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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Date:

AUG 3 2001

[redacted]

File: [redacted] Office: PHILADELPHIA DISTRICT OFFICE

IN RE: Petitioner:
Beneficiary: [redacted]

Application: 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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

Identifying ... prevent clearly unwarranted invasion of personal privacy

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INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on August 1, 2000. The petitioner is a 31 year-old married citizen of the United States. The beneficiary, who at this time is 15 years old, was born in Kabul, Afghanistan, on December 10, 1985. The beneficiary's biological mother, [redacted] is identified in the record as being deceased. The beneficiary's biological father, [redacted] is identified in the record as living in Kabul, Afghanistan.

The director denied the petition after determining that (1) the petitioner failed to submit evidence of his wife's immigration status; (2) the home study report did not address the issue of past history of abuse for the petitioner and his wife; and (3) the beneficiary does not meet the statutory definition of "orphan" because she lives with her biological father.

On appeal, the petitioner addresses the director's concerns.

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

I. IMMIGRATION STATUS OF THE PETITIONER'S WIFE

The first issue to address is the director's denial of the petition because the petitioner did not submit evidence of his wife's immigration status. On appeal, the petitioner states that at the time he filed the petition, his wife was in the process of naturalizing and she did not have a "green card" that the petitioner could photocopy. The petitioner submits a copy of his wife's naturalization certificate, which shows that she became a U.S. citizen on September 7, 2000. Accordingly, the petitioner has overcome the director's objection on this basis.

> feed his own family. My daughter like many other children in Afghanistan are not being properly nurtured and her future is unknown in this country where the civil ware has torn apart every family.

Evidence in the record is sufficient to overcome the director's objections to approving the petition on this basis. First, the original home study report that was submitted by the petitioner included a statement by its author that the beneficiary was "living with a great uncle" who was unable to provide for his own children in addition to the beneficiary. This statement supports the petitioner's claims that the beneficiary was not in the custody of her biological father.

Second, the original affidavit submitted by the biological father was ambiguous concerning the residence of the beneficiary; however, it did not clearly specify that the beneficiary was residing with him, despite the director's conclusions. The petitioner has submitted a new affidavit from the biological father, which now clearly specifies his residency as well as the residency of the beneficiary. This affidavit combined with information in the home study report is sufficient to conclude that the beneficiary is not living with her biological father because he is unable to provide proper care for her. Accordingly, the petitioner has established that the beneficiary is an orphan, as that term is defined in the statute and the regulations.

The director did not raise any other objections to the approval of the petition, and the petitioner has overcome all bases of the director's denial; the appeal shall be sustained. It is concluded that the petitioner has established that the beneficiary is eligible for classification as an orphan pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F).

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 met that burden. The appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.