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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

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: MAR 04 2010

PHI 09 010 00145

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:

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 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 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 denied the petition on the basis of her determination that 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:

> *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.
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> *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.
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> *Desertion by both parents* means that the parents have willfully forsaken the 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.
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> *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.
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> * * *
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> *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.
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> * * *
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> *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.

The petitioner is a forty-one-year-old citizen of the United States. The beneficiary was born in Malaysia on March 24, 2007. The record indicates that the petitioner and her husband adopted the beneficiary in Malaysia on September 28, 2007.

The petitioner filed the instant Form I-600 on June 17, 2009. The field office director issued a notice of intent to deny (NOID) the petition on July 31, 2009, which notified the petitioner of deficiencies in the record and afforded her additional time to submit evidence 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). In particular, the field office director noted that the beneficiary's birthparents relinquished the beneficiary to the petitioner and her husband directly. As the field office

director noted, the regulation at 8 C.F.R. § 204.3(b) specifically states that "relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment."

Counsel responded to the NOID on August 24, 2009. In his August 20, 2009 letter, counsel cited to a dictionary definition of the word "orphan," and stated that 8 C.F.R. § 204.3(b) "is not properly supported in the clear language of the statute." Finding this response inadequate, the field office director denied the petition on October 28, 2009. A timely appeal was submitted on November 23, 2009.

The sole issue before the AAO is whether the petitioner has established that the beneficiary qualifies for classification as an orphan as that term is defined in the Act. As noted previously, in order to meet the definition of an orphan as set forth at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), the petitioner must establish that the beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The AAO will address each of these definitions in turn.[1]

I. Death or disappearance of both parents

No assertions have been made that both of the birth parents have died. Nor have any assertions been made that they have "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.

II. Abandonment by both parents

The term "abandonment by both parents" is specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that 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 birth parents. 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 birth 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)." The regulation at 8 C.F.R. § 204.3(b) emphasizes further that "relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment."

Here, the record clearly establishes that the birth parents in fact intended to transfer control and possession of the beneficiary to the petitioner and her husband, and counsel's assertions on appeal fail to demonstrate that such was not the case. As the birthparents released the beneficiary to a specific person – in this case, the petitioner and her husband – such release does not constitute abandonment under 8 C.F.R. § 204.3(b). Accordingly, the beneficiary does not meet the definition of an orphan as a result of having been abandoned by both of his birth parents.

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[1] As the record does not indicate that the beneficiary could be considered the child of a sole or surviving parent as those terms are defined at 8 C.F.R. § 204.3(b), the AAO shall not address these two definitions.

III. Desertion by both parents

The term "desertion by both parents" is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been deserted by both of his birth parents. 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 birth parents "have willfully forsaken the 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"

There is no evidence in the record to suggest that the beneficiary has become "become a ward of a competent authority." Accordingly, the beneficiary does not meet the definition of an orphan as a result of having been deserted by both of his birth parents.

IV. Separation from both parents

The term "separation from both parents" is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been separated from both of his parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must provide evidence of "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." No such evidence has been presented.

Accordingly, the beneficiary does not meet the definition of an orphan as a result of having been separated from both of his birth parents.

V. Loss of both parents

The term "loss of both parents" is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of losing both parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must provide evidence of "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." Again, no such evidence has been presented. Accordingly, the beneficiary does not meet the definition of an orphan as a result of the loss of both of his birth parents.

VI. Conclusion

As set forth in the previous discussion, the AAO finds that the petitioner has failed to establish that the beneficiary meets the definition of an orphan under any of the five definitions discussed above: (1) the death or disappearance of both parents; (2) abandonment by both parents; (3) desertion by both parents; (4) separation from both parents; and (5) the loss of both parents. Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of 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), and the field office director properly denied this petition. Accordingly, the AAO will not disturb the field office director's denial 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.

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