

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

F₁

[Redacted]

DATE: **SEP 12 2012** Office: NEW DELHI, INDIA File: [Redacted]

IN RE: Petitioner: [Redacted]
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:

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,

Perry Rhew
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). The matter is now before the Administration 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) of the Act, 8 U.S.C. § 1101(b)(1)(F), which defines an orphan, in pertinent part, as:

- (i) 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, and 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 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 petitioner is a 50-year-old U.S. citizen who was appointed guardian of the beneficiary pursuant to an order of guardianship issued by the Court of the Family Judge South at Karachi, Pakistan on July 26, 2011. The petitioner filed the Form I-600 with the U.S. Consulate in Islamabad, Pakistan on June 9, 2011, seeking to classify the beneficiary as an orphan. Consular personnel determined that the Form I-600 was not clearly approvable and forwarded it to the director for adjudication in accordance with the regulation at 8 C.F.R. § 204.3(h)(11). On January 13, 2012, the director issued a Notice of Intent to Deny (NOID) the petition because the U.S. consular investigation revealed that the beneficiary did not originate from The Health Oriented Preventative Education (“HOPE”) Center as alleged in the petition and as referenced in the supporting documentation and further that the record failed to demonstrate that HOPE is authorized or qualified under the child welfare laws of Pakistan to provide custodial care in anticipation of, or preparation for, an adoption. The petitioner responded to the NOID, in part, with his affidavit, an affidavit signed by [REDACTED] the petitioner’s lawyer in Karachi, Pakistan, and previously submitted documentation. After considering the evidence in the record, the director denied the petition because the beneficiary was not an orphan as described at section 101(b)(1)(F)(i) of the Act.

On appeal, counsel contends that the beneficiary meets the definition of an orphan as an abandoned child, as that term is defined at 8 C.F.R. § 204.3(b), because he was left with HOPE and his parents made no claim to him. Counsel asserts that the family court documents previously submitted demonstrate that HOPE is a “competent authority” and that the beneficiary was abandoned and that ties between the beneficiary and his biological parents were severed.

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 to be classified as an orphan.

In an October 9, 2010 letter on [REDACTED] letterhead, [REDACTED] HOPE, states that the beneficiary was “left abandoned at the [REDACTED] Branches, situated in [REDACTED] on 8th October 2010 whose background is not known.” [REDACTED] states further that the child was placed in the interim custody of the petitioner and his wife through their relatives.¹ In a November 9, 2010 letter on [REDACTED] letterhead, [REDACTED] re-states the information contained in the October 9, 2010 letter and adds: “We did not know the birth details of [the beneficiary] as the child in question was found at one of our branches” and that as such the child’s birth date was fixed as the “collection date.” In a third letter signed by [REDACTED] dated December 9, 2010, [REDACTED] repeats her previous statements and adds that the petitioner and his wife have given the child a name, the child is residing with them, and that no one has come to claim him. The record includes a copy of the beneficiary’s purported birth certificate identifying his father and mother as the petitioner and his wife and the beneficiary’s date of birth as October 8, 2010, along with the beneficiary’s district of birth as [REDACTED]

In the order of guardianship issued by the Court of the [REDACTED] on July 26, 2011, the respondents were identified as [REDACTED] and the public at large. The judge indicated that notice of the proposed guardianship had been published in the [REDACTED] on May 18, 2011. The record includes a translation of a notice placed in the [REDACTED] on May 18, 2011 informing all relatives and interested persons that the petitioner and his wife had filed an application to be appointed the beneficiary’s guardian. The notice identified the beneficiary only by the name given to him by the petitioner and his wife; no notice was given of the beneficiary’s date of birth or location of the alleged abandonment.

The record contains no evidence that [REDACTED] is a governmental agency, a court of competent jurisdiction, an adoption agency, an orphanage, or a competent authority, as that term is defined at 8 C.F.R. § 204.3(b).² Although counsel states on appeal that [REDACTED] is a considered a competent authority, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, the circumstances surrounding the beneficiary’s abandonment have not been sufficiently explained. The October 9, 2010, November 9, 2010, and December 9, 2010 letters signed by [REDACTED] do not provide any probative details regarding how [REDACTED] became involved in the beneficiary’s case, such as where the beneficiary was abandoned and the steps that the organization took, if any, to contact law enforcement authorities or governmental

¹ The record includes May 14, 2011 affidavits signed by the petitioner’s brother and sister-in-law acknowledging their care of the beneficiary until the petitioner and his wife arrived in Pakistan on April 8, 2011.

² On its website, [REDACTED] describes itself as:

[A]n NGO providing services of health and education for the poor and needy in Pakistan. The major activities of [REDACTED] includes provision of health care through hospitals and maternal and child health centers. In addition education for children is provided through formal and informal schools. Vocational centers provide computers and vocational training for youth.

social welfare agencies about the beneficiary and the identities of his biological parents. In addition, [REDACTED] does not explain how the beneficiary came to be placed in the petitioner's "interim custody" through the petitioner's brother only one day after the beneficiary was allegedly abandoned. Consequently, [REDACTED] letters do not constitute probative evidence that the beneficiary was abandoned or deserted by his biological parents, that his parents disappeared from his life, or that he was separated from his parents as those terms are defined at 8 C.F.R. § 204.3(b).

Similarly, the record does not demonstrate that the Court of the [REDACTED] Pakistan is a competent authority in guardianship or adoption matters under the laws of Pakistan. When the petitioner relies on foreign law to establish eligibility for the beneficiary, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). In this matter, the record does not demonstrate that the court had jurisdiction and authority to make decisions over the beneficiary's guardianship, or that the court ever assumed legal guardianship of the beneficiary. To the contrary, according to the petitioner's affidavit as well as the affidavits of others who submitted testimony on his behalf, the beneficiary had been living with the petitioner's relatives in Pakistan since the day after his alleged abandonment and had never been in the legal or physical custody of the court or any other governmental entity in Pakistan.

Conclusion

The record lacks sufficient evidence to establish that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act. 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has not been met.

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