FILE: ........................................ OFFICE: BALTIMORE Date: MAY 13 2009

IN RE: ........................................ PETITIONER: [REDACTED]

BEFICIARY: [REDACTED]


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.

John F. Grissom
Acting Chief, Administrative Appeals Office
DISCUSSION: The Director, Baltimore Field Office, denied the orphan petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.


On appeal, the petitioner submits a letter and additional evidence.

Applicable Law

Section 101(b)(1)(F) of the Act defines an 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) of this title, 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, . . . 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, . . . who have . . . complied with the preadoption requirements, if any, of the child’s proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation at 8 C.F.R. § 204.3(b) defines the following pertinent terms:

* * *

*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.

*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.

The regulation at 8 C.F.R. § 204.3(d)(1)(iii)(C) further prescribes that the following evidence must be submitted with the orphan petition:

If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan’s care and has irrevocably released the orphan for emigration and adoption[.]
Pertinent Facts and Procedural History

The petitioner is a U.S. citizen and native of Ghana. The beneficiary is the petitioner’s niece and was born in Ghana on July 14, 1991. The beneficiary’s biological father, the petitioner’s brother, died on November 16, 1996. On June 8, 2007, the petitioner adopted the beneficiary in Ghana.

The petitioner filed the instant Form I-600 on October 14, 2005. On September 13, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of sufficient evidence that the beneficiary’s surviving parent was incapable of providing proper care to the beneficiary. The petitioner submitted additional affidavits in response to the NOID, which the director found insufficient to establish that the beneficiary’s eligibility. The director denied the petition on this ground and the petitioner timely appealed.

On appeal, the petitioner submits additional affidavits from the beneficiary’s surviving parent and his tenant in Ghana. The petitioner asserts that the accompanying certifications of the veracity of the signatures of the notary public and the certifying official provide objective evidence corroborating the contents of the affidavits. We concur with the director’s determination that the petitioner did not establish that the beneficiary’s surviving parent was incapable of providing proper care for the beneficiary. Nonetheless, the petition will be remanded because the director failed to consider the adoption decree issued in Ghana.

Surviving Parent’s Capability of Providing Proper Care to the Beneficiary

To classify a child with a surviving parent as an orphan, the petitioner must demonstrate that the surviving parent is “incapable of providing the proper care” for the beneficiary. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). The regulation at 8 C.F.R. § 204.3(b) defines such incapacity as meaning that the surviving parent “is unable to provide for the child’s basic needs, consistent with the local standards of the foreign sending country.” Affidavits supported by an investigation or report by the relevant authority in the foreign sending country may suffice to establish the surviving parent’s incapacity to care for the child’s basic needs. See Matter of Rodriguez, 18 I&N Dec. 9, 11 (Reg. Comm. 1980) (declaration of mother supported by the findings of a social welfare agency in Peru established the mother’s inability to provide proper care to the child).

The record contains three affidavits of the beneficiary’s surviving parent, dated November 5, 1998; April 5, 2004; and October 12, 2007. The contents of these affidavits are substantially similar. The affidavits stated that she was unemployed, that her late husband was the family’s sole bread winner and that since his demise, her family’s only source of livelihood had been the rent from a tenant of the petitioner. Further asserted, “my current living conditions make me incapable of providing for [the beneficiary’s] basic needs consistent with the local standards.” The petitioner’s tenant, stated that the petitioner had been his landlord since 1997 and that the petitioner authorized him to pay his rent to for the maintenance and care of the beneficiary. further attested that he had received and delivered various items from the petitioner for the beneficiary.
On appeal, the petitioner submits additional affidavits from [redacted] and [redacted] in which they reiterate their prior statements, but provide no further, probative information. The affidavits are accompanied by certifications of the signatures of the notary public who notarized the affidavits and the Judicial Service officials who verified the signatures of the notary public. Contrary to the petitioner’s claim, these certifications do not establish the veracity of the affiants’ statements. The Judicial Service officials’ verifications explicitly state that they “attest[] to the signature of the notary public only and not the contents of the attached document.” The certifications of the Ministry of Foreign Affairs official simply state that the declarations of the Judicial Service officials contain “the true and certified signature” of each of those officers. The certifications do not attest to the substantive content of the affidavits and provide no corroboration of the affiants’ statements.

The director determined that the petitioner “failed to submit a single item of credible, objective evidence to support the claims made” in his statements and the affidavits of the beneficiary’s surviving parent and the petitioner’s tenant in Ghana. The director did not consider, however, the adoption order from the Superior Court of Judicature in the High Court of Justice in Accra, which was submitted below. The order is dated June 8, 2007 and states, in pertinent part:

Upon hearing [petitioner’s name] for and on behalf of the [Petitioner] herein, and [name of Director of Social Welfare] of the Director of Social Welfare and reading the recommendations of the Probation Officer;

It is hereby ordered that under and by virtue of the Children’s Act 1998 (Act 560) and also the relevant regulations made thereunder, the child [Beneficiary] the Juvenile herein be adopted by the said [Petitioner] as [his] Lawful child for all purposes whatsoever Legal and equitable . . . .

The adoption order indicates that the Department of Social Welfare in Ghana reviewed the petitioner’s application and made recommendations in favor of the adoption. The Department of Social Welfare is the government authority on adoption in Ghana. See U.S. Dept. of State, Office of Children’s Issues, http://adoptions.state.gov/country/ghan.html#who2 (updated Feb. 2009). The order provides some support for the petitioner’s claims. Yet the brief wording of the order itself is insufficient to demonstrate that the Department of Social Welfare specifically determined that the beneficiary’s mother was incapable of providing her with proper care. The petitioner did not submit the underlying recommendations or other evidence of the findings of the Department of Social Welfare to support his claim that the beneficiary’s surviving parent was incapable of providing her with the proper care consistent with the local standards in Ghana. The petitioner cannot be faulted for failing to provide such evidence, however, because the director did not consider the implications of the adoption order or reference the order in his decision.

Conclusion

Based on the present record, the petitioner has not established that the beneficiary’s surviving parent is incapable of providing her with the proper care, as required by section 101(b)(1)(F)(i) of the Act. Nonetheless, the petition will be remanded to the director because he failed to consider relevant
evidence in the record. Upon remand, the director should consider the adoption order and request evidence of the findings underlying the order or other additional documentation of the beneficiary’s mother’s inability to provide for the beneficiary’s basic needs, consistent with the local standards in Ghana.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion, and for issuance of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.