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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

DATE: **DEC 09 2013** OFFICE: NATIONAL BENEFITS CENTER 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)

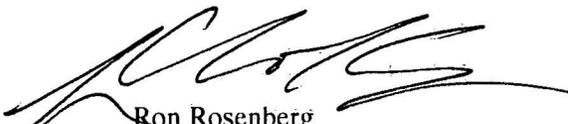
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Director of the National Benefits Center (“the director”) initially approved the Petition to Classify Orphan as an Immediate Relative (Form I-600) but ultimately revoked the approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

Applicable Law

Regarding the revocation of approved visa petitions, section 205 of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1155, states, in pertinent part:

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

The regulation at 8 C.F.R. § 205.2 governs the procedures for revoking approved visa petitions on notice, and states, in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The beneficiary of the instant petition is the natural sibling of a child with a Form I-600 petition filed on her behalf by the petitioner in the instant matter. Section 101(b)(1)(F) defines the term “orphan,” in pertinent part, as:

(i) 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

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . ; (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause . . . and (III) is otherwise described in clause (i), except that the child

is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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.

Facts and Procedural History

The petitioner is a 46-year-old married U.S. citizen. She and her husband obtained guardianship over the 19-year-old beneficiary and her 10-year-old sister, both natives of Pakistan, on November 16, 2011.¹ The petitioner submitted Form I-600 petitions to U.S. Citizenship and Immigration Services (USCIS), on behalf of the beneficiary and her sister, on November 29, 2011 along with the death certificate of the beneficiary's biological mother. The petitioner, who is the beneficiary's maternal aunt, seeks to classify the beneficiary as the child of a surviving parent (the biological father) who is incapable of providing proper care to the beneficiary.

On February 7, 2012, USCIS approved the Form I-600. On November 28, 2012, the U.S. Consulate in Islamabad, Pakistan returned the approved Form I-600 to the director based upon an investigation, which determined that the beneficiary is not an orphan because her biological father is able to provide proper care to her.

The director issued a Notice of Intent to Revoke (NOIR) approval of the petition on March 20, 2013, notifying the petitioner that based upon the findings of the investigation, the record did not demonstrate that the beneficiary's biological father ("beneficiary's father") is incapable of providing proper care to the beneficiary. The petitioner responded to the NOIR with additional evidence, which the director determined insufficient to overcome the reasons for the intended revocation. On June 5, 2013, the director determined that the record failed to demonstrate that the beneficiary's father is incapable of providing proper care to the beneficiary, and revoked the approval of the petition. Counsel timely appealed the revocation.

¹ Since there is no central government adoption authority in Pakistan, guardianship proceedings are filed in family courts. See *Intercountry Adoption, Pakistan*, U.S. Department of State, http://adoption.state.gov/country_information/country_specific_info.php?country-select=pakistan (last visited November 27, 2013).

On appeal, counsel submits a brief. 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. The appeal will be dismissed for the following reasons.

Analysis

The director correctly determined that the record does not demonstrate that the beneficiary's father is incapable of providing proper care to the beneficiary, consistent with the local standards in Pakistan. The record shows that a fraud analyst from the U.S. Consulate in Islamabad, Pakistan visited the beneficiary's father at his home and interviewed him. During the interview, the beneficiary's father stated that the beneficiary is attending grammar school and his older daughter is attending college. The analyst contacted the beneficiary's father's employer and learned that he is employed as a teacher with a grammar school in Karachi, earning a monthly salary of PKR 60,172 (Pakistani rupees) or \$633.00 (U.S. dollars). The analyst viewed the beneficiary's father's home and found that the beneficiary and her sister are residing in an apartment with three bedrooms, each with an attached bathroom, a kitchen and a family room. The analyst observed that the apartment has a computer and television. The analyst opined that the apartment is spacious and in good condition in a wealthy area of Karachi. The analyst's findings indicated that the beneficiary's father is capable of providing the beneficiary with proper care. The Consulate's investigation provided the director with good and sufficient cause to issue a notice of intent to revoke approval of the orphan petition.

