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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SIM 09 226 10016

Office: NATIONAL BENEFITS CENTER

Date: **MAR 15 2010**

IN RE: Petitioners: [REDACTED]
Beneficiary: [REDACTED]

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

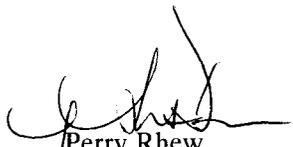
ON BEHALF OF PETITIONER:

[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 Director, National Benefits Center, denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner¹ seeks classification of an adoptee as an immediate relative pursuant to section 101(b)(1)(G) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(b)(1)(G). The director denied the petition on the basis of his determination that, because the petitioner had failed to establish that the beneficiary’s birthparents are incapable of providing proper care, the petitioner had failed to establish that the beneficiary is eligible for classification as an immediate relative under the Act.

Section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), states, in pertinent part, the following:

a child, under the age of sixteen at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993,² or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age—

- (i) if—
 - (I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;
 - (II) the child’s natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have

¹ The regulation at 8 C.F.R. § 204.301 defines “petitioner” as follows:

Petitioner means the U.S. citizen (and his or her spouse, if any) who has filed a Form I-800 under this subpart . . . Although the singular term “petitioner” is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

As this case involves a married couple, the phrase “the petitioner” could refer to either spouse. In an effort to ease the reading of this discussion, the AAO will refer to [REDACTED] as the “petitioner” (as she was named on the Form I-800 as the petitioner) and to [REDACTED] as the “petitioner’s husband.”

² See *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (May 29, 1993). The United States signed the Hague Convention on March 31, 1994 and ratified it on December 12, 2007, with an effective date of April 1, 2008.

freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

- (III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;
- (IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer status on one or both of such natural parents) [.]

The regulation at 8 C.F.R. § 204.301 states, in pertinent part, the following:

Birth parent means a "natural parent" as used in section 101(b)(1)(G) of the Act.

* * *

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

Irrevocable consent means a document which indicates the place and date the document was signed by a child's legal custodian, and which meets the other requirements specified in this definition, in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. . . .

- (1) To qualify as an irrevocable consent under this definition, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, the document does not qualify as an irrevocable consent unless the document is accompanied by a declaration, signed, by an identified individual, establishing that the identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the

place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

- (2) If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

The petitioner, a citizen of the United States, filed Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, on March 11, 2009. The Form I-800A was approved on April 14, 2009. The record indicates that the beneficiary was born in India on August 19, 2007, and that she currently lives with her birth parents. The record indicates further that the beneficiary's birthfather is the brother of the petitioner's husband.

The petitioner filed the instant Form I-800 on May 13, 2009. On May 27, 2009, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit additional evidence. Specifically, the director requested that the petitioner submit evidence to establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary. The director found the petitioner's response insufficient, and denied the petition on October 7, 2009. Counsel submitted a timely appeal on November 6, 2009.

As the AAO noted previously, the director denied the petition on the basis of his determination that because the petitioner had failed to establish that the beneficiary's birthparents are incapable of providing proper care pursuant to section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III) and 8 C.F.R. § 204.301, the petitioner had failed to establish that the beneficiary is eligible for classification as an immediate relative under the Act. Upon review of the entire record of proceeding, including the petitioner's appellate submission, the AAO agrees with this determination. Beyond the decision of the director, the AAO further finds that the record of proceeding fails to establish that the birth parents have freely given their written irrevocable consent to the termination of their legal relationship with the beneficiary, and to the beneficiary's emigration and adoption, consistent with section 101(b)(1)(G)(i)(II) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(II), and 8 C.F.R. § 204.301. The AAO will address each of these issues in turn.

I. Incapability of the birth parents to provide proper care to the beneficiary, consistent with local standards in India

When she filed the petition, the petitioner submitted a document signed by both of the beneficiary's birth parents on April 13, 2009 entitled "Relinquishment Deed." That document stated, in pertinent part, the following:

We [the birth parents] both anonymously decided to handover [the beneficiary] to [the petitioner and her husband] and relinquish our rights permanently since they cannot have children of their own. . . .

