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U.S. Citizenship
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Services

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JUN 10 2012

[Redacted]

FILE:

[Redacted]

Office: SAN ANTONIO, TX

Date:

IN RE: Petitioner:

Beneficiary:

[Redacted]

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, San Antonio, Texas denied the visa petition, and the matter was appealed to the Administrative Appeals Office (AAO). The AAO remanded the matter to the district director for entry of a new decision which, if adverse to the petitioner, was to be certified to the AAO for review. The district director revoked a subsequent approval of the petition, and the matter was re-appealed to the AAO. The appeal will be dismissed.

The petitioner is a forty-seven year-old married citizen of the United States. The beneficiary was born in India on May 3, 1984, and he is presently twenty-years-old. The petitioner initially filed the Petition to Classify Orphan as an Immediate Relative (I-600 Petition) in November 1999. Because the 1999, I-600 petition had not yet been adjudicated, the petitioner filed a second I-600 petition on February 27, 2001. The district director denied the applicant's I-600 petition based on a finding that the petitioner had failed to file the petition prior to the beneficiary's sixteenth birthday, as required by section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The petitioner appealed the denial of his I-600 petition to the AAO. The AAO found that the petitioner had filed an initial I-600 petition in November 1999, when the beneficiary was fifteen years old, and that the district director had erred in finding that the petitioner had not filed the I-600 petition prior to the beneficiary's sixteenth birthday. The AAO found further that the district director had erred in simultaneously denying the I-600 petition for lack of prosecution based on the petitioner's failure to provide requested information relating to his wife's immigration status, and relating to the beneficiary's status as an orphan. Accordingly, the AAO remanded the matter to the district director for a determination of whether the petitioner had complied with regulatory requirements for filing an I-600 petition, and regarding whether the beneficiary met the definition of an "orphan" as set forth in section 101(b)(1)(F) of the Act.

The district director subsequently approved the petitioner's I-600 petition on June 4, 2002. However, a subsequent investigation by the U.S. Consulate General Office in Chennai, India, revealed information that was not available to U.S. Citizenship and Immigration Services (CIS) at the time the I-600 petition was approved. The consular officer noted that the beneficiary's father had died on May 18, 1984, and that the beneficiary's mother had provided for the beneficiary since he was an infant. The consular officer additionally obtained information during an interview with the beneficiary, which established that the beneficiary's mother cleans sewing machines on a part-time basis in India and that she earns between \$504 and \$636 per year. The consular investigation revealed further that the beneficiary's mother's earnings are over the Indian per capita income of \$374 annually. She therefore appeared capable of providing proper care to the beneficiary, as defined in 8 C.F.R. § 204.3(b).

Based on the information obtained from the consular investigation, the district director issued a "Notice of Intent to Revoke" approval of the petitioner's I-600 petition on October 17, 2003. The petitioner responded to the district director's notice. However, the I-600 petition was revoked on April 12, 2004, based on the determination that the beneficiary's surviving parent was capable of providing proper care to the beneficiary in a manner consistent with the local standards in India, as set forth in 8 C.F.R. § 204.3(b), and that the beneficiary therefore did not meet the definition of "orphan" as defined in section 101(b)(1)(F) of the Act.

The petitioner asserts on appeal that the beneficiary's mother's health and financial situation do not allow her to provide proper care to the beneficiary. The petitioner asserts further that the beneficiary misunderstood the consular officer's questions regarding his mother's financial circumstances.

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.

The AAO notes that in order to be eligible to file an I-600 petition, the petitioner must first establish that he and his wife meet the definition of "prospective adoptive parents", as defined in Title 8 of the Federal Code of Regulations (8 C.F.R.). 8 C.F.R. § 204.3(b) provides in pertinent part that:

Prospective adoptive parents means a married United States citizen of any age and his or her spouse of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

8 C.F.R. § 245.1(d) states that:

- (1) [F]or [adjustment of status] purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:
 - (i) In lawful permanent resident status;
 - (ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter.
 - (iii) In refugee status under section 207 of the Act, such status not having been revoked;
 - (iv) In asylee status under section 208 of the Act, such status not having been revoked;
 - (v) In parole status which has not expired, been revoked or terminated;
or
 - (v) Eligible for the benefits of Public Law 101-238 (the Immigration

Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

The record reflects that the applicant married his wife, [REDACTED] in India on January 16, 1983. The record indicates further that [REDACTED] entered the U.S. without inspection on October 10, 1988, and that she has resided with the petitioner in the United States since her entry in 1988. The record reflects that in February 1999, the petitioner applied to adjust [REDACTED] immigration status to that of a lawful permanent resident under the alien file number (A number) [REDACTED]. U.S. Citizenship and Immigration Service (CIS) records reflect that [REDACTED] status was adjusted to that of a lawful permanent resident on July 22, 2002. However, the record contains no information to indicate that the applicant's wife maintained any other type of lawful status in the U.S. prior to July 22, 2002. The AAO finds that the petitioner has failed to establish that he meets the prospective adoptive parent requirements set forth in 8 C.F.R. § 204.4(b), because his wife resided in the U.S. and was not in a lawful immigration status when the petitioner filed the I-600 petition.

The AAO finds that the petitioner has also failed to establish that the beneficiary's mother is incapable of providing proper care to the beneficiary, as set forth in 8 C.F.R. § 204.3(b), or that his I-600 petition was revoked improperly.

8 CFR 204.3(b) states in pertinent part that:

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.

8 C.F.R. § 204.3(b) defines "incapable of providing proper care" by stating:

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.

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 record contains the following evidence relating to the beneficiary's status as an orphan:

A birth certificate reflecting that the beneficiary was born in [REDACTED] India on March 5, 1984, to [REDACTED]

A Certificate of Death reflecting that the beneficiary's father [REDACTED] Hyderabad, India, on May 18, 1984.

An affidavit signed by the beneficiary's mother on June 11, 1998, transferring her parental rights to the petitioner and his wife, and stating in pertinent part that "[a]fter the demise of my husband [REDACTED] am finding it difficult to make both ends meet as such I hereby agree to give my said son [REDACTED] in adoption to my sister-in-law [REDACTED] and her husband [REDACTED]

A March 27, 1999, Court of the Judge, Family Court at Hyderabad court order making the petitioner Hussain Hassan Merchant's legal guardian.

An October 30, 2003, letter from [REDACTED] of the Mahavir Cardiovascular Center in Hyderabad, India, certifying that [REDACTED] Merchant suffers from systemic hypertension and anxiety depression, and that she has been under his regular treatment since May 2001.

An October 30, 2003, letter from MD Imthiaz, Chief Manager at the Development Credit Bank in Hyderabad, India, certifying that the petitioner has had a bank account with his bank since November 29, 1997, and that the account was initially operated under the guardianship of [REDACTED]. The letter states further that since August 3, 2001, the account has been operated by [REDACTED] because he attained the age of majority.

2003 bank statements reflecting money transfers from the petitioner's U.S. bank to Hussain Merchant's account.

A June 10, 2004, affidavit signed by the beneficiary's mother, stating in pertinent part that she is about 53 years old and that the beneficiary is a 20 year old student. The beneficiary's mother states that she is an "[o]ld lady suffering from Hypertention [sic] due to ailment caused by Blood Pressure is unable to look after my son's matter. As such it is necessary that

¹ The AAO notes that the beneficiary's father was the brother of the petitioner's wife.

my son be called at U.S to live and prosper under the guardianship of his maternal uncle

The petitioner's October 28, 2003 statement, stating that the petitioner is the only source of household income for the beneficiary and his mother and that discussions with the beneficiary revealed that the beneficiary had misunderstood the consular officer's question about his mother's sources of income.

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the beneficiary's mother is incapable of providing for the beneficiary's basic needs in a manner consistent with the local standards in India. The AAO finds that the medical letter submitted by the petitioner lacks material detail and fails to discuss or establish that the beneficiary's mother is unable to work or provide proper care to the beneficiary. The AAO finds further that the bank account information submitted by the petitioner fails to establish that the petitioner has been the beneficiary's mother's sole source of income or that she is incapable of working, or of providing for the beneficiary's basic needs in India. Moreover the AAO finds that the petitioner's statement about the beneficiary's misunderstanding of consular questions relating to the sources of his mother's income, is uncorroborated by evidence in the record and fails to address the determination that the beneficiary's mother earns an income through part-time employment repairing sewing machines that allows her to provide for the beneficiary's basic needs in a manner consistent with local standards in India. 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.