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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**

F,

[REDACTED]

FILE: [REDACTED]

Office: BALTIMORE

Date: **AUG 10 2010**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

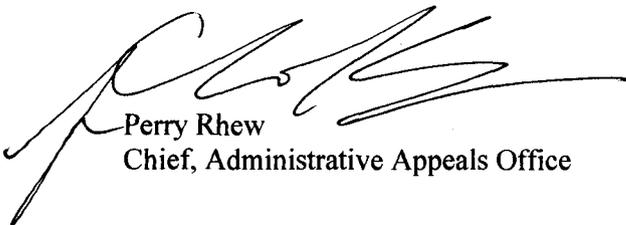
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The district director initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative. However, upon receipt of correspondence from the United States Embassy in Georgetown, Guyana, the district director issued a notice of intent to revoke, and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (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 district director denied the petition on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan as defined at section 101(b)(1)(F)(i) of the Act. Specifically, the district director found the record absent of evidence that the beneficiary has a sole parent who is incapable of providing proper care to the beneficiary, consistent with local standards in Guyana.

Section 101(b)(1)(F)(i) of the Act 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:

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. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a

governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

* * *

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.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

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.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign-sending country.

* * *

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

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.

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 pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

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

* * *

- (1)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;
- (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 thirty-seven-year-old citizen of the United States. The beneficiary was born in Guyana on August 8, 2004. The record indicates that the petitioner adopted the beneficiary in Guyana on May 9, 2008. The petitioner filed the instant Form I-600 on January 23, 2009, and it was approved on March 26, 2009.

The petitioner stated on the Form I-600 that the beneficiary "has only one parent who is the sole or surviving parent," and that the beneficiary's "[f]ather's whereabouts [are] unknown." At the time she filed the petition, the petitioner submitted an April 8, 2008 affidavit from [REDACTED] the beneficiary's birthmother, who stated that her relationship with [REDACTED] the beneficiary's birthfather, ended in January 2007, and that she has not heard from or received any support from him since that time.

After conducting its I-604 investigation, the United States Embassy in Georgetown, Guyana, returned the petition for further review and possible revocation, and the district director issued a notice of intent to revoke (NOIR) approval of the petition on January 19, 2010. In his NOIR, the district director relayed the concerns of the U.S. Consulate in Georgetown to the petitioner, and afforded her thirty days during which to address those concerns. As noted by the director in the NOIR, the I-604 investigation

indicated that the beneficiary's birthmother is capable of providing proper care to the beneficiary consistent with local standards in Guyana and, as such, the beneficiary could not be considered an orphan as a result of having a sole parent incapable of providing proper care consistent with such standards.

The petitioner, through counsel, disputed that conclusion, and submitted a timely response to the NOIR on February 18, 2010. The district director found counsel's response inadequate, and revoked approval of the Form I-600 on March 15, 2010.

On appeal, counsel submits an argument on the Form I-290B but no additional evidence. Counsel contends that the district director's decision should be reversed because the evidence of record clearly establishes the birthmother's incapability of providing proper care to the beneficiary.

At the time of the field office director's March 26, 2009 decision to approve the petition, the record contained minimal information regarding the alleged incapability of the beneficiary's sole parent to provide proper care consistent with local standards. In her April 8, 2008 affidavit, the beneficiary's birthmother stated that she has been solely responsible for the beneficiary's educational and social well-being. The Guardian Ad Litem's (GAL) April 29, 2008 report stated that the beneficiary had resided with her birthmother since she was born and that although the birthmother had tried to cater to the needs of the beneficiary, she had been confronted by social and economic dysfunction. The GAL stated that the birthmother is unable to provide for the beneficiary's social, education, and financials needs, and that the birthfather, whose whereabouts were unknown, provided no support.

As noted previously, the I-604 investigation revealed derogatory information regarding the birthmother's alleged inability to provide proper care consistent with local standards. Such derogatory information included, in relevant part, the following:

- The beneficiary's birthmother appeared to the investigators to be young, healthy, and articulate.
- The beneficiary's birthmother lived with her two sisters, two of her three children, and her sister's children.
- The beneficiary's birthmother received financial support from her mother.
- The investigators took note of the birthmother's active interest in, and care for, her youngest child. She told the investigators that she intended to register him for preschool and get a job.
- The birthmother's neighbors told the investigators that the birthmother often visits the beneficiary at the private school she attends, and that she is well cared for – more so than most children in the neighborhood.