[The petitioner's husband] is [b]iological brother and we want to see his family expanded. Therefore we lose our rights [to the beneficiary] from this day on. . . .

As noted previously, section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III), requires, the petitioner to demonstrate that the beneficiary's birth parents are incapable of providing proper care to the beneficiary. The regulation at 8 C.F.R. § 204.301 defines "incapable of providing proper care" as a determination that, in light of all circumstances including, but not limited to, economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country, in this case India. As the petitioner's initial I-800 submission did not address this requirement in any meaningful way, the director requested evidence to satisfy this requirement in his May 27, 2009 NOID.

In response, the petitioner submitted several documents. The AAO notes that the April 19, 2009 "Child Study Report" states, in pertinent part, the following:

Reasons for seeking adoption:

Adoptive parents cannot have their own children – the family relations gave the child for adoption.

The petitioner also submitted a second "Relinquishment Deed." That document stated, in pertinent part, the following:

We are living in our great grand Father's (Family) house with [the beneficiary] which is in A BAD SHAPE AND CAN BE COLLAPSE ANYTIME. . . .

Based on our income we are unable to provide necessary requirements to [the beneficiary]. . . .

Based on our Financial position we are willing to hand over [the beneficiary]. . . .

The petitioner also submitted a June 6, 2009 letter from [REDACTED] stating that the beneficiary's birth father's income is beneath the poverty line, several pictures of the birth parents' home, and a copy of a foreign-language document that appeared to be the property tax receipt for the birth parents' residence.

The director found this evidence insufficient, and denied the petition on October 7, 2009. In his decision, the director noted that the property tax receipt was not translated into the English language; that there was no evidence that the birth parents were actually living in the building in which the submitted pictures were taken; and that there was no evidence as to whom the birth parents' residence actually belongs. The director noted further that in the first relinquishment, which was issued prior to the NOID, the stated reason for the adoption is the infertility of the petitioner and her husband. However, in the second relinquishment, which was issued after issuance of the NOID, the stated reason for the adoption was the incapability of the birth parents to provide proper care to the beneficiary. The director found this evidence insufficient to establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary, and denied the petition on October 7, 2009.

Counsel submits several documents on appeal. The AAO turns first to the November 3, 2009 "Valuation Report" prepared by [REDACTED], a "government registered valuer." At page 2 of this report, the birth parents' neighborhood is classified as "middle class." [REDACTED] assigns a fair present market value of "Rs. 6,93,129=00" to the residence. Counsel, however, makes no effort to place this figure into context. Without any such context, this figure has little evidentiary value to this proceeding, and does not establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary consistent with local standards in India.

Counsel also submits what appears to be a transcript of a lawsuit. However, counsel makes no effort to explain the relevance of this document to this proceeding. While the names of the petitioner and the defendant are similar to those of the beneficiary's birth father, they do not precisely match his name as provided at other locations in the record of proceeding. As such, the identities of the petitioner and defendant are unclear. As counsel has not explained the relevance of this document, it has little evidentiary value to this proceeding, and it does not establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary consistent with local standards in India.

Counsel also submits what the AAO presumes is an architectural rendering of the physical layout of the birth parents' residence. However, counsel does not explain the relevance of this document and, moreover, the AAO notes that it was not prepared in the English language. Because the petitioner failed to submit a certified translation of this document, the AAO cannot determine whether it supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, this document is not probative and will be accorded no weight in this proceeding.

Counsel also submits what appear to be English translations of property tax receipts for the residence. However, counsel does not explain that such is the case, and makes no effort to

explain the relevance of these documents to this proceeding. Nor does counsel make any effort to place the numerical figures contained in these documents into any sort of context that would allow the AAO to ascertain whether such figures support the petitioner's case. Without any such context, these documents have little evidentiary value to this proceeding, and they do not establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary consistent with local standards in India.

Finally, counsel submits additional pictures of the birth parents' residence.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny this petition. The petitioner has failed to demonstrate that the beneficiary's birth parents are incapable of providing proper care to the beneficiary, consistent with local standards in India.

