



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 08 2013**

OFFICE: NATIONAL BENEFITS CENTER

FILE: [Redacted]

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:

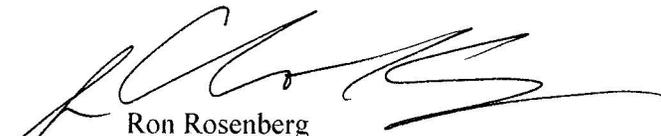
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center (the director), after proper notice, revoked approval of the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600) and dismissed a subsequent motion to reopen and to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, that:

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.

Section 205 of the Act, 8 U.S.C. §1155, provides that:

The Secretary of Homeland Security may, at any time, for what [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by h[er] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

Facts and Procedural History

The petitioner is a 68 year old married, U.S. citizen who adopted the beneficiary in Guyana in April 2011. She seeks to classify the beneficiary as an orphan, as set forth in section 101(b)(1)(F)(i) of the Act. The Form I-600 was initially approved in July 2011. On September 12, 2012, the director issued a Notice of Intent to Revoke (NOIR) approval based on field investigation findings that the beneficiary's biological father was capable of providing proper care to the beneficiary consistent with local standards in Guyana. Approval of the Form I-600 was revoked on October 18, 2012, based on the determination that the petitioner failed to overcome the reasons for revocation. The petitioner's motion to reopen and reconsider was also dismissed by the director on January 30, 2013, on the basis that the evidence submitted failed to overcome the Form I-600 revocation grounds.

On appeal of the motion the petitioner contends, through counsel, that although the beneficiary's biological father earned about US\$200.00 a month working as a taxi driver, he was unable to provide for the beneficiary's basic needs on his salary. Counsel asserts that new evidence establishes that the beneficiary's biological father is now unemployed and thus has a "significantly reduced income." Counsel additionally asserts that due to the biological father's inability to provide for her, the beneficiary has lived with her paternal grandmother since she was a baby; that the beneficiary's grandmother died of cancer the day before the appeal was prepared; and that the beneficiary no longer has anyone to care for her in Guyana. In support of the assertions, counsel submits letters from the beneficiary's biological father and his former employer, as well as letters from the beneficiary's paternal grandmother and from their Reverend. Counsel also submits adoption report information, financial evidence, and articles discussing country conditions in Guyana. In addition, the record contains a death certificate reflecting that the beneficiary's biological mother [REDACTED] died on June 16, 1998. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

To establish that the beneficiary's biological father is incapable of providing proper care to the beneficiary consistent with the local standards in Guyana, the record contains an October 29, 2012 letter from the beneficiary's biological father stating that he is employed as a taxi driver; he earns "about \$20,000 Guyana dollars per fort night;" he must pay his rent, utilities, groceries and other bills and he cannot meet his expenses; and he "cannot provide adequately" for the beneficiary. The beneficiary's biological father states, in pertinent part, in a December 25, 2010 letter that he is giving the beneficiary up for adoption because, although he gets work "now and then," he does not have a

permanent job, and he must rely on his retired parents to help him care for the beneficiary and her brother. In a letter dated February 20, 2013, the beneficiary's biological father states that he is currently unemployed because the vehicle he drives is "out of service and needs extensive repairs, which the owner cannot afford." He states that finding work is difficult because he has no technical skills; he and his wife "are struggling to exist" and depend on his wife's earnings from selling snacks at their home; his wife's earnings are not reliable and are only about \$10,000 Guyana dollars a month; and they must rely on relatives to meet their monthly expenses.

A June 22, 2011 letter from Reverend [REDACTED] states that the beneficiary's biological father earns 20,000 Guyana dollars as a self-employed taxi driver, that his salary is "insufficient to live on," that due to his financial situation the beneficiary's biological father cannot take care of his children, and that the beneficiary's biological father relies on his mother to care for his children.

[REDACTED] states in an October 29, 2012 letter that he employs the beneficiary's biological father as a driver; that he does not pay him a salary; and that the beneficiary's biological father pays him \$3,500.00 Guyana dollars per day, and keeps whatever earnings he makes after that. [REDACTED] states in a February 20, 2013 letter that he no longer employs the beneficiary's biological father as a driver because the "vehicle he operated is no longer in service" and he is unable to afford the repairs that are needed.

The beneficiary's paternal grandmother [REDACTED] states in a letter dated September 28, 2012, that the beneficiary has lived with her since she was four months old because the biological father is unable to find regular work. She states that the biological father "does not earn enough to support [the beneficiary], because of the high cost of living in Guyana." She states further that she depends on the petitioner for support in caring for the beneficiary, that the home she owns is shared by eight people, and that her daughter and husband live downstairs and own everything in the home. In a letter dated, October 29, 2012, the beneficiary's paternal grandmother states that the beneficiary's biological father "never had a close relationship with his children" and "never came back home to live and have a proper relationship with [his] children." She states that the beneficiary is at school whenever her biological father visits, and "there is no bonding" between the beneficiary and her biological father. She states further that her own "health is not the best for the past 5 months" and that she can no longer "cope with the everyday needs" of the beneficiary.

