



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF H-K-M-

DATE: JUNE 23, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of [REDACTED] at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Director of the National Benefits Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was given permission by the relevant court in Bangladesh to emigrate to the United States. The Director also found that the record did not establish that the Beneficiary was abandoned by both of his parents. On appeal, the Petitioner overcame the first ground of denial, but we found that the Beneficiary had not been abandoned by both of his parents. We affirmed our decision in response to the Petitioner's first motion. On his second motion, we found that the Beneficiary had not been abandoned or deserted by both of his parents.

On motion to reopen and reconsider, the Petitioner submits additional evidence and asserts that the Beneficiary was abandoned and deserted by both of his parents.

Upon review, we will deny the motion to reopen and reconsider.

I. 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 . . . 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 who is coming to the United States for adoption by a United States citizen

and spouse jointly . . . 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[.]

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue on motion is whether the Applicant has submitted new documentation or arguments that show that our prior decision was in error. We previously found that the Petitioner did not establish that the Beneficiary's parents either abandoned or deserted him. On motion, the Petitioner asserts that newly submitted evidence establishes that the Beneficiary was abandoned and deserted by his parents. We find that the record does not establish that the Beneficiary's parents either abandoned or deserted him, and therefore he does not meet the definition of an orphan.

A. Abandonment

The Petitioner previously submitted an affidavit from [REDACTED] stating that the Beneficiary's biological parents came to him and requested that he take their child because they could not provide for the child; and that he sought to place the Beneficiary in an adoption agency. The Petitioner also submitted an affidavit from Mr. [REDACTED] spouse, in which she stated that, "[m]y husband told me that Mr. [REDACTED] financially [sic] condition was so poor that he could not afford to take care of the [Beneficiary] and that he begged my husband to take [the Beneficiary]." She also stated that they almost had to place the Beneficiary in an adoption agency. Pursuant to these submitted affidavits, both Mr. [REDACTED] and his spouse stated that the Beneficiary's biological parents directly requested that Mr. [REDACTED] take their child.

However, on the present motion, as in his two prior motions, the Petitioner asserts that the Beneficiary's parents intended to permanently abandon the Beneficiary by placing him at the doorsteps of a local imam, the imam contacted the local police, and the local police appointed a temporary guardian, Mr. [REDACTED], as they were authorized to do.

The record includes a Bangladeshi attorney's letter, with an excerpt from the 1974 Child Act of Bangladesh, stating that the police have the right and power to appoint a temporary guardian for an abandoned child until the court appoints a legal guardian. The Applicant submits a police report, which states that the Beneficiary was found abandoned in front of an imam's house in the village of [REDACTED] the police went to the Beneficiary's parents' house to return him; the parents said they were not able to care for him and refused to take him due to poverty; and the police spoke with the imam and gave him

to a temporary guardian. The Petitioner states that he previously tried to obtain this report, but he was not the Beneficiary's legal guardian at the time and was told to seek the assistance of an attorney. The record also includes a statement from an imam in [REDACTED], who states that the Beneficiary's parents rejected him and gave him up.

The Petitioner states that the submitted police report and imam's statement both confirm that the Beneficiary was found abandoned in front of the imam's house door; the local police was involved in investigating the abandonment by the parents, who refused to take him back due to financial insolvency; the police arranged a temporary guardian until the court appointed a permanent one; and the appointment of a temporary guardian was in preparation for guardianship proceedings and not for adoption, as there is no adoption law or procedure in Bangladesh.

As we stated in our prior decision, the term *abandonment by both parents* is specifically defined at 8 C.F.R. § 204.3(b), and the petitioner must demonstrate that both of the beneficiary's biological 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)."

The regulation emphasizes that if the child was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. 8 C.F.R. § 204.3(b).