The petitioner, through counsel, filed a supplemental submission to the district director after the U.S. Embassy returned the file to the district director, but before the district director issued the

NOIR. In that submission, counsel submitted several documents pertaining to the birthmother's alleged incapability of providing proper care to the beneficiary, including the following:

- An August 7, 2009 letter from [REDACTED] who stated that she had been caring for the beneficiary since May 2008, and that the petitioner had been providing for all of her financial support since that time.
- A July 22, 2008 letter from [REDACTED] who stated that she saw the beneficiary in April 2006, and that she was undernourished, anemic, irritable, and withdrawn, and had a poor appetite, recurrent colds, and skin rashes. [REDACTED] stated that the birthmother was not employed, received no support from the birthfather, and was dependent upon her mother and sisters for financial support.
- A December 19, 2008 letter from [REDACTED] the birthmother's mother and beneficiary's biological grandmother. [REDACTED] stated that although the birthmother initially went to live with the birthfather in Suriname, she returned home shortly thereafter. According to [REDACTED], the birthmother is unemployed and has no means of financial support. She also reported that the birthmother verbally and physically abused her children. [REDACTED] reported that although she allowed the birthmother to live with her and her other daughters in her home, and that they shared everything they had with her, once the birthmother was given money she "found friends and nightclubs." [REDACTED] stated that although the petitioner, who is her sister, has been supporting the beneficiary financially for over two years, the birthmother initially used the money to buy clothing and attend parties.
- A December 8, 2008 letter from [REDACTED] and [REDACTED] the birthmother's sisters and beneficiary's biological aunts. They stated that the birthmother has been consistently unemployed since 2006, with no means of support. They reported that the petitioner has been providing financial support for the beneficiary for over two years, but that the birthmother initially used the money to buy clothing for herself and attend parties while she left her children alone. They stated that because the birthmother stayed out so late, she was too tired to take her children to school. They also reported that the birthmother abused the beneficiary physically and verbally, which caused the beneficiary to become anxious, fearful, worried, and introverted. Because the beneficiary did not yet have a visa with which to enter the United States, the petitioner eventually placed her in the care of [REDACTED]
- A November 19, 2008 letter from [REDACTED] Head Teacher of the beneficiary's school. [REDACTED] stated that when the beneficiary was living with the birthmother, she was small and underweight, was withdrawn, always had a sad look on her face, and her school attendance was irregular. However, after she was placed into the custody of [REDACTED] the beneficiary began to show improvement.

The district director relayed the specific concerns of the U.S. Embassy that arose during the course of the I-604 investigation to the petitioner in his January 19, 2010 NOIR, and stated that the

beneficiary's birthmother had not demonstrated her incapability of providing the beneficiary's basic needs, consistent with local standards in Guyana.

Counsel submitted a timely response to the NOIR. In her February 17, 2010 letter, counsel stated that although relatively healthy and articulate, the birthmother was, and is, incapable of raising the beneficiary. Counsel submitted additional testimonial evidence regarding the birthmother's alleged incapability of providing proper care to the beneficiary, including the following:

- A February 16, 2010 statement from the birthmother, who stated that she decided to place the beneficiary for adoption with the petitioner because it was too difficult to care for both the beneficiary and her younger son (her older son was already being raised by her sister).
- Another letter from [REDACTED] the birthmother's sister and biological aunt of the beneficiary, dated February 9, 2010. [REDACTED] stated that the birthmother is "barely capable of caring for herself, let alone caring for 2 young children on her own." According to [REDACTED] the birthmother does not participate in any way in the care or support of her two older children: the petitioner and [REDACTED] are raising the beneficiary, and [REDACTED] is raising her older son. She stated that although the birthmother is raising her younger son, other individuals contribute substantially to his care and support. [REDACTED] stated that although the birthmother has had several advantages in life, including several years of private schooling, she has never supported herself financially or acted like a responsible adult. For example, although several family members paid the enrollment fees for a vocational cosmetology program, the birthmother eventually stopped attending classes and used the money to buy nonessential items and go to parties. On other occasions, she used money given to her for the purpose of supporting the beneficiary to buy alcohol, clothing, and attend parties. [REDACTED] reported that the birthmother abused the beneficiary verbally and physically and that even when others paid for the cost of daycare for the beneficiary, the birthmother "could not be bothered" to get out of bed to feed her and take her to daycare. She stated that the birthmother has never held a job for a sustained period of time.
- Another letter from [REDACTED] the birthmother's mother and beneficiary's biological grandmother, dated February 15, 2010. She stated that the birthmother has no role in the beneficiary's life, and neglected her when she did. [REDACTED] stated that the birthmother has not held a steady job and that when she sends her money, the birthmother generally uses it to go out with friends to clubs and concerts.

The district director found counsel's response insufficient and revoked approval of the petition on March 15, 2010. In his revocation, the district director stated that although it appears as though the birthmother is not currently employed the record lacks evidence that she is unable or incapable of holding employment. Accordingly, the beneficiary does not meet the definition of an orphan as a result of a sole parent incapable of providing proper care to the beneficiary consistent with local standards.

On appeal, counsel states that in revoking approval of the petition, the district director improperly held the petitioner to an unnamed standard. Noting the abuse and lack of care cited in the testimonial evidence of record, counsel asserted that district director's revocation of the petition's approval was improper.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The sole issue before the AAO on appeal is whether the petitioner has established that the beneficiary's birthmother, her sole parent, is incapable of providing proper care to the beneficiary, consistent with local standards in Guyana, pursuant to 8 C.F.R. § 204.3(b). Upon review of the entire record, the AAO agrees with the district director's determination that the beneficiary has not made that demonstration and that the beneficiary therefore does not meet the definition of an orphan as the result of having a sole parent who is incapable of providing proper care consistent with local standards in Guyana. The AAO finds further that the beneficiary does not meet the definition of an orphan under any of the other criteria set forth at section 101(b)(1)(F)(i) of the Act.

