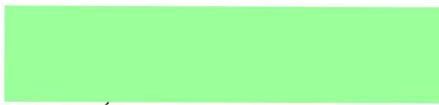
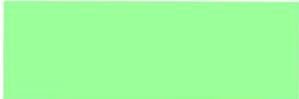


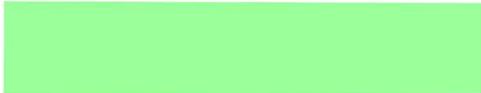
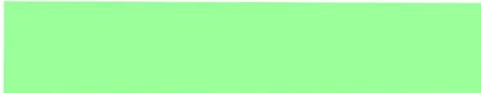


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 11 2014 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:

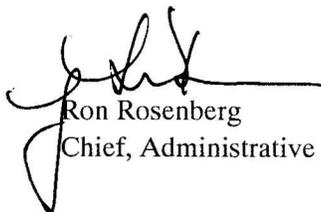
SELF-REPRESENTED

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, National Benefits Center, (“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, the petitioner 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;

(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:

Abandonment means: (1) That a child's parent has willfully forsaken all parental rights, obligations, and claims to the child, as well as all custody of the child without intending to transfer, or without transferring, these rights to any specific individual(s) or entity. . . .

* * *

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State. Except as specified in this Part, "Central Authority" also means, solely for purposes of this Part, an individual who or entity that is performing a Central Authority function, having been authorized to do so by the designated Central Authority, in accordance with the Convention and the law of the Central Authority's country.

Competent authority means a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Deserted or desertion means that a child's parent has willfully forsaken the child and has refused to carry out 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 Convention country.

Disappeared or Disappearance means that a child's parent has unaccountably or inexplicably passed out of the child's life so that the parent's whereabouts are unknown, there is no reasonable expectation of the parent's reappearance, and there has been a reasonable effort to locate the parent as determined by a competent authority in accordance with the laws of the Convention country. A stepparent who under the definition of "Parent" in this section is deemed to be a child's legal parent, may be found to have disappeared if it is established that the stepparent either never knew of the child's existence, or never knew of their legal relationship to the child.

* * *

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.

* * *

Parent means any person who is related to a child as described in section 101(b)(1)(A), (B), (C), (D), (E), (F), or (G) and section 101(b)(2) of the Act, except that a stepparent described in section 101(b)(1)(B) of the Act is not considered a child's parent, solely for purposes of classification of the child as a Convention adoptee, if the petitioner establishes that, under the law of the Convention country, there is no legal parent-child relationship between a stepparent and stepchild. This definition includes a stepparent if the stepparent adopted the child, or if the stepparent, under the law of the Convention country, became the child's legal parent by marrying the other legal parent. A stepparent who is a legal parent may consent to the child's adoption, or may be found to have abandoned or deserted the child, or to have disappeared from the child's life, in the same manner as would apply to any other legal parent.

* * *

Sole parent means: (1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life; or (2) The child's father, when the competent authority has determined that the child's mother has abandoned or deserted the child, or has disappeared from the child's life; except that (3) A child's parent is not a sole parent if the child has acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

Facts and Procedural History

The petitioner is a 65-year-old married U.S. citizen. The beneficiary was born in Thailand on January 22, 1999 and is the petitioner's niece. The petitioner filed the instant Form I-800 on April 2, 2013. On April 12, 2013, the director issued a Request for Evidence (RFE) to the petitioner for: a Form I-864, Affidavit of Support, or Form I-864W, Intending Immigrant's Affidavit of Support Exemption; an irrevocable consent from the beneficiary's legal custodians; and proof that the beneficiary's birth parents are incapable of providing proper care for the beneficiary. The petitioner responded to the RFE with additional documentation, which the director found insufficient to establish eligibility. On May 21, 2013, the director denied the petition with a determination, in principal part, that the petitioner had not established that the beneficiary's birth parents are incapable of providing proper care to the beneficiary. The director concluded that the beneficiary did not meet the definition of a child at section 101(b)(1)(G) of the Act. The petitioner timely appealed.

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.

On the Form I-800, the petitioner indicated that the beneficiary's legal custodian is her sole birth parent, because a competent authority has determined that the beneficiary's other birth parent has

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abandoned or deserted the beneficiary, or has disappeared from the beneficiary's life, and the beneficiary has not acquired another parent.

