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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: GUATEMALA CITY Date: MAR 24 2003

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 APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC), Guatemala City, denied the immigrant visa petition. The petitioner filed a motion to reconsider. The OIC again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The OIC's decision will be withdrawn and the matter remanded to him for entry of a new decision.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on October 21, 2002. The petitioner is a 33-year-old single citizen of the United States. The beneficiary is presently nine months old and was born on June 18, 2002 in Guatemala City.

The OIC denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan found at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

In a notice of intent to deny the petition, the OIC informed the petitioner that his office had conducted an interview of the beneficiary's mother concerning the relinquishment of her child for adoption and that she had changed her mind and no longer wanted to release the beneficiary for adoption. The OIC informed the petitioner that if she wanted to proceed with the petition, she would need to go to the local Guatemalan tribunal court with jurisdiction and get a favorable ruling on the voluntary consent of the biological mother within 30 days. The OIC denied the petition on January 23, 2003, noting that the petitioner had failed to submit new evidence within 30 days of his notice of intent to deny.

On appeal, the petitioner submits evidence of a favorable ruling on the voluntary consent of the beneficiary's biological mother.

Section 101(b)(1)(F) of 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.

The record of proceeding contains an approved I-600A application, a Form I-600 petition and supporting documentation, the OIC's notice of intent to deny, a record of the beneficiary's mother's sworn statement taken by the OIC's staff on October 2, 2002, the beneficiary's mother's written irrevocable consent to release the

beneficiary for adoption and emigration dated August 16, 2002, and the appeal documents. The appeal documents include two social reports done by appointed social workers from two different Guatemalan family courts, and the results of DNA testing. Both social reports affirm that the beneficiary's biological mother gave her irrevocable consent for this adoption.

The petitioner has overcome the OIC's sole objection to approval of the petition. The evidence on the record demonstrates that the beneficiary is the child of a sole parent. The beneficiary's biological certificate indicates that she is an illegitimate child. The evidence shows that the biological mother gave her irrevocable consent for adoption and emigration of the beneficiary.

Regarding the issue of whether the biological mother can care for the beneficiary, it is noted that the record contains two social reports that indicate that the biological mother is unable to care for the beneficiary. One report states that "the biological mother states that she works as a housekeeper, she has a monthly salary of 500 quetzales." The other report states that the biological mother "does not have anyone to help her, her job is not well paid off, she earns only 1,000 quetzales on average. She pays a rent of 200 quetzales with light and water. For this situation of poverty when she was seven months pregnant, she made her decision to give up her child for adoption. For this reason, she reiterates her consent before this tribunal." The first report indicates that the biological mother has five children, named [redacted] The latter report indicates that she has six children, named [redacted]

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(b).

It must be emphasized that, while 8 C.F.R. § 204.3 requires a showing that the sole parent cannot meet the beneficiary's basic needs "consistent with the local standards of the foreign sending country," the regulation does not limit the inquiry solely, or even chiefly, to economic or financial standards. A relevant inquiry may be made into the size of the beneficiary's family, the health of all its members, and child care arrangements.

Although the biological mother stated in the consent format that she was unable to support the beneficiary, she did not explain why she couldn't care for the beneficiary. The biological mother stated to the OIC's staff that "until today I have been able to support well all of my children with my honest work. ... I have the capacity and the possibilities to maintain and raise her with me forever." Such a statement conflicts with the evidence on the

record that the biological mother is unable to provide for the beneficiary's basic economic needs.

The record is incomplete regarding whether the beneficiary's sole parent is incapable of providing proper care as that term in defined in the regulations. For example, while ability to provide proper care is not limited to financial issues, it is noted that the two social reports conflict concerning the biological mother's income - one reporting an income twice the amount reported in the other.

The petitioner should endeavor to procure the birth records of all of the beneficiary's siblings and evidence to demonstrate that the biological mother is unable to provide for the beneficiary's basic needs, consistent with the local standards of Guatemala. The petitioner should provide the Bureau with evidence of the standard of living in Guatemala.

Accordingly, this case shall be remanded to the OIC so that he can request evidence of the biological mother's inability to properly care for the beneficiary. He should also request evidence that the petitioner has complied with all preadoption requirements of the State of the orphan's proposed residence and a home study. He should request evidence of the petitioner's citizenship. After receipt and consideration of the additional evidence, the OIC should enter a new decision.

As always, the burden of proof rests solely with the petitioner in visa petition proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The OIC's decision is withdrawn. The case is remanded to the OIC for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.