has not established who in fact does own it. It is unclear why the owner of the structure is allowing the birth mother to reside there: whether he or she is allowing the birth mother to stay there as a matter of charity or of family loyalty, or whether rent is being paid. Regardless, the record does not indicate that the birth mother is in any danger of losing her residence, regardless of who actually owns the structure.

Having made those initial findings with regard to the issue of homeownership, the AAO turns next to the issue of the structure itself. Although counsel draws attention to the small size of the dwelling, she submits no evidence regarding average house sizes in Lebanon that would enable the AAO to analyze the size of the birth mother’s residence, relative to those of typical residences in Lebanon, in any meaningful way. Again, the petitioner has failed to submit any evidence that the structure in which the family resides, regardless of who actually owns it, falls below local standards in Lebanon.

With regard to the assertion that the petitioner and her husband are the sole source of financial support for the beneficiary’s family, the AAO finds it unsupported by the record. As noted at footnote 4, the record indicates that the petitioner and her husband sent a total of \$550 in 2004, nothing in 2005, \$1,700 in 2006, \$800 in 2007, and \$1,100 in 2008. In her October 1, 2008 NOIR response, counsel stated that after paying all debts in 2003, the family was left with a total of \$22,005, and they lived on this amount between 2003 and 2005. Taking into account the petitioner’s remittance of \$550 in 2004, this would indicate that the beneficiary’s family spent \$22,555 on living expenses between 2003 and 2005. If counsel’s assertions are correct, after having spent \$22,555 on living expenses between 2003 and 2005, the family lived on \$1,700 in 2006, \$800 in 2007, and \$1,100 in 2008. The AAO agrees that, if substantiated, this would be a significant drop in income. However, there is no evidence of record to substantiate this claim. The petitioner and her husband have not demonstrated that their financial support has been the sole source of support for the birth mother and the beneficiary. Given that the petitioner’s claim that the birth mother is incapable of providing proper care rests largely on the assertion that she and her husband have been the sole financial support for the birth mother since

2005,⁴ the AAO finds the record insufficient to document that assertion. 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)).

The petitioner has failed to establish that the beneficiary's surviving parent is incapable of providing proper care to the beneficiary, consistent with local standards in Lebanon, and the AAO agrees with the decision to revoke approval of the petition.

In that she has failed to establish that the beneficiary's birth mother is incapable of providing proper care consistent with local standards in Lebanon, the petitioner has failed to establish that the beneficiary qualifies for classification as an orphan as the term is defined at section 101(b)(1)(F)(i) of the Act. Accordingly, the AAO will not disturb the field office director's decision.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.

⁴ Counsel states in her appellate brief that this fact has been documented and verified, that "no controverting evidence" has been submitted, and that the field office director looked only to the results of the I-604 field investigation conducted by the U.S. Department of State.