In arriving at this conclusion, the AAO looks first to the chronology of the petitioner's claim that the birth parents lack such capability. When she filed the petition, the petitioner made no mention of the inability of the birth parents to provide proper care to the beneficiary, consistent with local standards in India. It was not until the director issued the NOID that the petitioner began making that assertion. As noted previously, in the relinquishment document submitted by the petitioner when she filed the petition, the birth parents stated that they were relinquishing their rights to the beneficiary because the petitioner and her husband could not have children. The "Child Study Report," which was also issued before issuance of the NOID, also provided the petitioner and her husband's inability to conceive a child as the reason for the adoption. It was not until after the director issued the NOID that the petitioner argued that the birth parents were incapable of providing proper care to the beneficiary, consistent with local standards in India. This gradual evolution undermines the credibility of the petitioner's claim.

However, even if this gradual evolution did not exist, the AAO would still find the evidence of record insufficient to establish that the beneficiary's birth parents are incapable of providing proper care to the beneficiary consistent with local standards in India. As indicated previously, the documents submitted by counsel on appeal fail to establish the petitioner's claim because neither counsel nor the petitioner makes any effort to place those documents, or the facts contained in those documents, into any meaningful context. For example, although counsel submits information regarding the current market value of the residence in which the birth parents live, he submits no evidence to place that figure into context. The evidentiary deficiencies with the other documents submitted on appeal were set forth previously; again, counsel submits no information to place any of these documents into context. The mere submission of documents with no explanation does not satisfy the petitioner's burden. Without a letter, brief, or any other type of explanation or description from counsel or the petitioner explaining the relevance of these documents to this proceeding, they are of little probative value. While the AAO has reviewed the pictures submitted on appeal, without any type of descriptions the AAO has no way of placing them into any context, and they are of little probative value, as well.

Finally, the AAO notes that the record contains no evidence whatsoever regarding “local standards” in India.

For all of these reasons, the AAO agrees with the director’s determination that the petitioner has failed to establish that the beneficiary’s birth parents are incapable of providing proper care to the beneficiary, consistent with local standards in India. The petitioner, therefore, has failed to satisfy section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III).

II. Irrevocable consent of the birth parents

Beyond the decision of the director, the AAO finds that the record of proceeding fails to establish that the birth parents have freely given their written irrevocable consent to the termination of their legal relationship with the beneficiary, and to the beneficiary’s emigration and adoption, consistent with section 101(b)(1)(G)(i)(II) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(II), and the regulation at 8 C.F.R. § 204.301.

As was set forth previously, “irrevocable consent” is specifically defined in the regulation at 8 C.F.R. § 204.301, and the document must contain several specific provisions in order to qualify as an irrevocable consent. One such requirement in order to qualify as irrevocable consent is that the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. The record contains two relinquishment documents executed by the beneficiary’s birth parents. Both of these documents were executed in the English language, yet neither document specifies that the birth parents are able to read and understand the English language.

These specific, technical requirements are set forth at 8 C.F.R. § 204.301, and the AAO is without discretionary authority to waive them. The regulation at 8 C.F.R. § 204.301 specifically states that if a document does not meet these technical requirements, the document does not qualify as an irrevocable consent. Neither of these documents satisfies 8 C.F.R. § 204.301 and, as such, neither of them qualifies as irrevocable consent of the birth parents to the adoption. As such, the petitioner has failed to satisfy section 101(b)(1)(G)(i)(II) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(II). For this additional reason, the petition may not be approved.

III. Conclusion

The AAO concurs with the director’s determination that the petitioner has failed to establish that the beneficiary’s birthparents are incapable of providing proper care to the beneficiary consistent with local standards in India pursuant to section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III). Beyond the decision of the director, the AAO finds further that the record of proceeding fails to establish that the birth parents have freely given their written irrevocable consent to the termination of their legal relationship with the beneficiary, and to the beneficiary’s emigration and adoption, consistent with section 101(b)(1)(G)(i)(II) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(II). The petitioner, therefore, has failed to establish that the beneficiary is eligible for immigrant classification as an immediate relative pursuant to section

101(b)(1)(G) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(b)(1)(G). Accordingly, the AAO will not disturb the director’s denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. See 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 appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the denial. 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.