

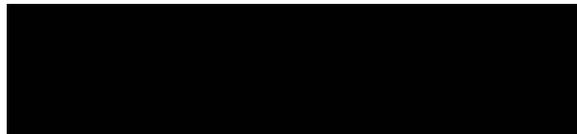
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARTFORD

Date:

DEC 02 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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Hartford, revoked the approval of the Petition to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on March 23, 2006 on behalf of the beneficiary, [REDACTED] who is the petitioner's nephew. The beneficiary was born in Jamaica on August 20, 1990 and is currently 18 years old. The I-600 Petition was approved on June 19, 2006, but the approval was revoked on August 19, 2008 after the American Embassy in Kingston, Jamaica, conducted an investigation into the facts of the case.

The director concluded that, based on the documents submitted in support of the I-600 Petition and the Consular Officer's investigation, [REDACTED] birth mother was employed, received additional financial assistance from the father of her two daughters and other family members and was able to provide for [REDACTED] basic needs consistent with local standards in Jamaica. The director noted that the petitioner had failed to provide any evidence in support of her claim that [REDACTED] mother was unable to provide proper care for her son. *Director Decision*, August 19, 2008. The director found that the beneficiary did not therefore meet the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1101(b)(1)(F). The approval of the I-600 Petition was revoked accordingly.

On appeal, [REDACTED] asserts that [REDACTED] is an "orphan" and that his surviving parent is unable to provide proper care. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)* and *Brief*, September 17, 2008. Her Brief includes the following claims: She filed the I-600 Petition for [REDACTED] before his mother obtained temporary employment, which she then lost due to illness shortly after the Consular Officer's investigation and she has not worked since that time; [REDACTED] was forced to live on the streets after his father and his great aunt died; when she was informed of this situation, [REDACTED] contacted [REDACTED] mother, who allowed [REDACTED] to stay with her temporarily only after [REDACTED] agreed to send money for his care and well being; [REDACTED] mother "moved away and left [REDACTED] sometime during August 2006 and February 2007" and has not cared for him in almost two years.

In support of her appeal, [REDACTED] submits a report by [REDACTED] "Detective Corporal of Police in charge of Crime at the Guanaoboa Vale Police Station." *Detective's Report*, September 18, 2008. The Detective's Report is based on interviews with the beneficiary, his mother and other family members and friends, and his high school principal. Detective Corporal [REDACTED] states that he was contacted by [REDACTED] to give an impartial and unbiased recommendation on behalf of her nephew and to give a brief update of the family's efforts to have him move to the United States. The individuals interviewed by Detective Corporal [REDACTED] described the difficulties the beneficiary experienced after his father and great aunt died; the support he received from his relatives, including the petitioner; and the financial problems his mother was facing. His report concluded:

After speaking with the above individuals and knowing the locations of the areas that [REDACTED] lived and traveled in and especially knowing the location of the home where he lived with his mother before she moved and the location of his grandmother's home which is a two bedroom concrete structure and is a tenement yard with about twenty persons, I feel that this youth would have a better chance if he was granted the opportunity to live with [REDACTED] in the United States. *Detective's Report, supra.*

Section 101(b)(1)(F) 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) of [the Act], 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).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3 provides in pertinent part:

(b) *Definitions*. . . .

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.

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*.

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The record reflects that the beneficiary's father was killed in July 2005, and that the beneficiary's birth mother is his “surviving parent” as defined above. The petitioner adopted the beneficiary, who is her brother's son, on June 14, 2006 in Kingston, Jamaica. *Adoption Order*, Family Court for Kingston & St. Andrew, Jamaica, June 14, 2006. The issue on appeal is whether the beneficiary's surviving parent is incapable of providing proper care to the beneficiary.

The petitioner has submitted several statements describing the poor and dangerous living conditions of the beneficiary and her financial support of him. In addition to her statements in the record and the documents submitted on appeal, described above, the following relevant documents are included in the record:

- Four Western Union money transfer receipts showing that the petitioner sent a total of \$190 to family members in Jamaica from October 1, 2005 to December 5, 2005. Of this amount, \$50 was sent to the beneficiary and \$100 to his birth mother.

