U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-P-B-

DATE: NOV. 24, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE RELATIVE

The Petitioner, a citizen of the United States, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (INA, or the Act) § 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director, National Benefits Center, denied the petition. We dismissed the appeal and denied a subsequent motion. The matter is now before us again on motion. The motion is denied.

I. APPLICABLE LAW

The Petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, 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 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; who has been adopted abroad by a U.S. citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

> (d) *Supporting documentation for a petition for an identified orphan* . . . An orphan petition must be accompanied by full documentation as follows:

. . . .

(1)(iii) Evidence that the child is an orphan as appropriate to the case:

. . . .

(B) The death certificate(s) of the orphan's parent(s), if applicable[.]

. . . .

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full

> and final under the laws of the foreign-sending country;
>
> (3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and
>
> (4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a 49-year-old naturalized U.S. citizen, submitted Form I-600, Petition to Classify Orphan as an Immediate Relative, to U.S. Citizenship and Immigration Services (USCIS) on August 14, 2013, and it was denied on January 14, 2014. The Director found, and we affirmed in our decision dated July 31, 2014, that the Beneficiary did not qualify for classification as an orphan. In our decision we found that the Petitioner did not submit proof of legal guardianship over the Beneficiary; provide a No Objection certificate from the Ministry of Home Affairs in Bangladesh; establish with reliable evidence that the Beneficiary's parents are deceased; and establish the Beneficiary's date of birth with reliable evidence. The Petitioner filed a motion to reopen, and we determined that the petition should remain denied. We found that the Petitioner did not establish that the adoptive parents have legal guardianship over the Beneficiary; that the adoptive parents obtained an irrevocable release and consent to the Beneficiary's adoption and emigration from her current guardian; that they have met all of the pre-adoption requirements of the State of New York; that they obtained a No Objection certificate from the Ministry of Home Affairs in Bangladesh; that the Beneficiary's parents are deceased; and that the Beneficiary's birth certificate and amended birth certificate are reliable evidence of her date of birth.

On motion, the Petitioner submits previously submitted documents and new evidence. The new evidence includes, but it not limited to, two statements from the Petitioner and her spouse, photographs, and documents related to guardianship proceedings in Bangladesh.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find the record lacks evidence of the Beneficiary's eligibility for orphan status.

First we will address the issues of legal custody, irrevocable release, state preadoption requirements, and obtaining a No Objection certificate. When prospective parents seek to bring a child to the United States for adoption here, the parents must first have secured legal custody of the child, as required by the regulation at 8 C.F.R. § 204.3(d). In addition, relevant to this case, the prospective parents must also submit evidence of compliance with all pre-adoption requirements from the state where the child will be adopted. Prospective adoptive parents must also obtain a No Objection certificate from the Ministry of Home Affairs in Bangladesh. *http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/bangladesh.html* (accessed November 9, 2014).

The U.S. Department of State advises that there is no independent central government adoption authority in Bangladesh; that the Family Court has sole jurisdiction over family matters; and that, "[p]rospective adoptive parents seeking to gain guardianship of a Bangladeshi child must submit an application for legal guardianship to the Family Court having jurisdiction over the child's place of residence[.]" *Id.*

On motion, the Petitioner submits a judgment from the District Court, dated March 27, 2014, in which the District Judge ordered that the Petitioner's spouse be appointed the Beneficiary's guardian. This document, however, is not proof of the Petitioner's legal guardianship, because it does not name both the Petitioner and her spouse as the Beneficiary's legal guardians, as required by 8 C.F.R. § 204.3(d). The document names only the Petitioner's spouse, who is a lawful permanent resident and not a U.S. citizen like the Petitioner. The child must be coming to the United States for adoption by a U.S. citizen and his or her spouse. *See* Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). As the appointment does not name the U.S. citizen Petitioner and does not name both the Petitioner and her spouse, it does not meet the requirement that the adoptive parents must have been granted legal guardianship. In addition, we note that the March 27, 2014, judgment is in English, and it does not appear that the Bengali version of the judgment has been submitted. The record includes a Bengali document attached to the English document, but the Bengali document is signed by a different judge.

