

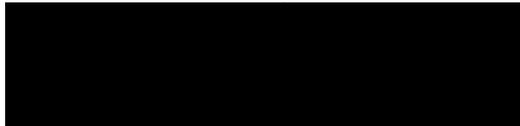


U.S. Citizenship
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Services

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FILE:



Office: BALTIMORE, MD

Date:

SEP 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, Baltimore, Maryland, 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 April 18, 2003. The petitioner is a forty-three-year-old unmarried, naturalized citizen of the United States. The beneficiary was born in Liberia on December 12, 1989, and she is fifteen years old.

In a Notice of Intent to Deny letter sent to the petitioner on May 3, 2004, the district director determined the petitioner had failed to establish that the beneficiary was abandoned, that the beneficiary's birth father had disappeared, or that the beneficiary had only one surviving or sole parent, as defined in Volume 8 of the Code of Federal Regulations (8 C.F.R.). The petitioner was afforded thirty-days to respond to the district director's findings with additional evidence or information. The petitioner responded to the Notice of Intent to Deny on May 21, 2004, with the statement that she was in Liberia in December of 1989, prior to beginning the beneficiary's adoption process. The petitioner stated further that she was requesting relevant documents from Liberia, and she asked for additional time to submit the requested information and documents. The district director denied the petitioner's I-600 petition nine months later, on February 25, 2005. The district director noted that the petitioner had provided no new documentation or evidence, and the district director found that the petitioner had failed to overcome the derogatory information contained in the Notice of Intent to Deny. The district director found further that the petitioner had failed to demonstrate she had seen the beneficiary prior to, or during the beneficiary's adoption proceedings. The district director concluded that the beneficiary had therefore failed to meet 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), and the I-600 petition was denied.

On appeal, the petitioner indicates that the beneficiary meets the "orphan" definition because her biological father is presumed dead, her teenage mother abandoned her, and she was placed into a Liberian Government Home for Children prior to her adoption by the petitioner. Specifically, the petitioner asserts that the beneficiary is the daughter of a distant relative and that the beneficiary's biological mother was a teenager when the beneficiary was born. The petitioner asserts that the beneficiary's biological father never acknowledged the child as his own, and that he had no contact with the beneficiary. The petitioner asserts further that the beneficiary's biological mother abandoned the child, and that the beneficiary was cared for by her maternal grandmother until her grandmother became ill and the beneficiary was placed in a Liberian Government Home for Children. The petitioner asserts that she visited the beneficiary at the Liberian Government Home for Children. The petitioner asserts further that the beneficiary remained at the Liberian Government Home for Children from approximately 1991 to 1995, when the petitioner began adoption proceedings, and the beneficiary moved to the petitioner's mother's home. The petitioner asserts that the beneficiary's biological mother has not been seen since 1991, and that her biological father was last seen in 1992, at which time he was a fighter in the war in Liberia. The petitioner asserts further that around 1991, the beneficiary's biological parents signed and gave an "Affidavit of Consent" releasing their parental claims over the beneficiary to the Liberian Government Home for Children. The petitioner asserts that the Liberian Ministry of Health and Social Welfare subsequently provided her attorney with the "Affidavit of Consent" for purposes of the beneficiary's adoption in January 1997. The petitioner asserts that she has been unable to obtain Liberian, Government Home for Children, Ministry of Health and Social Welfare, or Court adoption documents because, according to her former attorney, his office files were destroyed during the Liberian war and many Liberian government offices were also destroyed and lost their files.

Section 101(b)(1)(F)(i) 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).

8 CFR 204.3(b) provides in pertinent part 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.

In addition, 8 C.F.R. § 204.3(b) states 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.

8 C.F.R. § 204.3(b) also 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.¹

The record contains a Liberian Birth Certificate reflecting that [REDACTED] (the beneficiary) was born on December 12, 1989 to [REDACTED] (father) and [REDACTED] (mother). The record also contains a January 18, 1997, Liberian, 13th Judicial Circuit Court adoption decree reflecting that after examining the affidavit signed by the petitioner's attorney and the "Affidavit of Consent" signed by the beneficiary's biological parents, the court ordered and decreed the beneficiary's adoption by the petitioner. The record contains no other evidence to support the petitioner's claim that the beneficiary is an "orphan" as set forth in the Act.

The AAO finds that the petitioner has failed to provide sufficient evidence to establish that the beneficiary's biological parents disappeared, deserted or abandoned the beneficiary, or that the beneficiary had only one surviving or sole parent, as set forth in the Act. The record contains no evidence to corroborate the petitioner's claim that the beneficiary was unconditionally placed in a Liberian Government Home for Children in 1991, or to establish that the Ministry of Health and Social Welfare provided the beneficiary's parents' "Affidavit of Consent" to the petitioner's attorney for adoption purposes in 1997. The record also contains no corroborative evidence to demonstrate that the beneficiary's biological father disappeared or died, to demonstrate that the beneficiary's biological mother abandoned the beneficiary or is unable to provide proper care to her according to local standards in Liberia, or to demonstrate that the petitioner saw the beneficiary prior to, or during the Liberian adoption proceedings. The petitioner has additionally failed to establish that any of the required evidence was destroyed.

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 not met her burden of establishing that the beneficiary meets the definition of an "orphan" as set forth in section 101(b)(1)(F)(i) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that Liberian law distinguishes between a child born in or out of wedlock, and that legitimation is accomplished by court decree. *Matter of Duncan*, 15 I&N Dec. 272 (BIA 1972).