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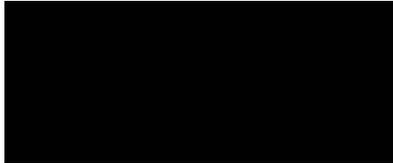
U.S. Department of Homeland Security
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FILE:



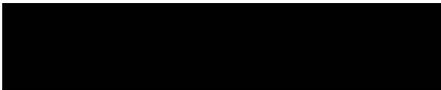
Office: ATLANTA, GA

Date:

JUN 17 2008

IN RE:

Petitioner:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Atlanta, Georgia, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600 petition will be denied.

The petitioner filed the Form I-600 on July 21, 2006. The petitioner is a forty-nine-year-old married citizen of the United States. The beneficiary was born in Mexico on June 21, 1991, and he is sixteen years old.

The acting district director found that the beneficiary did not meet the definition of an orphan, as set forth in section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F) because: 1) the beneficiary's parents released their parental rights over the beneficiary for purposes of a specific adoption by the petitioner and his wife; and 2) the petitioner failed to establish that the beneficiary's mother was incapable of providing proper care to the beneficiary in accordance with local standards in Mexico. The Form I-600 petition was denied accordingly.

On appeal the petitioner asserts, through counsel, that the beneficiary's natural parents abandoned the beneficiary, and that they are unable to provide for the beneficiary's needs. The petitioner indicates that the beneficiary therefore meets the definition of an orphan, and he requests that the Form I-600 be approved.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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.)

The regulation provides in pertinent part at 8 C.F.R. § 204.3(b) that:

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 (emphasis added.)

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.¹

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.

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

The Form I-600 filed by the petitioner, reflecting that it is based on the claim that the beneficiary's father abandoned the beneficiary, and that the beneficiary is the child of a sole parent.

A Special Power of Attorney document, prepared by the General Consul of Mexico in Atlanta, Georgia on December 3, 2004, reflecting that the beneficiary's natural parents, Jose [REDACTED] and [REDACTED] appeared before the General Consul, and:

[E]xpressed that through the present document they confer and grant Mrs. [REDACTED] neighbor of Cortazar, Guanajuato, Mexico, a Special Power . . . so that on their behalf and representation she appears before the corresponding authorities and make [sic] all the actions related to the Adoption of the minor named [REDACTED] . . . in favor of [REDACTED] and [REDACTED] . . .

The General Consul of Mexico certifies that the beneficiary's natural parents were identified through identification documents, and the General Consul of Mexico certifies that the beneficiary's natural parents are married to each other, that the father is gainfully employed, and that they live on [REDACTED] in Clarksville, Georgia.

¹ It is noted that the provisions of Public Law 104-51, changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, and replaced the words "legitimate child" with the words "child born in wedlock," and "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The regulatory definition of "sole parent" contained in 8 C.F.R. § 204.3 has not been amended to conform to these changes.

An adoption decree, dated September 2, 2005, reflecting that the petitioner and his wife adopted the beneficiary in Cortazar, Guanajuato, Mexico. The adoption decree reflects that [REDACTED] and [REDACTED] request the full adoption of [REDACTED], son of [REDACTED] and [REDACTED], who grant power to [REDACTED].” The decree reflects further that, “consent to the adoption was made on the behalf of the parents, through their representative.”

A sworn affidavit signed by the beneficiary’s natural mother in Hall County, Georgia, on September 5, 2006, stating that she wanted the petitioner and his wife to adopt the beneficiary because his father left them, and she has no money or financial support, and could not take care of the child by herself in Mexico.

The petitioner’s Adoption Home Study dated, June 1, 2006, reflecting in pertinent part that the beneficiary is the petitioner’s niece’s child, and that the petitioners have known the beneficiary since he was very young and have:

[T]hought of [REDACTED] [the beneficiary] all along as a member of their family since they are blood relatives and as they have had a close relationship with the child since he was very young. [REDACTED] and [REDACTED] do recognize that there are differences in parenting [REDACTED] and are positive and open in discussing his birth parents with him and are willing for him to have contact with his birth parents as this is an open adoption and they have a good relationship with [REDACTED]’s birth parents.

An affidavit signed by the petitioner in Hall County, Georgia on August 10, 2007, stating that the petitioner stands by his statement that the beneficiary was abandoned by his parents, and that the beneficiary’s natural mother is not capable of supporting him. The petitioner states that the beneficiary’s natural mother is his sister, but that he has not had contact with her, or the beneficiary’s natural father, since they signed the Special Power of Attorney (on December 3, 2004.) The petitioner states that he located the beneficiary’s natural parents through family members, in order to get them to sign the Special Power of Attorney relating to the adoption of their son. The petitioner states further that it was difficult finding his sister so that she could sign the (September 5, 2006) affidavit relating to her inability to provide for the beneficiary, and he indicates that the beneficiary’s natural parents did not have contact with the beneficiary for quite some time prior to the adoption, and that he has no reason to believe that they will have future contact with the beneficiary. The petitioner indicates that the beneficiary’s natural parents are married, but that they have separated and gotten back together many times during their marriage, and that it is his understanding that they did not live together at the time of the adoption, or at any time after the adoption.

The AAO finds that the totality of the evidence establishes that the beneficiary’s natural parents relinquished their parental rights over the beneficiary with the specific intent of transferring those rights to the petitioner and his wife. The Special Power of Attorney clearly reflects that the beneficiary’s natural mother and father appeared before the General Consul of Mexico in Atlanta, Georgia for the specific purpose of appointing a neighbor to represent them in the petitioner’s adoption proceedings for their son. Moreover, the Mexican

adoption decree reflects clearly that, through their representative, the beneficiary's natural parents released the beneficiary for adoption with the specific intent of having the petitioner and his wife adopt the beneficiary. Because the beneficiary's natural parents specifically relinquished their parental rights over the beneficiary to the petitioner and his wife, the beneficiary does not qualify as an abandoned child under the regulations or the Act.

The AAO finds further that the sole parent definition contained in 8 C.F.R. § 204.3(b) is not applicable to the present case. The AAO notes that sole parent statements contained in the Form I600, and in the affidavits signed by the petitioner and the beneficiary's natural mother, are contradicted by other evidence. The Special Power of Attorney prepared by the General Consul of Mexico and used for adoption proceedings purposes, certifies that the beneficiary's natural parents are married, and that they live together in Clarksville, Georgia. The petitioner's affidavit also states that the beneficiary's parents are married. Moreover, the AAO notes that even if the beneficiary's parents were not married, and the beneficiary were an illegitimate child, the petitioner failed to provide evidence to corroborate the claim that the beneficiary's natural mother would be incapable of providing proper care to the beneficiary in accordance with local standards in Mexico.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met his burden of proof in the present matter. The appeal will therefore be dismissed and the Form I600 petition will be denied.

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