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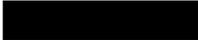
U.S. Department of Justice
Immigration and Naturalization Service

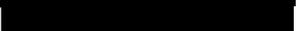
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

MAY 7 2001

File:  Office: TAMPA SUB-OFFICE Date:

IN RE: Petitioner: 
Beneficiary: 

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 data deleted to prevent clearly unwarranted invasion of personal privacy

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the Officer-in-Charge, Tampa, Florida. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on November 9, 2000. The petitioner is a 55 year-old married citizen of the United States. The beneficiary, who at this time is 16 years old, was born in Abesim, Ghana, on December 31, 1984. The beneficiary's biological mother, [REDACTED], has been identified in the record of proceeding and is stated by the petitioner to be living. The beneficiary's biological father, [REDACTED], is stated by the petitioner to be deceased.

The director denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" because the submitted evidence failed to establish that the biological mother is incapable of caring for the beneficiary, or that the beneficiary's biological father is deceased.

On appeal, the petitioner submits a brief and two affidavits.

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.

The director denied the petition because the petitioner did not submit any evidence that there is only one surviving parent, or that the surviving parent is incapable of providing care and support for the beneficiary. The director also noted that evidence indicated that the biological mother placed the beneficiary with the petitioner's cousin in order to facilitate the adoption of the beneficiary by the petitioner and his wife. It is noted that the beneficiary was adopted by the petitioner and his wife in December 1999 pursuant to the laws of Ghana.

On appeal, the petitioner submits two affidavits. One of the affidavits is written by the petitioner's attorney in Ghana, [REDACTED] who states that he has been remitting monies to the biological mother in behalf of the petitioner since 1995. The petitioner believes that this evidence establishes that the biological mother is incapable of caring for the beneficiary.

The other affidavit is written by the guardian of the beneficiary, [REDACTED] who states that he became the beneficiary's guardian subsequent to the adoption order by the Ghanaian authorities. The affiant also states that he remits monies to the beneficiary's biological mother in behalf of the petitioner. The petitioner believes that this affidavit also establishes that the biological mother is incapable of caring for the beneficiary, and that custody of the beneficiary was not transferred to Mr. [REDACTED] by the biological mother in order to facilitate the adoption of the beneficiary by the petitioner and his wife.

Neither affidavit is persuasive evidence that the biological mother is incapable of caring for the beneficiary. Additionally, the Service is not persuaded that the biological mother is the sole surviving parent.

The regulation at 8 C.F.R. 204.3(b) defines *surviving parent* as 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. Pursuant to §204.3(b), *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 first issue that must be addressed is whether there is sufficient evidence in the record to establish that the beneficiary has only one surviving parent, who in this case is the beneficiary's biological mother.

The petitioner is claiming that beneficiary's biological father is deceased. The petitioner has not, however, specified when the beneficiary's biological father died or the circumstances surrounding his death. Furthermore, the petitioner has not submitted any documentary evidence, such as a death certificate, in support of his claim. On appeal, the petitioner states that "I am awaiting further documentation to show that the father is deceased;" however, no evidence has been forthcoming. Although the biological mother and the petitioner both state that the beneficiary's father is deceased, such statements, by themselves, are insufficient. The regulation at 8 C.F.R. 204.3(d)(1)(B) requires a petitioner to submit a death certificate of a parent, if the petitioner is claiming that there is only one surviving parent.

Accordingly, the Service has not been provided with sufficient evidence to establish that the beneficiary has only one surviving parent. Therefore, the petitioner has failed to show that the beneficiary has been abandoned by both parents as that term is defined in the regulation at 8 C.F.R. 204.3(b). Nevertheless, even if the petitioner were able to submit evidence that the beneficiary's father is deceased, the record would still be

deficient in establishing that the sole surviving parent is incapable of caring for her child.

The second issue that must be examined is the petitioner's claim that his and his wife's remittance of monies to the beneficiary's mother for more than 5 years is evidence that the biological mother is incapable of caring for the beneficiary.

The petitioner's remittance of monies to the biological mother does not, by itself, convincingly establish that the biological mother is incapable of caring for the beneficiary. The petitioner did not provide any information or evidence concerning the amount of monies he has remitted. The petitioner also did not submit a detailed explanation from the biological mother explaining why she is unable to care for the beneficiary. Information regarding the biological mother's annual income and the source of that income, and information surrounding the siblings of the beneficiary, if any, who are living with the biological mother, may provide the necessary insight into whether the biological mother is incapable of caring for the beneficiary. Without this type of detailed information, the Service could not find that the biological mother is incapable of caring for the beneficiary, even if we were to find that the biological mother is the sole surviving parent.

Accordingly, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act. For this reason, the petition may not be approved.

As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.