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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: NEWARK, NEW JERSEY

Date:

JUN 03 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:

SELF-REPRESENTED

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 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 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. Specifically, the director found the record absent of evidence that the beneficiary has a sole or surviving parent who is incapable of providing proper care to the beneficiary, consistent with local standards in Pakistan.

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 regulation at 8 C.F.R. § 204.3(d)(3) provides that orphan petitions filed concurrently with an advanced processing application, as is the case here, must contain the documentation required by 8 C.F.R. § 204.3(c), as well as the documentation required by 8 C.F.R. § 204.3(d)(1), except for the documentation required by 8 C.F.R. § 204.3(d)(1)(i).

Whether the petitioner has satisfied the criteria at 8 C.F.R. § 204.3(c) is not at issue. 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. . . .
- (iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoptive in accordance with the laws of the foreign-sending country:
- (A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad. . . .
  - (B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:
    - (1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;
    - (2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country. . . .

The petitioner is a forty-seven-year-old citizen of the United States. His wife is a thirty-eight-year old lawful permanent resident of the United States. The beneficiary was born in Pakistan on June 9, 2005.

The petitioner filed the instant Form I-600 on November 21, 2008, and the field office director issued three subsequent requests for additional evidence. In her January 6, 2010 decision denying the petition, the field office director, as noted previously, found the evidence of record insufficient 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).

The record contains evidence that the beneficiary's birthmother died on June 11, 2005. The record also contains an October 30, 2007 document entitled "Adoption Deed." That document states that the beneficiary's paternal grandfather, who is described as "being the general attorney" of the birthfather, is unable to care for the beneficiary due to his old age and sickness. The record also contains a June 26, 2009 letter from the beneficiary's birthfather stating that it is impossible for him to care for the beneficiary because of his professional commitments. The birthfather stated further that he has remarried, and that neither he nor his wife can care for the beneficiary due to "family problems," and that it would be difficult for the beneficiary "to get himself settled in my new family setup/life."

In her January 6, 2010 decision, the field office director stated that, since he referred to himself as a professional, the birthfather could be presumed to be employed and, as such, questioned why he cannot care for the beneficiary. On appeal, the petitioner contends that the field office director erred in her analysis of the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO affirms the field office director's decision. The petitioner's claims on appeal fail to overcome the grounds for denial.

*I. Whether an adoption has occurred abroad or whether the petitioner has, or a person or entity working on behalf of the petitioner has, custody of the beneficiary for emigration and adoption in accordance with the laws and procedures of Pakistan*

Before discussing whether the beneficiary qualifies for classification as an orphan as that term is defined in the Act, the AAO will first address the issue of whether a valid adoption occurred in Pakistan or whether the petitioner, or a person or entity working on behalf of the petitioner, has custody of the beneficiary for emigration and adoption in accordance with the laws and procedures of Pakistan, as required by the regulation at 8 C.F.R. § 204.3(d)(1)(iv).

As noted previously, the record contains an October 30, 2007 document entitled "Adoption Deed." The AAO notes that this document is not a legal judgment issued by a court or any other legal body. Rather, it is an affidavit executed by the petitioner and the beneficiary's grandfather. This document fails to establish that a full and final adoption has occurred. Nor does this document establish that the petitioner, or a person or entity working on behalf of the petitioner, has custody of beneficiary for emigration and adoption in accordance with the laws and procedures of Pakistan.

While Pakistan has no statutory law on adoption, it does have a law governing guardianship.<sup>1</sup> According to the U.S. Department of State, guardianship proceedings in Pakistan are filed in the

<sup>1</sup> *See* U.S. Department of State, Office of Children's Issues, Intercountry Adoption, *Pakistan*, <http://adoption.state.gov/country/Pakistan.html> (accessed May 19, 2010).

family courts.<sup>2</sup> The record lacks any evidence that such guardianship proceedings took place and that the beneficiary's grandfather had the authority to release the beneficiary for adoption. The record, therefore, lacks evidence that a full and final adoption in accordance with the laws of Pakistan has taken place. Nor does the record establish that the petitioner, or a person or entity working on behalf of the petitioner, has custody of the beneficiary for emigration and adoption in accordance with the laws and procedures of Pakistan pursuant to the regulation at 8 C.F.R. § 204.3(d)(1)(iv).

Although the field office director did not discuss this issue in her decision, the petitioner's failure to meet this requirement further precludes approval of this petition.

II. *Abandonment by both parents; death or disappearance of both parents; desertion by both parents; separation from both parents; and loss of both parents*

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, 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, 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.

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 his 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 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)." *Id.*

As noted, the regulation specifically states that both parents must willfully forsake 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 or persons*. The regulation further prescribes that "[a] relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment." *Id.* In this case, the June 26, 2009 letter from the beneficiary's birthfather specifically states, "I surrender all my rights in favour of [the petitioner] in respect of the upbringing, education and custody of the minor in any manner whatsoever." The record thus indicates clearly that the beneficiary's birthfather intends to transfer his parental rights, obligations, and claims, as well as control over and possession of, the beneficiary, directly to the petitioner. As such, the beneficiary does not meet the definition of an orphan as a result of having been abandoned by both parents.

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<sup>2</sup> *Id.*

Nor does the record establish that the beneficiary's birthfather has 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 parents.

Nor does the record establish that the beneficiary has become "become a ward of a competent authority" as the result of desertion by his birthfather. 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 establish that the beneficiary has been involuntarily severed from his birthfather by action of a competent authority for good cause and in accordance with the laws of Pakistan. 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 establish that that the beneficiary was involuntarily and permanently severed or detached from his birthfather due to a natural disaster, civil unrest, or other calamitous event beyond the control of her birth parents 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).

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

The record does not establish that the beneficiary meets the definition of an orphan because he has a sole or surviving parent incapable of providing proper care as those standards are defined at 8 C.F.R. § 204.3(b).

The record does not establish that the beneficiary has a sole parent for two reasons. The regulation prescribes that the term "sole parent" only applies to the mother of a child born out of wedlock who has not acquired another parent. The record in this case indicates that the beneficiary was born in wedlock, that his birth mother is deceased and that his birth father has remarried. Accordingly, the record fails to establish that the beneficiary has a sole parent.

Nor does the record establish that the beneficiary has only one surviving parent. Although the record establishes that the beneficiary's birthmother has died, it also establishes that his birthfather has remarried. As the birthfather has remarried, and the beneficiary now has a stepmother, he cannot be considered to have a surviving parent.

Moreover, even if it were established that the birthfather is the beneficiary's surviving parent, as that term is defined in the regulation, the beneficiary would still not meet the definition of an orphan under that standard, as the record does not demonstrate that the beneficiary's father is incapable of providing proper care to the beneficiary, consistent with local standards in Pakistan. As noted previously, the phrase "incapable of providing proper care" is specifically defined at 8 C.F.R. § 204.3(b) as "mean[ing] 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.” First, the petitioner has submitted no evidence whatsoever regarding local standards in Pakistan. Second, the birthfather’s mere declaration that he wishes to release the beneficiary for adoption due to unspecified “professional commitments” and “family problems” does not demonstrate that he is incapable of providing proper care to the beneficiary.

Accordingly, the beneficiary does not meet the definition of an orphan as the child whose sole or surviving parent is incapable of providing proper care.

### *Conclusion*

As set forth in the previous discussion, 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 and the director properly denied the petition. The petitioner has not overcome the grounds for denial on appeal.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 and the appeal will be dismissed.

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