



U.S. Citizenship
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FILE



FILE:



Office: PHILADELPHIA, PA

Date: OCT 26 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania 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 January 14, 2005. The petitioner is a forty-five year old married U.S. citizen. The beneficiary was born in the Dominican Republic on December 23, 1999, and she is five years old.

The district director determined that the petitioner had failed to establish the beneficiary's natural mother is a sole or surviving parent who is incapable of providing proper care to the beneficiary in a manner consistent with the local standards in the Dominican Republic. The district director found further that the petitioner failed to establish that the beneficiary's natural parent had irrevocably released the beneficiary for emigration and adoption purposes.

On appeal, the petitioner asserts that the beneficiary's natural mother is a single parent with little or no income. The petitioner asserts that the beneficiary's natural mother is incapable of taking care of the beneficiary and her six siblings, and the petitioner states that food is non-existent in their home and he indicates that the beneficiary's natural mother's home is substandard and not suitable for a child. The petitioner asserts that the beneficiary's natural mother has given the petitioner and his wife formal and definite consent to adopt the beneficiary. The petitioner submits an undated letter from his attorney in the Dominican Republic stating that the beneficiary has been placed with a caretaker under the attorney's supervision until her adoption is finalized, due to her living conditions and as required by the Dominican Republic Adoption Law. In addition, the petitioner submits a copy of a January 25, 2005, adoption petition for the adoption of the beneficiary.

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, was born in the Dominican Republic on December 23, 1999, to [REDACTED] (father) and [REDACTED] (mother).

A January 25, 2005, adoption petition stating that the beneficiary's natural mother, [REDACTED] and her natural father, [REDACTED] give formal and definite consent for their daughter, [REDACTED] to be adopted by the petitioner and his wife.

An undated letter from the petitioner's attorney in the Dominican Republic stating that the beneficiary has been placed with a caretaker under the attorney's supervision until her adoption is finalized due to her living conditions, and as required by Dominican Republic Adoption Law.

The AAO finds that a review of the evidence establishes that the "surviving parent" and "sole parent" definitions contained in the regulations do not apply to the present matter. The adoption petition evidence

reflects that the beneficiary's natural parents are both alive. Moreover, the AAO notes that the law in the Dominican Republic considers all children to be legitimate and does not distinguish between children born in or out of wedlock. In *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (Board) states that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child once his or her father acknowledges paternity in accordance with Dominican law. The Board states further that Article 21 of the Dominican Code for the Protection of Children provides that children born out of wedlock may be acknowledged individually by their father either when the birth occurs, or by means of a will, or by a public instrument." See *Matter of Cabrera, supra*, at FN 1. In the present matter, the beneficiary's birth certificate reflects that the beneficiary's natural father acknowledged the beneficiary at the time of her birth. The AAO therefore finds that the "sole parent" definition contained in the Act does not apply to the present matter irregardless of whether the beneficiary's natural mother married the beneficiary's natural father.

The evidence reflects further that both of the beneficiary's parents continue to maintain all parental rights, obligations and claims to the beneficiary, and that their intent in placing the beneficiary into adoption proceedings is to surrender their parental rights over the beneficiary specifically to the petitioner and his wife. The AAO therefore finds that the petitioner has failed to establish that the beneficiary has been "abandoned" as defined in the regulations and in the Act. Accordingly, the AAO finds that the petitioner has failed to establish that the beneficiary meets the definition of an "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. 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.