We previously found that the adoptive parents had not obtained an irrevocable release and consent to the Beneficiary's adoption and emigration from her current guardian. The Petitioner does not address this issue on motion. As such, she has not established compliance with this provision.

We previously found that the Petitioner did not establish that she met all pre-adoption requirements

of the State of New York. New York has special provisions relating to children to be brought into the state for private-placement adoptions. *See* N.Y. Domestic Relations Law § 115-a (McKinney 2015). The Petitioner does not address this issue on motion. As such, she has not established compliance with these state requirements.

In a letter dated March 12, 2015, accompanying the instant motion, the Petitioner requests additional time to provide a No Objection certificate from the Ministry of Home Affairs in Bangladesh, asserting that political violence in Bangladesh has restricted travel. However, she has not provided it as of the date of this decision. Therefore, this requirement has not been met.

We will next address the issues of the Beneficiary's parents' death certificates and the Beneficiary's birth certificate. We previously found that the Petitioner did not establish, by a preponderance of the evidence, that the Beneficiary's biological parents were deceased, because she submitted delayed death certificates for each parent. The death certificate for the Beneficiary's biological father was registered a year after the date of death. The death certificate for the Beneficiary's biological mother was registered 14 years after the date of death. We noted that neither death certificate reflected the basis upon which it was issued or the circumstances of death, and the record contained no contemporaneous corroborative evidence of the deaths.[1] The Petitioner also previously submitted a note dated January 26, 2014, claiming to be from the attending physician at the death of the Beneficiary's mother. The note indicates that the cause of the Beneficiary's mother's death on 1998, was severe dehydration resulting from diarrhea. This 2014 note is not contemporaneous corroborating evidence of the 1998 death.

The Petitioner claims on motion that the Beneficiary's mother's death was not recorded until her attorney requested a copy of the certificate; the "municipal authority" explained that they contacted "the local health official," who informed them that she died of a waterborne disease; and her attorney requested a copy of the death certificate from this health official, who was her attending physician. In addition, the District Court decision, dated March 27, 2014, states that the Beneficiary's mother died on 2011, although her death certificate states that she died on 1998. We do not have any document from 1998 reflecting that the Beneficiary's mother died that year. The same evidentiary weight does not attach to a delayed death certificate as would attach to one contemporaneous with the actual death. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968) (citation omitted). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte,* 21 I&N Dec. 1029, 1033 (BIA 1997). In addition, the Petitioner does not address our concerns about the biological father's delayed death certificate. Given the lack of objective contemporaneous documentation of the Beneficiary's biological parents' lives or deaths in the record, we cannot conclude that her parents are deceased. The

[1] Neither of the translated death certificates reveals the birth date of either deceased person; nor is the certifying physician named on either certificate. Moreover, neither of the translations is accompanied by the Bengali language document from which the translation was made. As such, neither translation may be considered. Because the Petitioner does not submit the Bengali document from which the translation was taken, we cannot determine whether the evidence supports the Petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

Petitioner has therefore not established that the Beneficiary meets the definition of an orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act, due to the death of both parents.

We previously found that the Beneficiary's birth certificate also has diminished evidentiary weight. *See Matter of Bueno-Almonte, supra..* We noted in our previous decision that the Beneficiary's birth certificate was registered after the claimed deaths of her biological parents and 14 years after the Beneficiary's birth. We noted that the birth certificate did not reflect the basis upon which it was issued; and the record contained no contemporaneous or documentary evidence corroborating the Beneficiary's birth to On motion, the Petitioner does not address our concerns about the unreliability of the Beneficiary's birth certificate.

In addition, the Petitioner re-submits a revised birth certificate changing the name of the Beneficiary to The new certificate, however, keeps the same date of issue as the original birth certificate, June 4, 2012. Doubt cast on any aspect of the Petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the Petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The Petitioner submits no objective evidence to explain how two different birth certificates for the Beneficiary, under two different names, were registered and issued on the same date.

Based on a review of the evidence presented, we find that the Beneficiary is not eligible for orphan status.

IV. CONCLUSION

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 motion is denied.

Cite as *Matter of S-P-B-*, ID# 12996 (AAO Nov. 24, 2015)