- Letter “To Whom It May Concern” from the Child Development Agency (CDA) in Jamaica, dated June 16, 2006, confirming that [REDACTED] was legally adopted by [REDACTED] on June 14, 2006. The letter states that, prior to his father’s death, the beneficiary had been living with his father but that “[h]e is currently living with his mother, however she has two other younger children caring for [sic] and is finding it difficult to care for [REDACTED] as well. [REDACTED] has indicated that she also fears for her nephew’s physical safety as his father’s death was possibly a revenge killing . . . [she and [REDACTED] biological mother] have agreed that this adoption is in his best interest.” The letter adds that [REDACTED] biological mother “completed her secondary education and obtained a certificate in Food and Nutrition . . . is currently employed as a cashier and earns approximately \$[Jamaican]2500.00 weekly.” The letter notes that [REDACTED] biological mother “stated that she is unable to provide proper care for her two young children along with [REDACTED] . . . After his father’s death he returned to live with her but her home is not convenient to accommodate another child.”
- Statement by [REDACTED], the beneficiary’s grandmother, dated June 28, 2007, claiming that the beneficiary came to live with her in December 2006 when his biological mother, her daughter, moved away from the home that they were living in. She adds, “[w]hen I told [REDACTED] [her daughter] that [REDACTED] could stay with me I thought it was only going to be for a short time, but at this time in my age I am no longer able to care for him . . . I believe he is now staying with [REDACTED] [the petitioner, [REDACTED] [REDACTED] cousin in another home in Kingston.”
- Consular Investigative Report, conducted in Kingston, Jamaica, dated August 17, 2006 (Consular Report), regarding the surviving parent’s ability to provide proper care to the beneficiary.¹ The Consular Report concluded that the beneficiary’s biological mother was employed and received financial support from her daughters’ father and her extended family. This conclusion was based on visits to the beneficiary and his mother on June 28, 2006 at their residence in Kingston and to a supervisor at his mother’s place of employment, the Capital Inn Motel, on July 6, 2006. At the time they were interviewed at their home, which was one room at the rear of a large house, the beneficiary and his mother stated that they resided there together, along with his mother’s two younger daughters and their father. The beneficiary stated that he was also able to spend nights at his grandmother’s house. The supervisor at the Capital Inn Motel confirmed that the beneficiary’s mother had been employed there for close to a year with a salary of JA\$3,500 and that she worked nights.

According to U.S. State Department guidance on intercountry adoption, the government office responsible for adoptions in Jamaica is the CDA, and all applications for adoptions of Jamaican children must be made to the CDA. <http://adoption.state.gov/country/jamaica.html>, accessed November 20, 2008. As noted above, the CDA submitted a letter in this case confirming that the petitioner had adopted the beneficiary in Jamaica. However, regarding the surviving parent’s ability to provide proper care for the beneficiary, the petitioner has not submitted any documentation from “a competent authority” as evidence. The CDA letter, *supra*, does not

¹ The Consular Report incorrectly refers to the provisions of section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E), applicable to adoptions but not applicable to orphan petitions. It therefore includes observations on how and when the petitioner met the beneficiary; it also assesses whether the beneficiary faces physical risk because of generalized crime in Jamaica and the specifics of the death of his father. While these observations are not material to the present case, the Consular Report also addresses the issue of the ability of the beneficiary’s surviving parent to provide proper care, including her living conditions and sources of income.

refer to the birth mother's status, economic or otherwise, other than to confirm that the beneficiary resides with her, that she is employed, and that she is "finding it difficult" to care for him along with her other children and her "home is not convenient to accommodate another child." A reference to difficulties and inconveniences is not an assessment that a mother cannot provide proper care for her child. While Detective Corporal [REDACTED] report, *supra*, notes the difficulties for young men in Jamaica and specifically in the neighborhoods where the beneficiary resided and concludes that it would be better for the beneficiary to move to the United States, the detective is a criminal investigator and does not claim to be competent to assess living standards or ability to provide proper care. While his report and the Consular Investigation clearly indicate that the beneficiary's situation, and that of his birth mother, is difficult and that raising three children in a crowded one-room residence raises concerns over the welfare of the children in the household, the evidence also shows that the beneficiary has alternate places to stay with relatives, that he attends school and that his mother works and has additional income from the father of her younger children.

The petitioner's assertions that the beneficiary's birth mother did not or could not work are contradicted by the letter from the CDA and the Consular Investigation. The petitioner also stated that she sent money to the beneficiary's birth mother for his care and welfare so that he could live with her, but the only evidence of any financial support in the record is comprised of receipts for the transfer of \$190 in 2005. The evidence shows, however, that the beneficiary was residing with his mother or grandmother or other relative from the time of his father's death in July 2005 to at least June 2007, the date of the letter from the beneficiary's grandmother (*supra*) stating that she could no longer care for him. There is no evidence that the petitioner covered the basic needs of the beneficiary during this period or that his surviving parent was not able to provide proper care during that time.

Moreover, the petitioner's claim that the beneficiary's birth mother was unable to provide proper care was largely based on the petitioner's own assessments and is not supported by any reference to the birth mother's actual income or earning capacity or to local standards in Jamaica. Details regarding local standards of living in Jamaica are absent from the record, despite the petitioner's reference to generalized crime and poverty and their effect on the beneficiary. Relevant reports and poverty income guidelines for Jamaica are not included in the record

Statements from the petitioner and others are not to be disregarded, but if not supported by the conclusions of a competent authority or other objective evidence, such statements cannot be afforded much weight. *See, e.g., Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). In this case, there are contradictory statements, no documentary evidence to support the claims of the petitioner, and no authoritative reports on local standards of living in Jamaica. As a result, such statements cannot be given much weight. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not therefore support a conclusion that the birth mother of the beneficiary is incapable of providing for the beneficiary's basic needs in a manner consistent with local standards in Jamaica.

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the sole parent is incapable of providing proper care for the beneficiary. 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 her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.