[REDACTED] states in a letter dated September 29, 2012, that she has been the biological father's wife for over 10 years; that the beneficiary's biological father has two children, the beneficiary and her brother; and that she has "not adopted or obtained legal custody" over the beneficiary or her brother.

A Guardian Ad Litem Report for the Adoption Board in Guyana reflects that the beneficiary was about four months old when her biological mother died. The beneficiary's biological father "has since established another relationship and resides with his wife in another section of the Town of New Amsterdam. However, he maintains regular contact with his daughter [the beneficiary] who has been residing with his mother, [REDACTED] ... since the death of her mother." The report states that the beneficiary "sees her relationship with her [biological] father as a good one." In addition, the report reflects that the beneficiary's biological father completed high school in Guyana, and that he "went on

to learn the trade of Tailoring, which he practiced for approximately four years.” He also worked as a sailor in Guyana, and he was employed with shipping companies for about 10 years before becoming a self-employed taxi driver. The report recommends adoption of the beneficiary, in pertinent part, because the beneficiary’s biological “mother is deceased and her father has established another family,” and because the beneficiary resides with her grandmother, the petitioners have contributed to the beneficiary’s welfare since birth, and the petitioners can offer the beneficiary “a better life and a more supportive environment, conducive to the [beneficiary’s] growth and development.”

The record also contains financial evidence reflecting that the petitioners sent \$110.00 to the beneficiary’s paternal grandmother in February 2012; \$350.00 in August 2012; and \$250.00 in October 2012. General country conditions articles discuss methods used to determine poverty, and social, economic, and geographic statistics in Guyana.

Upon review of the entire record, the AAO finds that the petitioner has failed to establish that the beneficiary’s biological father is incapable of providing for the beneficiary’s basic needs, consistent with local standards in Guyana, as set forth in 8 C.F.R. § 204.3(b). In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant’s knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-, 20 I&N Dec. 77 (Comm. 1989)*. In the present matter, the affidavits contained in the record have diminished evidentiary weight. There are material inconsistencies between statements made by the beneficiary’s paternal grandmother and statements contained in the Guardian Ad Litem Report, with regard to the relationship between the beneficiary and her biological father. The beneficiary’s paternal grandmother indicates that the biological father failed to provide emotional and psychological support to the beneficiary by stating that the biological father never visited or had a close relationship with the beneficiary. The Guardian Ad Litem Report reflects, on the other hand, that the beneficiary’s biological father has regular contact with the beneficiary, and that the beneficiary “sees her relationship with her [biological] father as a good one.” Furthermore, the Guardian Ad Litem Report recommendations for adoption are general; contain no indication that the office independently investigated or reviewed evidence of the biological father’s income and earning capacity in Guyana; and do not reflect a determination that the beneficiary’s biological father is unable to provide proper care to the beneficiary consistent with local standards in Guyana. The record also lacks evidence to support the affiants’ claims made with regard to the biological father’s income and expenses. For example, the record contains no evidence that the biological father would be unable to obtain another vehicle in order to continue his work as a taxi driver. Evidence reflects further that the beneficiary’s biological father could work in another field, as he has completed high school in Guyana, has trained and worked as a tailor in Guyana, and has work experience as a sailor and in shipping.

The record reflects further that the beneficiary’s biological father remarried over 10 years ago. The regulation provides at 8 C.F.R. § 204.3(b) that in order to qualify as a *surviving parent* for immigration purposes, the beneficiary cannot have acquired another parent within the meaning of section 101(b)(2) of the Act. The director determined that the biological father’s second wife had no legal rights to custody of the beneficiary as her stepchild under Guyanese law. However, under the Act, she became the beneficiary’s parent upon her marriage to the biological father. Under section 101(b)(1)(B) of the

Act, a parent-child relationship exists where the stepchild was not yet 18 at the time of the marriage creating the stepparent relationship. In the present matter, the evidence in the record reflects that the beneficiary's biological father remarried prior to the applicant's 18th birthday, and that his new wife became a stepparent to the beneficiary, such that the biological father does not qualify as a *surviving parent* under 8 C.F.R. § 204.3(b).

Moreover, the petitioner failed to establish that the beneficiary qualifies as an orphan due to *abandonment by both parents*. The record reflects that the biological father's written release of parental rights was for specific adoption by the petitioner, and the record lacks evidence that the beneficiary's biological father and her stepmother "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)," as required by 8 C.F.R. § 204.3(b).

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. *See also, Matter of Otiende*, 26 I. & N. Dec. 127, 128 (BIA 2013). In the present matter, the petitioner has failed to establish that the beneficiary meets the definition of an "orphan," as defined at section 101(b)(1)(F)(i) of the Act.

Conclusion

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed. Approval of the Form I-600 will remain revoked.

ORDER: The appeal is dismissed. Approval of the petition will remain revoked.