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U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: BALTIMORE, MD Date: **MAR 29 2004**

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting District Director for Services of the Baltimore, Maryland District Office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and the appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the acting district director on June 18, 2002. The petitioner is a 32-year-old married citizen of the United States. The beneficiary is two years old at the present time and was born in Haiti on January 28, 2002.

The director denied the petition, finding that 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) because the petitioner had not established that the beneficiary had been abandoned; that the birth father is incapable of providing proper care for the beneficiary, or that the petitioner had received a full and final adoption.

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

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), 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

In the I-600 petition, the petitioner claimed that the beneficiary was an orphan because his mother died and he became the child of a *surviving parent* who is incapable of providing proper care for the beneficiary. According to the evidence on the record, the beneficiary's father relinquished his parental rights to the beneficiary on May 21, 2002 and consented to the beneficiary's adoption by the petitioner on May 22, 2002. The beneficiary has been in the custody and care of his maternal grandmother since his birth. The evidence indicates further that the beneficiary's father subsequently disappeared and quit providing support to the beneficiary.

The acting director denied the petition on March 13, 2003. In the denial letter, the acting director gave three reasons for denying the petition: the petitioner failed to establish that the beneficiary had been abandoned by his father because he released the beneficiary for a specific adoption; the petitioner failed to establish that the beneficiary's father is incapable of providing proper care for the beneficiary; and the petitioner failed to establish that the petitioner had received a full and final adoption of the beneficiary or that the petitioner had obtained custody and legal control of the beneficiary according to the laws of Haiti.

On appeal, the petitioner states that the beneficiary's father did not transfer his parental rights to any specific party in anticipation of adoption, but that the beneficiary and his father had resided in the home of the beneficiary's grandmother until the father terminated his parental rights and disappeared. The petitioner asserts that because the beneficiary's father's whereabouts are unknown, his ability to provide care for the beneficiary is irrelevant. The petitioner further asserts that she will submit evidence of a final adoption within thirty days of the appeal.

The petitioner has consistently asserted that the beneficiary has only one living parent. Where it is established that the beneficiary has only one surviving parent, the definition of *abandonment by both parents* found at 8 C.F.R. § 204.3(b) should not be referred to or relied upon in the adjudication of the petition. Rather, the

definitions of *surviving parent* and *incapable of providing proper care* are the relevant definitions in 8 CFR. § 204.3(b). These definitions state:

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*.

In review, there is insufficient evidence to establish that the beneficiary is the child of a *surviving parent*. While evidence on the record includes the death certificate of the beneficiary's mother indicating that she died on January 28, 2002, according to the beneficiary's birth certificate, dated February 1, 2002, the biological father declared that the mother was still residing with him in Jacmel, Haiti. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on the conflicting information, it is not clear that the beneficiary's biological mother is in fact dead. Accordingly, there is insufficient evidence to establish that the beneficiary is the child of a *surviving parent*.

Even if the petitioner had established that the beneficiary is the child of a surviving parent, there is insufficient evidence to establish that the surviving parent is incapable of providing proper care of the beneficiary. In response to the acting director's Notice of Intent to Deny dated December 30, 2002, the petitioner submitted her own sworn statement advising that, due to the birth father's absence, "I am unable to determine the birth fathers' [sic] current ability to provide care." The petitioner also submitted an affidavit from the beneficiary's maternal grandmother advising that the birth father is absent and no one knows his whereabouts. The acting director determined that the petitioner had failed to establish that the beneficiary's surviving parent is unable to provide proper care for the beneficiary. The AAO concurs.

Information contained in an affidavit should not be disregarded simply because it appears to be hearsay or self-serving. In administrative proceedings that fact merely affects the weight to be afforded such evidence, not its admissibility. *Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972). However, neither affidavit addressed the biological father's ability to care for the child. On appeal, the petitioner's spouse again confirms that the birth father cannot be located, but does not address the biological father's ability to care for the beneficiary. The record of proceeding, as presently constituted, does not contain sufficient information to establish that the biological father is unable to provide for the beneficiary's basic needs, consistent with the local standards of Haiti. In the absence of a social welfare agency study in Haiti verifying that the beneficiary's father is unable to provide proper care for the beneficiary, or comparable evidence, the AAO is unable to determine whether the beneficiary's biological father is incapable of providing proper care as that term is defined in the regulations. For this additional reason, the petition may not be approved.

The final issue for consideration is whether the petitioner submitted evidence of adoption abroad or that a person or entity working on her behalf had custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country.

The regulation at 8 C.F.R. § 204.3(d)(1)(iv) requires that the petitioner submit:

Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country.

The petitioner submitted an *Extrait de L'Acte de Naissance*, and an *Extrait des Minutes de Greffe* of the *Tribunal de Paix* de la Section Sud de Port-au-Prince with the Form I-600. In a request for evidence dated November 12, 2002, the acting director cited the above regulation and requested that the petitioner submit evidence of the adoption abroad in the form of an "*Acte d'Adoption*." In his Notice of Intent to Deny, the acting director again asked for evidence of the adoption abroad. On appeal, the petitioner submitted the *Autorisation d'Adoption* from the *Institut du Bien Etre Social et de Recherches* (IBESR) in Port-au-Prince, issued on August 20, 2003, and an *Acte d'Adoption* dated August 26, 2003, indicating that the petitioner and her spouse adopted the beneficiary in Haiti on August 25, 2003. Accordingly, this portion of the acting director's decision is withdrawn.

Beyond the acting director's decision, the petitioner claims to live at an address in Burtonsville, Maryland; however, a recommendation for adoption issued on August 20, 2003, by the Ministry of Social Services in Port-au-Prince, Haiti, lists the petitioner's home address as one in Hempstead, New York. This inconsistency has not been resolved. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, it should be noted that CIS regulations require that the home study submitted in support of the petition be tailored to the particular situation of the prospective adoptive parents and meet any State requirements. 8 C.F.R. § 204.3(e). If the petitioner is not living at the residence or state listed on the Form I-600, the home study may not be considered valid for immigration purposes.

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 that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.