The petitioner submitted below the original and translated "Child Study Report" conducted by an officer with the Child Adoption Center under the Child Department of Social Development and Welfare (DSDW), Thailand's adoption authority.² The report, dated August 28, 2012, provided that the beneficiary's birth parents separated immediately after the beneficiary's birth and their marriage terminated in a divorce on January 6, 2006. The report explained that the beneficiary's birth mother has remarried and the beneficiary's birth father has been working in Norway for the previous seven years. The report stated that the beneficiary has been residing with her grandparents since her birth parents' separation and her birth father is financially supporting her. The report provided that the beneficiary's father had "guardianship power" and agreed and consented to the beneficiary's adoption.

The petitioner provided the original and translated "Consent Letter" or irrevocable consent from the beneficiary's birth father. The document stated that the beneficiary's birth father is "the person having the power giving consent for child adoption according to law in a capacity as father." In the document, the beneficiary's birth father consented to the petitioner's adoption of the beneficiary and the termination of his parental relationship with the beneficiary before DSDW officers on September 21, 2012.

The petitioner also provided a letter from [REDACTED] Director-General of the DSDW, in which [REDACTED] stated that he certified that the beneficiary's birth parents divorced by mutual consent and parental power over the beneficiary was granted to the beneficiary's birth father. [REDACTED] explained that the beneficiary's birth father consented in writing at the Child Adoption Center to the relinquishment of the beneficiary for adoption by the petitioner and his wife. He stated that on January 28, 2013 the Child Adoption Board of Thailand approved the petitioner and his wife's application for adoption registration.

On appeal, the petitioner asserts that the beneficiary's birth mother abandoned the beneficiary when she was one year old and has since had no contact with her. He contends that the beneficiary's birth mother gave her parental rights to the beneficiary's birth father. The petitioner maintains that the beneficiary's birth father had sole custody of the beneficiary and the right to give consent to the adoption. The petitioner provides a certified translation of the beneficiary's birth parents' divorce registration, which provided that on January 6, 2006, the birth parents agreed to place the beneficiary in the custody of her birth father.

Although the petitioner contends that the beneficiary's birth mother abandoned the beneficiary and gave her parental rights to the beneficiary's birth father, the record does not contain any evidence that the competent authority, DSDW, found the beneficiary to be the child of a sole parent based

² *Intercountry Adoption, Thailand*, U.S. Department of State, http://adoption.state.gov/country_information/country_specific_info.php?country-select=thailand (last visited December 27, 2013).

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upon her birth mother's abandonment or desertion of her, or her birth mother's disappearance from her life.

As explained in the preamble to the *Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention* (Hague Rule): "A child will be deemed to be the child of a sole parent if the child has only one legal parent, based on the competent authority's determination that the other legal parent has either abandoned or deserted the child, or has disappeared from the child's life." 72 Fed. Reg. 56832-01, 56839 (Oct. 4, 2007).

The Child Study Report from DSDW provided that the beneficiary has been residing with her grandparents since her birth parents' separation and the beneficiary's father had "guardianship power" over her. [REDACTED] Director-General of DSDW, certified that the beneficiary's birth parents divorced by mutual consent and parental power over the beneficiary was granted to the beneficiary's father. These documents reflect that DSDW determined that the beneficiary's birth father had custody over the beneficiary following his divorce from the beneficiary's birth mother. However, they do not indicate that the beneficiary's birth mother disappeared, abandoned, or deserted her, as those terms are defined in 8 C.F.R. § 204.301. The term "abandonment" means that a child's parent has willfully forsaken all parental rights, obligations, and claims to the child, as well as all custody of the child without intending to transfer, or without transferring, these rights to any specific individuals. 8 C.F.R. § 204.301. The record reflects that the beneficiary's birth mother and birth father mutually agreed to the beneficiary's birth father's custody of the beneficiary. This specific transfer of custody does not constitute abandonment as that term is defined in the regulation. The term "deserted" means that a child's parent has willfully forsaken the child and has refused to carry out 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 Convention country. *Id.* The record does not show that the beneficiary is a ward of DSDW; it instead shows that she resides in her grandparents' home and is financially supported by her birth father. The term "disappeared" means that a child's parent has unaccountably or inexplicably passed out of the child's life so that the parent's whereabouts are unknown, there is no reasonable expectation of the parent's reappearance, and there has been a reasonable effort to locate the parent as determined by a competent authority in accordance with the laws of the Convention country. *Id.* The record shows that the beneficiary's birth mother's whereabouts are known as the Child Study Report provided that DSDW interviewed her and the beneficiary's father on August 28, 2012 at the beneficiary's grandparents' home in [REDACTED] province. The record fails to establish that the beneficiary is the child of a sole parent because she was abandoned or deserted by her birth mother, or that her birth mother had disappeared from her life.

