



U.S. Citizenship
and Immigration
Services



F₁

DATE: **DEC 18 2012** OFFICE: NEW DELHI, INDIA

FILE:

IN RE: Petitioner:
 Beneficiary:



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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The New Delhi, India Field Office Director (the director) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

Applicable Law

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), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf . . . 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[.]

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.

* * *

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.

Facts and Procedural History

The AAO previously issued a Notice of Derogatory Evidence (NDE) to the petitioner on June 14, 2012, which contained the pertinent facts, procedural history and the derogatory evidence in the record. The AAO afforded the petitioner a period of twelve weeks to respond to the NDE, or until September 6, 2012. As of this date, the petitioner has not responded and we, therefore, issue a decision based upon the record as it presently stands. 8 C.F.R. § 103.2(b)(13)(i).

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review of the relevant evidence fails to demonstrate that the beneficiary is eligible for the requested visa classification.

Section 101(b)(1)(F)(i) of the Act states, in part, that a child may be deemed an orphan “because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents[.]” Each of these terms are defined at 8 C.F.R. § 204.3(b) and were set forth earlier in this decision. As determined in the NDE, the beneficiary’s parents are alive and their whereabouts are known, which means that the petitioner cannot establish that the beneficiary is an orphan due to the death of disappearance of her biological parents. The evidence also does not demonstrate that the beneficiary was lost or separated from her biological parents because she was not permanently and involuntarily

severed or detached from them. Accordingly, the beneficiary can only be classified as an orphan if the petitioner can demonstrate that she was abandoned or deserted by her biological parents.

The NDE notified the petitioner of the biological parents' statements regarding an individual named [REDACTED] who was involved in the petitioner's ability to secure guardianship over the beneficiary. The NDE also notified the petitioner that the biological parents stated: (1) that they gave the beneficiary directly to the petitioner; (2) their willingness to care for the beneficiary should she be unable to go with the petitioner; and (3) their continued involvement in the beneficiary's life. Overall, the evidence fails to demonstrate that the beneficiary was abandoned or deserted by both parents because the biological parents have continued to exhibit an ongoing interest in the beneficiary's life, and did not willfully forsake or refuse to carry out their parental rights over the beneficiary but instead sought to transfer their parental rights only to the petitioner for a specific adoption. Accordingly, the beneficiary's biological parents did not desert or abandon her as those terms are defined in the regulation at 8 C.F.R. § 204.3(b). Consequently, the beneficiary does not meet the orphan definition at section 101(b)(1)(F)(i) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met that burden and the appeal will be dismissed.

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