The issue remains that if the Beneficiary was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. And, the Petitioner has provided conflicting assertions and evidence related to whom the Beneficiary's parents relinquished their child. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We find the initial evidence presented of the Beneficiary's relinquishment to Mr. [REDACTED] to be persuasive, as the subsequent account that the Beneficiary was left at the imam's doorstep appears to have been created in order to meet the definition of abandonment. As such, we find that the Beneficiary was relinquished to a third party, Mr. [REDACTED] and the biological parents intended to place the Beneficiary up for adoption. Considering the inconsistencies in the record, the evidence presented on motion does not credibly establish that Mr. [REDACTED] was appointed as a temporary guardian for the Beneficiary by the police. The police report submitted by the Petitioner, dated in 2015, was not created contemporaneously with the 2012 events that are in dispute. And, as the police report was created years after the fact, it is not sufficient to serve as probative evidence that can overcome the inconsistencies in the record. Further, even assuming *arguendo* that Mr. [REDACTED] was appointed as a temporary guardian by

the police, it is also not clear that Mr. [REDACTED] was authorized under the child welfare laws of Bangladesh to act in the capacity of a third party to provide custodial care to the Beneficiary. Additionally, the section of the 1974 Child Act contained in the Bangladeshi's attorney's letter does not support the attorney's assertion that police are authorized under law to appoint temporary guardians for abandoned children, prior to the court's appointment of a legal guardian.

We acknowledge the U.S. Department of State documentation reflecting that Bangladesh has no statutory provisions governing adoptions; there are only guardianship laws and procedures in Bangladesh; and an irrevocable release of a child by his or her parents is required to obtain legal guardianship over the child. The record includes an affidavit from the biological parents of the Beneficiary in which they relinquish their rights to the Beneficiary to the Petitioner in 2013. This affidavit was submitted as part of the guardianship proceedings. The same Bangladeshi attorney referenced above asserted that the relinquishment was not made in anticipation of or preparation for an adoption, rather it was made to comply with the applicable guardianship laws. However, although the guardianship laws require an irrevocable release of a child by his or her parents, it does not affect the finding above that prior to the guardianship proceedings in 2012, the Beneficiary was relinquished to a third party, Mr. [REDACTED], and the biological parents intended to place the Beneficiary up for adoption.

Despite the Petitioner's assertions, the definition of *abandonment by both parents* at 8 C.F.R. § 204.3(b) is clearly defined and prohibits a Petitioner from circumventing child welfare laws to arrange for an adoption directly with the biological parents or through a private intermediary, which is what occurred here. Accordingly, the Petitioner has not established that the Beneficiary meets the definition of orphan due to abandonment by both parents.

B. Desertion

The term *desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their 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 foreign-sending country. 8 C.F.R. § 204.3(b).

The Petitioner states that the temporary guardian appointed by the police meets the definition of a guardian under the Bangladeshi Guardian and Wards Act of 1890. The Petitioner asserts that the Guardian and Wards Act of 1890 provides, “[w]ard means a minor for whose person or property, or both, there is a guardian,” and that the law does not require the Beneficiary to be a ward of the court.

As discussed in our previous decision, the Guardians and Wards Act of 1890, Chapter 1, Section 4(3) provides that ward “means a minor for whose person or property, or both, there is a guardian,” and Chapter 1, Section 4(2) provides that guardian “means a person having the care of the person of a minor or of his property, or of both his person and property.” Mr. [REDACTED] states in his August 2014 affidavit that he and his spouse carried out all responsibilities for the Beneficiary until the Petitioner was declared the Beneficiary's legal guardian. Therefore, the record reflects that the Beneficiary may have been a ward with the temporary guardian and then the Petitioner, but not that he “become a ward of a

competent authority in accordance with the laws of the foreign-sending country.” A competent authority is defined as a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare. 8 C.F.R. § 204.3(b). Accordingly, the Petitioner has not established that the Beneficiary meets the definition of orphan due to desertion by both parents.

III. CONCLUSION

The Applicant has not established that our prior decision was based on an incorrect application of law or policy. The new evidence submitted on motion also does not overcome the basis for denial, as Petitioner has not established that the Beneficiary meets the definition of an orphan.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-K-M-*, ID# 65964 (AAO June 23, 2017)