Sole parent incapable of providing proper care and who has, in writing, irrevocably released the child for emigration and adoption

In order to meet this standard, the petitioner must establish that the beneficiary's birthmother is unable to provide for the child's basic needs, consistent with local standards. 8 C.F.R. § 204.3(b). First, the petitioner has submitted no evidence whatsoever regarding local standards in Guyana. Second, as was noted by the district director, the testimonial evidence of record indicates that the birthmother does not hold steady employment, does not spend money wisely, and has neglected her children. However, as indicated by the district director's decision, these factors do not necessarily indicate that she is incapable of providing proper care to the beneficiary. Although an unwillingness to provide proper care may be similar to the incapability of providing proper care, the terms are not synonymous. While there is ample testimony that the birthmother may be unwilling to hold a steady job, there is no indication that she is incapable of maintaining employment.

The beneficiary does not meet the definition of an orphan under this standard. Counsel's claims on appeal fail to overcome the ground for revocation of the approval of this petition.

Nor has the petitioner established that the beneficiary meets the definition of an orphan under any of the other criteria set forth at section 101(b)(1)(F)(i) of the Act. Although the district director did not address this issue in his March 15, 2010 decision, the AAO notes counsel's assertion in her December 15, 2009 letter to the district director that the beneficiary meets the definition of an orphan as a result of having been abandoned by both birthparents, as well as having been deserted by both birthparents. As such, the AAO will address the other statutory definitions of an orphan.

Abandonment by both parents; death or disappearance of both parents; desertion by both parents; separation from both parents; loss of both parents; and surviving parent incapable of providing proper care and who has in writing irrevocably released the child for emigration and adoption

The term "abandonment by both parents" is specifically defined at 8 C.F.R. § 204.3(b), and the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been abandoned by both of her birthparents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must demonstrate that both of the beneficiary's birthparents 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)." 8 C.F.R. § 204.3(b). The regulation emphasizes further that "relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment." *Id.* Moreover, if the child was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. *See id.* The record establishes clearly that the birthmother desires to transfer her parental rights, obligations, and claims, as well as control over and possession of, the beneficiary, directly to the petitioner. The birthmother was aware that the petitioner wanted to adopt the beneficiary, and the record is clear that she consented to the adoption. She clearly wished to transfer "all parental rights, obligations, and claims to the child, as well as all control over and possession of the child," directly to the petitioner. Second, the placement of the beneficiary with [REDACTED] was done "in anticipation of, or preparation for, adoption." *Id.* The record, however, does not establish that [REDACTED] is authorized under the child welfare laws of Guyana to act in such a capacity. *See id.* For all of these reasons, the beneficiary does not meet the definition of an orphan under this standard.

The record does not indicate that both of the birthparents have died or disappeared, as that term is defined at 8 C.F.R. § 204.3(b). As such, the beneficiary does not meet the definition of an orphan as a result of the death or disappearance of both birth parents.

Nor does the record indicate that the beneficiary has become "become a ward of a competent authority" as the result of her birthparents' desertion. Accordingly, the beneficiary does not meet the definition of an orphan as a result of "the desertion by both parents," as that term is defined in the regulation at 8 C.F.R. § 204.3(b).

Nor does the record indicate that the beneficiary was involuntarily severed from her birthparents by action of a competent authority for good cause and in accordance with the laws of Guyana. Accordingly, the beneficiary does not meet the definition of an orphan as a result of "separation from both parents," as defined at 8 C.F.R. § 204.3(b).

Nor does the record indicate that the beneficiary was involuntarily and permanently severed or detached from her birthparents due to a natural disaster, civil unrest, or other calamitous event beyond the control of her birthparents and as verified by a competent authority. Accordingly, the beneficiary

does not meet the definition of an orphan as a result of the "loss of both parents," as defined by the regulation at 8 C.F.R. § 204.3(b).

Finally, the record establishes that both of the beneficiary's birthparents are living. As such, neither the beneficiary's birthmother nor her birthfather is a "surviving parent," as that term is defined at 8 C.F.R. § 204.3(b). Accordingly, the beneficiary does not meet the definition of an orphan under this standard.

Conclusion

The AAO concurs with the district director's determination that the petitioner has failed to establish that the beneficiary meets the definition of an orphan as a result of having a sole parent who is incapable of providing proper care, consistent with local standards and has in writing irrevocably released the child for emigration and adoption. The petitioner has not overcome the grounds for denial on appeal. Beyond the decision of the district director, the AAO finds further that the petitioner has failed to establish that the beneficiary meets the definition of an orphan as a result of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption. The evidence of record does not establish that the beneficiary meets the definition of an orphan under any of the criteria set forth at section 101(b)(1)(F)(i) of the Act and the director properly revoked approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. Approval of the petition is revoked.