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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

[Redacted]

FILE: [Redacted] Office: ST. LOUIS, MISSOURI Date: **DEC 06 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

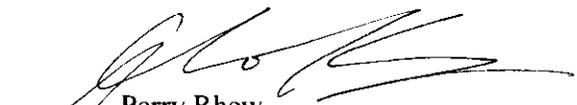
PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:
[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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Saint Louis, Missouri, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the director's decision will be withdrawn, and the matter remanded for further action.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(b)(1)(F). The director determined that the beneficiary did not meet the definition of an orphan because: (1) he was not abandoned by his parents; and (2) the beneficiary's birth mother released him to the petitioner for purposes of adoption. The director denied the petition accordingly. On appeal, the petitioner contends through counsel that the beneficiary meets the definition of an orphan because his birth father is dead and his surviving parent is incapable of providing proper care for him.

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 phrase "[s]urviving 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." 8 C.F.R. § 204.3(b). Further, "[i]ncapable 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." *Id.*

The record reflects that the petitioner is a married U.S. citizen. The beneficiary is a 12-year-old native and citizen of Morocco. The beneficiary's birth father died on April 13, 2002. On May 20, 2009, the beneficiary's birth mother executed a release of the beneficiary to the petitioner and her husband. See *Consent of a Kafala of a Non Abandoned Child*, dated May 20, 2009. On June 25, 2009, a Moroccan court granted kafala (legal guardianship) over the beneficiary to the petitioner and her husband. See *Original Decree in Custody at Court Clerk's Office at First Instance Tribunal of Kelaa Des Sraghnas*, dated June 25, 2009. The petitioner filed a Petition to Classify Orphan as an Immediate Relative (Form I-600), on October 21, 2009. The director denied the Form I-600 on June 4, 2010, and the petitioner timely appealed.

Here, the director erred in determining that the beneficiary did not meet the definition of an orphan because he has not been abandoned. Specifically, the statute provides that a child may be an orphan if his “surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.” Section 101(b)(1)(F)(i) of the Act. First, the record reflects that the beneficiary’s birth father is deceased, making the beneficiary’s birth mother a “surviving parent” as defined by the regulations. *See Death Certificate of Jilali Chatouane; see also 8 C.F.R. § 204.3(b).*

Second, the preponderance of the evidence in the record supports the petitioner’s claim that the beneficiary’s 53-year-old birth mother is incapable of providing proper care for him consistent with the local standards in Morocco. *See Death Certificate of [REDACTED]; Municipal Affidavit of Non-Employment* (issued by the First Urban District of the Municipality of Kelaa Sraghna, Morocco on Jan. 20, 2009 and certifying that the birth mother is “Without profession”); *Certificate of Non-taxation of Inhabitation and Community Service* (indicating that the beneficiary’s birth mother has no profession and that she is not subjected to inhabitation and communal services taxes in Morocco); *Consent of a [REDACTED] of a Non Abandoned Child* (indicating that the beneficiary’s birth mother is unemployed); [REDACTED] *Testimony*, filed June 17, 2009 (same). Additionally, the petitioner reported to her home study preparer that the beneficiary’s birth mother suffers from heart disease. *See Adoptive Homestudy for International Placement*, dated Sept. 22, 2009.

Third, the beneficiary’s birth mother has in writing irrevocably released the child for emigration and adoption. *See Consent of [REDACTED] of a Non Abandoned Child; [REDACTED] Testimony*. Although the beneficiary’s birth mother released him directly to the custody of the petitioner and her husband, a child who is an orphan because his surviving parent cannot provide proper care may be released for a specific adoption. *Compare* the definitions at 8 C.F.R. § 204.3(b) of “Abandonment by both parents” (prohibiting release for a specific adoption) with “Surviving parent” (containing no such prohibition).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has met the burden of proving that the beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act.

Accordingly, the appeal will be sustained, the director’s decision will be withdrawn, and the matter will be remanded for continued processing.

ORDER: The appeal is sustained, and the director’s June 4, 2010 decision is withdrawn. The petition is remanded to the director for continued processing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.