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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: OFFICE: ATLANTA, GEORGIA

FILE:

JAN 18 2012

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 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 \$630. 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 Atlanta, Georgia field office 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 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. . . .

* * *

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*.

* * *

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.

Factual and Procedural History

The petitioner is a 55-year-old native of Liberia who adopted the beneficiary, his nephew, in July 2006 in Liberia after the death of the beneficiary's biological father in June 2006. The petitioner filed the Form I-600 in August 2006, seeking to classify the beneficiary as an orphan due to the biological mother's alleged inability to provide proper care to the beneficiary. In denying the petition, the director noted that the assertions by the petitioner, the home study preparer, and the adoption authorities in Liberia that the biological mother's whereabouts were unknown were belied by the biological mother's declaration, dated July 5, 2006, in which she declared that she was living in Conyers, Georgia. The director accordingly concluded that the petitioner failed to establish that the biological mother was unable to provide proper care to the beneficiary consistent with the local standards in Liberia.

On appeal, counsel states that the beneficiary was clearly abandoned by his biological mother prior to the biological father's death in 2006, which left the beneficiary an orphan upon the death of his father. According to counsel, the biological mother has not been supporting the beneficiary for many years, has not taken any steps to be a part of the beneficiary's life, and has not supported the beneficiary financially. The petitioner submits a declaration on appeal in which he states that the beneficiary has not seen his biological mother since she left the family in either 2001 or 2002 and that it was only when he received a phone call from the biological mother after the biological father's death did he become aware that she was living in Conyers, Georgia. The petitioner submits copies of the beneficiary's July 2006 adoption proceeding from Liberia.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan.

On appeal, counsel asserts that the beneficiary is an orphan due to his mother's abandonment. However, the statute and regulation provide for orphan classification due to abandonment only where the child has been abandoned by *both* parents, which is not the situation in this case. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i); 8 C.F.R. § 204.3(b) (defining "abandonment by both parents"). The record contains evidence of the biological father's death in 2006, the event which caused the biological mother to be considered a *surviving parent* under the definition at 8 C.F.R. § 204.3(b). Thus, whether the beneficiary is an orphan remains dependent upon a demonstration that the biological mother is incapable of providing proper care to the beneficiary consistent with the local standards in Liberia.

Counsel and the petitioner imply that the biological mother is incapable of providing proper care to the beneficiary because she abandoned him in 2001/2002 and has had no contact with the beneficiary since that time. However, to demonstrate that the biological mother is incapable of providing proper care the petitioner must establish that the biological mother "is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country." Here, no such demonstration has been made.

In her affidavit, dated July 5, 2006, the biological mother acknowledges her maternity of the beneficiary and consents to the beneficiary's adoption by the petitioner, but does not state or otherwise suggest that she is unable to provide for the beneficiary's basic needs; she also does not assert, as contended by the petitioner, that she abandoned the beneficiary many years ago. Her affidavit, therefore, is not probative evidence of her inability to properly care for the beneficiary. The documents relating to the beneficiary's adoption in Liberia contain information regarding the biological mother's younger brother's claims that the biological mother abandoned her family in 2001/2002, but the court made no independent finding of the brother's claims. The court granted the adoption, in part, on the biological mother's consent to the adoption in light of the biological father's death. The court did not make a finding that the adoption of the beneficiary was in the child's best interest because his biological mother was unable to provide for his basic needs.

Conclusion

The record lacks sufficient supporting documentation to establish that the biological mother is incapable of providing proper care to the beneficiary consistent with the local standards of Liberia. Accordingly, the present record does not establish that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act, and the appeal will be dismissed. As always, the burden of proving eligibility for the benefit sought rests solely 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 remains denied.