

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Date: **DEC 23 2005**

FILE: [Redacted] Office: CHICAGO, ILLINOIS (INDIANAPOLIS, IN)

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

F1

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on January 12, 2005. The petitioner is a fifty two year old married citizen of the United States. The beneficiary was born in Ethiopia on October 7, 1990. He is presently fifteen years old.

The district director determined that the beneficiary's natural mother released her parental rights over the beneficiary with the specific intent of transferring her rights to the petitioner. The district director concluded the petitioner had therefore failed to establish that, for immigration purposes, the beneficiary was "abandoned" by her natural parents, or that the beneficiary met the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i).

On appeal, the petitioner asserts that the beneficiary's natural mother is unable to provide proper care to the beneficiary. The petitioner asserts further that he supports the beneficiary and has obtained legal guardianship over the child, and that the beneficiary's natural mother has abandoned the beneficiary.

Section 101(b)(1)(F)(i) 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), **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 . . . 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(b) provides that:

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. **This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate.** In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

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*.

Disappearance of both parents means that **both parents** have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a *competent authority* in accordance with the laws of the foreign-sending country.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, **as a result, the child has become a ward of a competent authority** in accordance with the laws 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.

(Emphasis added). The record contains a copy of the beneficiary's birth certificate, reflecting that the beneficiary was born in Addis Ababa, Ethiopia. The birth certificate reflects that the beneficiary's natural mother is [REDACTED] and that his natural father is [REDACTED] both Ethiopian nationals. The record contains no information to establish whether or not the beneficiary was born in, or out of wedlock. The AAO notes, however, that the Ethiopian Constitution states in Article 36, section 8 that, "[c]hildren born out of wedlock shall have the same rights as children born of wedlock." See <http://www.ethiopianembassy.org>. Because Ethiopia considers all children legitimate and makes no distinction between a child born in or out of wedlock, the AAO finds that the "sole parent" definition contained in 8 C.F.R. § 204.3(b) is inapplicable to the present matter. The AAO finds that the "surviving parent" definition contained in 8 C.F.R. § 204.3(b) is also inapplicable, as the record contains no evidence to indicate or establish that the beneficiary's natural father is deceased. Because the "sole parent" and "surviving parent" definitions do not apply to the present matter, the AAO finds it is unnecessary to address whether the beneficiary's natural mother is "incapable of providing proper care" to the beneficiary in Ethiopia.

The AAO additionally finds that the petitioner failed to establish both of the beneficiary's natural parents' whereabouts are unknown, or that they "disappeared". The petitioner also failed to establish that the beneficiary at any time became a ward of an Ethiopian court or governmental agency, or that he was "deserted" by his natural parents.

8 C.F.R. 204.3(b) provides that:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. **A relinquishment or release by the parents to the**

prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned. (Emphasis added).

The record contains the following evidence relating to the beneficiary's abandonment status:

A June 22, 2005, affidavit signed by the beneficiary's natural mother indicating that the petitioner is her brother and that he is the beneficiary's legal guardian. The beneficiary's natural mother indicates that she gave the beneficiary up for adoption because she was unable to raise, educate and provide properly for the beneficiary.

A Declaration signed by the beneficiary's natural mother stating that she legally gave the beneficiary up for adoption because she has no income and is unable to satisfy the beneficiary's needs.

A June 21, 2004 letter from the Ethiopian Ministry of Labor and Social Affairs indicating that the whereabouts of the beneficiary's natural father are not known, that the beneficiary's natural father does not help his son, that the beneficiary's natural mother relied on the petitioner's support to raise the beneficiary, and that the petitioner and his wife legally adopted the beneficiary in Ethiopia on June 16, 2004.

A June 16, 2004, Ethiopian, Federal First Instance Court Order, approving the petitioner and his wife's petition for adoption of the beneficiary.

A May 29, 2001, Guardianship Order from the Allen Superior Court, Indiana appointing the petitioner as the beneficiary's guardian.

The AAO finds that the evidence contained in the record clearly reflects that, in giving her son up for adoption, the beneficiary's natural mother intended to, and did release her parental rights over the beneficiary specifically to the petitioner. Accordingly, the AAO finds that the petitioner has failed to establish that the beneficiary was "abandoned by both parents" as set forth in 8 C.F.R. § 203.4(b). The AAO finds further that the petitioner has failed to establish the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act; 8 U.S.C. 1361. The petitioner has failed to meet his burden. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.