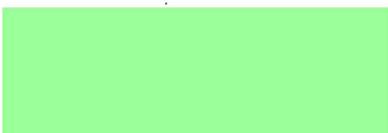
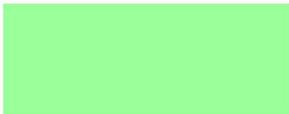


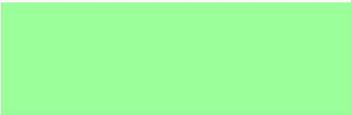


U.S. Citizenship
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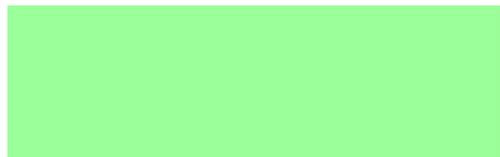


DATE: **AUG 22 2013** Office: NATIONAL BENEFITS CENTER File: 

IN RE: Petitioner: 
Beneficiary:

PETITION: Petition to Classify Convention Adoptee as an Immediate Relative Pursuant to Section 101(b)(1)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(G)

ON BEHALF OF PETITIONER:

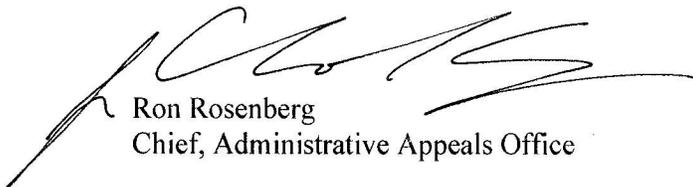


INSTRUCTIONS:

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
Chief, Administrative Appeals Office

DISCUSSION: The National Benefits Center Director (the director) denied the Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks classification of the beneficiary as an immediate relative pursuant to section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(G). The director denied the petition because both of the beneficiary's parents are living and the record does not establish that the parents are incapable of providing care for the child. On appeal, counsel submits a brief and additional documentation.

Applicable Law

For the purpose of classifying an intending Convention adoptee as a "child," so that the child may be subsequently classified as an immediate relative for the purpose of emigrating to the United States, section 101(b)(1)(G) of the Act provides, in pertinent part, the following definition:

(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at the Hague¹. . . or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, Provided, That –

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child; [and]

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under

¹ See *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (May 29, 1993). The United States signed the Hague Convention on March 31, 1994 and ratified it on December 12, 2007, with an effective date of April 1, 2008.

this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents)[.]

The regulation at 8 C.F.R. § 204.301 states, in pertinent part, the following:

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

Facts and Procedural History

The petitioner is a citizen of the United States. The beneficiary was born in Belize on October 25, 2002. The petitioner filed the instant Form I-800 on November 6, 2012, and on December 7, 2012, the director issued a Request for Evidence (RFE) concerning the biological parents' claimed inability to provide proper care to the beneficiary. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found failed to establish that the biological parents were incapable of providing proper care to the beneficiary. The director denied the petition accordingly, additionally finding that the beneficiary had not been abandoned. On appeal, counsel submits a brief, letters from the petitioner's family and friends, and an addendum to the Social Inquiry Report prepared by a social worker from the Department of Human Services (DHS), which is the Central Adoption Authority in Belize.

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 a child under section 101(b)(1)(G) of the Act.

Preliminarily, we withdraw the director's reference to and discussion of the term "abandonment" at 8 C.F.R. § 204.301 in his denial decision. A determination of whether a child has been abandoned is relevant when a child has a sole or surviving parent. *See* section 101(b)(1)(G)(i)(II) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(II). As the beneficiary in this matter has two living biological parents, the petitioner must only establish that such parents are incapable of providing proper care for the beneficiary. *See* section 101(b)(1)(G)(i)(III) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(III). Accordingly, the petitioner must demonstrate that the beneficiary's biological parents are not able to provide for his basic needs, consistent with the local standards of Belize. *See* 8 C.F.R. § 204.301 (definition of *Incapable of providing proper care*). Factors considered by USCIS include, but are not limited to, economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration of the biological parent(s). *Id.*

According to the record, the beneficiary's biological parents are divorced, living in Belize, and are in relationships with other individuals with whom they have other children. The record contains two reports from the DHS in Belize dated September 19, 2012; March 6, 2013; as well as an addendum submitted on appeal dated June 24, 2013. In all of the reports the biological father is identified as a welding supervisor whose common-law wife is a secretary. The biological mother is listed as being employed as a bartender, and in her December 21, 2012 statement, she noted that she is also a seasonal worker for a cruise line.

In the September 19, 2012 report, the social worker states that the beneficiary has been living with his guardian-ad-litem, A-A-², who stated that since the beneficiary was placed in her care in September 2011 the biological mother visited the beneficiary three times, but "the father still does his best to come and take him every afternoon for lunch." A-A- reported to the social worker that the biological father "appears to be very attentive and showers the child with love."

The social worker reported the biological mother's statement that she, the biological father and the petitioner "played an integral role in the [beneficiary's] life," and that she supports the adoption so that the beneficiary would have better opportunities. The biological father reported to the social worker that the petitioner "has also reassured him that he will still be able to have contact with the [beneficiary] after completion of the adoption," and that he wants the beneficiary to be happy.

The March 6, 2013 social worker report repeats much of the same information from the September report, but in contrast to her prior statements, the biological mother claimed in a February 27, 2013 interview with the social worker that "she has not parent[ed] [the beneficiary] for over six years."

In the June 24, 2013 addendum submitted on appeal, the social worker concludes, in part, that: the biological parents' salary is insufficient for them to adequately provide for the beneficiary; the biological father has no interest in parenting the beneficiary; and the biological mother has no attachment to the beneficiary or a desire to form one. However, the social worker fails to provide any evidence that the income of the biological parents is below the poverty level or otherwise renders them financially unable, rather than unwilling, to provide for the beneficiary's basic needs. Similarly, there is no assessment of the biological parents' emotional or psychological fitness to parent the beneficiary, and her conclusions are inconsistent with the prior reports concerning the biological parents' interest in the beneficiary's life.

The record contains no evidence that the biological parents are incapable of providing proper care to the beneficiary because of extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration of either party. The social worker reports also fail to adequately document any economic or financial hardship of the biological parents that render them incapable of providing for the beneficiary's basic needs. Overall, the evidence is deficient in establishing that the biological parents are incapable of providing proper care to the beneficiary consistent with the local standards in Belize.

² Name withheld to protect identity.

Beyond the director's decision, the evidence fails to demonstrate that the purpose of the adoption is to form a bona fide parent-child relationship between the petitioner and the beneficiary, as required by section 101(b)(1)(G)(i)(IV) of the Act. The biological father reported to the social worker that the petitioner has "reassured him that he will still be able to have contact with the [beneficiary] after completion of the adoption." In her December 21, 2012 statement, the biological mother provided: "[The beneficiary] knows who his parents are. We will live with him always, in his hearts and when he comes to visit Belize City." These statements suggest that the purpose of this particular adoption is not to sever the parental relationship between the biological parents and the beneficiary because they are incapable of providing care to him and to create a new parent-child relationship with the petitioner.

Conclusion

The beneficiary has two living natural parents, and the record does not demonstrate that they are incapable of providing him proper care. Accordingly, the petitioner has not sustained his burden of establishing that the beneficiary may be classified as a child at section 101(b)(1)(G) of the Act. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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