In addition, the Child Study Report provided that the beneficiary's birth mother remarried soon after the beneficiary's birth. The definition of "parent" under the Convention Adoptee regulations includes a stepparent if, under the law of the Convention country, the stepparent became the child's legal parent by marrying the other legal parent. 8 C.F.R. § 204.301. As discussed, the record does not demonstrate that the beneficiary's birth mother is not the beneficiary's legal parent. Nor does the record show that the beneficiary's birth mother's remarriage did not create a legal stepparent/stepchild relationship between the beneficiary and her birth mother's current

husband under the laws of Thailand.³ The record contains no evidence to demonstrate that the beneficiary's stepparent abandoned or deserted the beneficiary, or disappeared from her life. A stepparent may be found to have disappeared if it is established that the stepparent either never knew of the child's existence, or never knew of his or her legal relationship to the child. *Id.* The record does not show that DSDW determined that the beneficiary's stepfather did not know of the beneficiary's existence. Nor does the record show that DSDW determined that the beneficiary's stepfather did not have, or never knew that he had, a legal parent-child relationship with the beneficiary. Accordingly, the record does not demonstrate that the beneficiary is the child of a sole parent.

Because the beneficiary has two living biological parents and a stepparent, the petitioner must demonstrate that they are incapable of providing proper care for her. 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 parents are not able to provide for her basic needs, consistent with the local standards of Thailand. *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 birth parent(s). *Id.*

The Child Study Report provided that the beneficiary's birth father has been employed in Norway for the previous seven years and he was earning 70,000 baht per month and sending financial support of approximately 10,000 baht per month to the beneficiary's grandparents for the care of the beneficiary. The report explained that the beneficiary's birth parents are interested in the beneficiary's adoption because they want her to continue her education in the United States and the petitioner's wife (the beneficiary's aunt) is unable to have her own child. The report also mentioned that the beneficiary's grandmother is unable to continue caring for the beneficiary because she is elderly.

On appeal, the petitioner asserts that the funds provided by the beneficiary's birth father are not solely for the care of the beneficiary, but for the entire household because it is Thai custom and culture to provide for aging parents. He states that the beneficiary's birth father does not work in Thailand and is therefore unable to provide the beneficiary with care. The petitioner submitted a letter from [REDACTED] a social worker with DSDW, which reiterated that in the Thai culture, children provide support for their parents' daily needs, including, housing, food and clothing. [REDACTED] stated that the money provided by the beneficiary's birth father is for the entire household and not just the beneficiary.

The evidence submitted below and on appeal fails to demonstrate that the beneficiary's parents are incapable of providing proper care to the beneficiary, consistent with local standards in Thailand. As discussed, the Child Study Report stated that the beneficiary's birth parents are interested in the beneficiary's adoption because they want her to continue her education in the

³ In *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973), the Board of Immigration Appeals (BIA) held that the law of a foreign country is a question of fact which must be proved by the applicant if he or she relies upon it to establish eligibility for an immigration benefit.

United States and the petitioner's wife is unable to have her own child. The report explained that the beneficiary's birth father is employed in Norway and the beneficiary's birth mother is remarried with a new family. The report reflects that DSDW interviewed the beneficiary's mother at the beneficiary's grandparents' home, but it does not discuss where the beneficiary's birth mother currently resides, her income, the income of her current spouse, and their involvement in the beneficiary's care. The petitioner has not provided evidence of how the beneficiary's birth father's income and monthly remittances to the beneficiary's grandparents compare to that of the general population in [REDACTED] province. Nor has the petitioner provided evidence that shows that if the beneficiary's birth father relocated to Thailand he would not be able to provide for the beneficiary. The petitioner has failed to present economic or financial concerns, shown extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration of the beneficiary's parent(s), or presented other similar factors to establish that the parents are unable to provide for the beneficiary's basic needs. *See* 8 C.F.R. § 204.301.

Conclusion

The record does not contain evidence that a competent authority determined that the beneficiary's birth mother had abandoned or deserted her, or disappeared from her life, or that her birth mother's remarriage did not create a stepchild/stepparent relationship between her and her birth mother's current husband, so that she could be classified as the child of a sole parent. Consequently, the beneficiary has three living parents, and the record does not demonstrate they are incapable of providing her proper care.⁴ 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 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 and the appeal will remain dismissed.

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

⁴ The record also does not contain an irrevocable consent from the beneficiary's birth mother and her stepfather to the termination of their legal relationship with the beneficiary, and to the beneficiary's emigration and adoption, as required by section 101(b)(1)(G)(i)(II) of the Act.