

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

FI

[REDACTED]

FILE: [REDACTED] Office: ATLANTA, GA

Date: **OCT 26 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia 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 Petition to Classify Orphan as an Immediate Relative (I-600 petition) on July 7, 2004. The petitioner is a twenty-eight year old married U.S. citizen. The beneficiary was born in Ghana on February 22, 1989, and she is sixteen years old.

The district director denied the I-600 petition on April 20, 2005, based on a finding that the petitioner had failed to establish the beneficiary had only one surviving parent, or that she met the definition of an "orphan", and based on the petitioner's failure to submit requested initial home study report evidence.

On appeal, the petitioner concedes that both of the beneficiary's parents are alive and that they specifically consented to the petitioner's adoption of the beneficiary. The petitioner asserts, however, that the beneficiary's father is unemployed and that the beneficiary's parents are thus unable to support the beneficiary or to provide for her basic needs.

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;** 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(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).

8 C.F.R. § 204.3(b) states, in pertinent part:

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.

8 C.F.R. § 204.3(b) provides that:

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 evidence relating to the beneficiary's status as an "orphan" consists of the following:

A birth certificate reflecting that the beneficiary, [REDACTED] was born in Ghana on February 22, 1989, to [REDACTED] (father) and Peace [REDACTED] (mother).

A November 27, 2003, Court Order of Adoption from the Circuit Court in Accra, Ghana, reflecting that the beneficiary's natural parents consented to the petitioner's adoption of their daughter, [REDACTED].

A notarized affidavit signed by the beneficiary's natural parents on January 18, 2005, stating that they are [REDACTED] natural parents and that they consented to the petitioner's application to adopt their daughter on November 27, 2003, and released their parental rights.

A review of the evidence establishes that the "sole parent" and "surviving parent" definitions contained in the regulations do not apply to the present matter. The evidence reflects that the beneficiary's natural parents are both alive and that they maintained all parental rights, obligations and claims to the beneficiary prior to the petitioner's November 27, 2003, adoption of the beneficiary. The evidence establishes further that in surrendering their parental rights over the beneficiary, the beneficiary's natural parents intended to, and did transfer their parental rights specifically to the petitioner. Accordingly, the AAO finds that the petitioner has failed to establish that the beneficiary meets the definition of an "orphan" as set forth in the regulations and in 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 her burden. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.