U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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JUN 1 0 2005

[redacted]

FILE: [redacted] Office: DETROIT, MI Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Detroit, Michigan denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a forty-eight year-old married citizen of the United States, filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on September 11, 2002. The beneficiary was born in Guyana on September 11, 1994, and she is presently ten-years-old.

The district director approved the I-600 petition on October 7, 2002, and forwarded the petition to the U.S. Embassy in Georgetown, Guyana for further processing. The Embassy investigation revealed information that was not available to U.S. Citizenship and Immigration Services (CIS) at the time the I-600 petition was approved. Specifically, the Embassy investigation revealed that the beneficiary's biological parents had relinquished their parental rights in court, solely for the purpose of allowing the petitioner and his wife to adopt the beneficiary. The investigation revealed further that the beneficiary presently lives at her paternal grandmother's home with family members, including, periodically her father. In addition, the investigation revealed that the beneficiary's father works on boats at sea and as a river taxi captain, which keeps him away from home for long periods of time. Stating that in Guyana, children and their parents often live with relatives, especially if the father has custody over a child and his job requires him to travel, the consular officer determined that the beneficiary's home life was not inconsistent with the local standards for proper care of children in Guyana, and that the petitioner had provided no evidence to the contrary.

Based on the information obtained from the Embassy investigation, the district director issued a Notice of Intent to Revoke the approval of the petitioner's Form I-600 petition. The petitioner responded to the district director's notice. Referring to sections 2.0.3 and 3.0 of the Guardian[redacted]Report for the Adoption Board of Guyana, the petitioner asserted that the report established the beneficiary's biological father[redacted] has no relationship with the beneficiary and that he abandoned his child to the care of her grandmother after her biological mother had abandoned the child to[redacted] The petitioner asserted further tha[redacted] Singh provides no support to the beneficiary and that he is an alcoholic who does not have a job at sea and who does not hold a steady job as a river taxi captain. The petitioner asserted that the beneficiary's parents have no relationship with the child and that they abandoned the beneficiary prior to her adoption. The petitioner indicates further that the beneficiary's biological parents were contacted solely during the adoption proceedings for relinquishment of parental rights purposes, so that the adoption of the child could occur.

The district director found that the petitioner's response failed to establish that the beneficiary met the definition of "orphan" as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The Form I-600 petition was subsequently revoked based on the determination that the beneficiary's parents had relinquished their parental rights over the beneficiary solely to allow the petitioner to adopt the beneficiary, and based on the determination that the applicant's father was employed and providing support to the beneficiary in a manner consistent with local standards in Guyana.

The petitioner asserts on appeal that the district director provided inconsistent reasons for revoking the I-600 petition and that the beneficiary was abandoned by her parents and therefore meets the definition of "orphan".

Section 101(b)(1)(F)(i) of the Act, defines "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), 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 United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to 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. (Emphasis added).

Abandonment by both parents is a defined term in the regulations. 8 CFR 204.3(b) states in pertinent part:

> *Abandonment by both parents* means that the 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). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment 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. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

8 C.F.R. § 204.3(k)(1) states:

> An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

8 C.F.R. § 204.3(h)(14) states in pertinent part:

> [T]he approval of . . . an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

The evidence relating to the beneficiary's status as an orphan includes the following:

The beneficiary's birth certificate reflecting that was born to in Guyana on September 11, 1994.

The Guardian Ad Litem, Report for the Adoption Board, Report on a Visit Made on 15th and 20th August, 2002, stating that the beneficiary is the paternal cousin of the petitioner's wife, and stating in sections 3.0 and 2.0.3, that has no permanent job, but operates a speed boat occasionally, and that the beneficiary does not enjoy a harmonious or good parent/child relationship with her biological parents. The Report states that after a misunderstanding between the beneficiary's biological parents, the mother moved away with the child for about a month, and then sent the child back to live with her father. The Report states that the beneficiary lived with her father for a period, but was unable to establish a relationship with him, especially because he was an alcoholic, and that after a short period, left the child with her paternal grandmother.

The petitioner's application for adoption of the beneficiary, the appointment of the Adoption Board as Guardian Ad Litem, and the Adoption Order reflecting that all required consents were obtained and that the beneficiary was adopted by the petitioner and his wife in Guyana on September 4, 2002.

2002 receipts reflecting that the petitioner has provided financial support to the beneficiary.

A Home Study Report approved on April 10, 2002, by Alliance for Adoption after multiple interviews with the applicant and his wife, stating at page 3-4, that:

> [T]he opportunity to legally adopt two children from [the petitioner's wife's] extended family is a double blessing for the children as well as for this couple. The extended family is all in favor of this match so that the children are being cared for within the kinship network.
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> . . . .
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> The girls that are to be adopted are related [petitioner's wife] uncle (mother's brother). The children's mother is currently living with another man. The children were abandoned by their mother when she went to live with her new husband . . . . [The children] are too much for their alcoholic biological father to handle. His care taking has been inconsistent and they have been dependant on surrounding relatives.
>
> . . . .

> The Dexters are very respectful of the emotional relationship the girls . . . still have with their biological father and will do everything they can to maintain kinship ties.
>
> . . . .
>
> Although it is unusual to make an adoption plan for Guyanese children, this couple is ready and willing to legally adopt these girls. They are part of the same extended family system. This will allow the girls to continue contact with their other family members. They will continue to have family contact as . . . [the petitioner and his wife] return to Guyana about once a year.

The AAO finds that the information contained in the [redacted] Report for the Adoption Board and submitted by the petitioner fails to address or overcome the CIS determination that the beneficiary was not "abandoned" by her parents as defined in 8 C.F.R. 204.3(b). A review of the cumulative evidence in the record reflects that the beneficiary's biological parents maintained their parental rights, obligations and claims to the beneficiary prior to the petitioner's September 4, 2002 adoption of the beneficiary. Moreover, a review of the evidence in the record reflects that in surrendering their parental rights over the beneficiary, the beneficiary's biological parents intended, and did transfer their parental rights specifically so that the beneficiary could be adopted by the petitioner and his wife. A review of the evidence in the record additionally reflects that the beneficiary's biological father maintains a relationship with the beneficiary, and that the beneficiary's living arrangement in Guyana is not inconsistent with local standards in that country. Accordingly, the AAO finds that the beneficiary does not meet the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.