In an affidavit dated April 10, 2013, the beneficiary's father stated that he resides in a "middle income area" of Karachi in an apartment that is not in good condition. He asserted that after his wife died and he lost her income, he has not been able to keep up with the rent payments on the apartment. He explained that he would not be able to save a significant amount of money if he moved to a smaller apartment. He provided documentation of his earnings and expenses and stated that his income does not meet his expenses and he relies on financial assistance from his family members and friends. However, the beneficiary's father's earning statement shows that he has been given a base salary with an allowance for rent, utilities and medical expenses. The beneficiary's father provided a balance sheet, in which he showed that he has a monthly shortage of approximately \$135.00 and carries \$2,216.26 in credit card debt. The expenses on the balance sheet include non-essential services such as cable television, cellular telephone, internet service, and school tutoring for the beneficiary and her sister. The regulation at 8 C.F.R. § 204.3(b) states that the term "incapable of providing proper care" means that the surviving parent is unable to provide for the child's *basic needs*, consistent with the local standards of the foreign-sending country. The relevant evidence shows that the beneficiary's father is capable of meeting the beneficiary's basic needs.

The beneficiary's grandfather, [REDACTED] recounted in his May 9, 2013 affidavit that on one occasion he witnessed the beneficiary's father spank the beneficiary's sister. He stated that the beneficiary's father has left the beneficiary and her sister home alone on several occasions. Mr. [REDACTED] stated that the beneficiary and her sister have not been given proper medical care and the beneficiary's sister has not been provided with a proper lunch when she attends school. He stated that the beneficiary's father is in debt and creditors have threatened him with imprisonment, but the

beneficiary's father himself does not mention any such threats. Mr. [REDACTED] made similar allegations in his previous affidavit, dated January 16, 2012. A surviving parent's abuse and neglect of a child are taken into consideration when making a determination on the individual's capability to provide proper care. However, in this case the record lacks any evidence of the beneficiary's father's abuse or neglect, other than her grandfather's brief statements. To the contrary, the guardianship petition mentions no abuse or neglect and instead describes the beneficiary's biological father as "a responsible and caring father" who consented to the guardianship in compliance with his deceased wife's wish.

On appeal, counsel discusses the evidence submitted below and reasserts that the beneficiary's father is unable to provide for the beneficiary's basic needs, consistent with the local standard of living in Pakistan. Counsel also states that the beneficiary is Roman Catholic and cites to a U.S. Department of State report and an article from Catholic World News, which describe violence and threats against Christians in Pakistan. Counsel contends that the petitioner's evidence should be considered in light of the political and security situation in Pakistan. The record, however, does not show that the beneficiary or her family members have ever been harmed or threatened in Pakistan in any manner which would render her an orphan under the definition at section 101(b)(1)(F)(i) of the Act.

The record instead reflects that the beneficiary resides with her father and sister in a three-bedroom, three-bathroom apartment in Karachi. The beneficiary attends school, receives tutoring for help with her studies, and her home has a computer, internet service and cable television. The beneficiary's father has been gainfully employed in a permanent teaching position since August 2000 with a grammar school in Karachi. Although the record contains a physician's letter, which stated that the beneficiary's father has hypertension and is on medication, there is no evidence that this medical condition has affected his ability to properly care for the beneficiary. The record therefore shows that the beneficiary's father is capable of providing for the beneficiary's basic needs. Accordingly, the petitioner has not established that the beneficiary has a surviving parent who is incapable of providing her with proper care, as the term is defined at 8 C.F.R. § 204.3(b). This deficiency provided the director with good and sufficient cause to revoke approval of the orphan petition.

Conclusion

As set forth in the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an "orphan," as that term is defined at section 101(b)(1)(F)(i) of the Act. Consequently, the appeal will be dismissed and approval of the petition will remain revoked.

In visa petition 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.