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FILE:



OFFICE: BALTIMORE, MD

DATE: JUL 18 2006

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, Chief
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 Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on September 29, 2004. The petitioner is a fifty-year-old married citizen of the United States. The beneficiary was born in Sierra Leone on June 2, 1989, and she is presently seventeen years old.

In a decision dated October 5, 2005, the district director determined that the petitioner did not meet the "prospective adoptive parent" definition contained in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) because, although her husband signed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition), the petitioner is separated from her spouse and has failed to establish that she has obtained a final divorce. The district director determined further that the beneficiary's natural parents are both alive and specifically transferred their parental rights over the beneficiary to the petitioner. The district director determined that the beneficiary was therefore not "abandoned" as defined in 8 C.F.R. § 204.3(b). The district director concluded that the petitioner thus failed to establish that the beneficiary meets 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 asserts that her husband lives in England and is not part of the present orphan petition process. The petitioner provides documentation reflecting that she filed for a divorce from her husband in Maryland on October 14, 2005, and she asserts that she is awaiting a final decision on her divorce. The petitioner additionally asserts that new affidavit and letter evidence establishes that the beneficiary's natural parents gave the beneficiary to the Ben Hirsh Orphanage Home in July 1996, and that they therefore abandoned the beneficiary many years ago. On this basis, the petitioner concludes that she is eligible to file an I-600 petition, and that the beneficiary meets the definition of "orphan" for immigration purposes.

Section 101(b)(1)(F)(i) of the Act provides in pertinent part that an "orphan" is:

[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.

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

Prospective adoptive parents means a **married United States citizen of any age and his or her spouse** of any age, **or an unmarried United States citizen** who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

The I-600 petition contained in the record reflects that the petitioner married Morris Bernard Foday in England on August 4, 1999. The I-600 petition was signed on April 30, 2005, by the petitioner and her spouse. The petitioner states on appeal, however, that she is separated from her spouse, that he lives in England and is unable to immigrate to the United States, and that he was not part of the adoption proceedings for the beneficiary and is not participating in the present orphan petition. The record reflects that subsequent to the denial of her I-600 petition, the petitioner filed for a divorce from her husband at the Circuit Court for Montgomery County, Maryland on October 17, 2005. However, the record contains no evidence to establish that the petitioner has obtained an absolute or final divorce from her husband.

Based on the information contained in the record, the AAO finds that the petitioner has failed to establish that she is unmarried, or that she and her spouse adopted the beneficiary jointly and are participating jointly in the orphan petition process as set forth in section 101(b)(1)(F) of the Act and 8 C.F.R. § 204.3(b). Accordingly, the petitioner has failed to establish that she is presently eligible to file an I-600 petition.

The AAO notes that even if the petitioner had established her eligibility to file an I-600 petition in the present matter, her I-600 petition would nevertheless have been dismissed based on her failure to establish that the beneficiary's natural parents "abandoned" the beneficiary, as defined in 8 C.F.R. § 204.3(b).

8 C.F.R. § 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.** (Emphasis added.)

The AAO finds that the evidence contained in the record reflects that the beneficiary's natural parents specifically transferred their parental rights over the beneficiary to the petitioner. As noted in the district director's decision, the record contains Affidavits of Consent signed by the beneficiary's natural parents, for adoption purposes, on July 20, 2004. The affidavits clearly reflect that the beneficiary's natural parents specifically released their parental rights over the beneficiary to the petitioner. A June 15, 2005 affidavit contained in the record and signed by the beneficiary's natural parents reflects further that the beneficiary's natural parents released their parental rights over the beneficiary to the petitioner in order to secure the beneficiary's educational interests and welfare.

The AAO notes the petitioner's assertion on appeal that the beneficiary's natural parents abandoned the beneficiary in July 1996, by giving her to the Ben Hirsh Orphanage Home in Sierra Leone. The AAO is unconvinced by the petitioner's assertion. In support of her assertion, the petitioner submits a copy of an October 19, 2005, letter from the Ben Hirsh Orphanage Home and a new affidavit signed by the petitioner's natural parents stating that the orphanage has had parental control and guardianship over the beneficiary since July 1996. The AAO notes that the petitioner's assertion is made for the first time on appeal. Neither the

petitioner's I-600 petition nor the parental affidavits or Sierra Leone High Court adoption decree make any reference to the beneficiary being placed in an orphanage, or the beneficiary's natural parents having previously released their parental rights over the beneficiary to an orphanage. The AAO notes further that pursuant to international adoption procedure guidance provided by the U.S. Department of State at www.travel.state.gov, "[t]he High Court will not require the consent of the biological parents if those parents have legally abandoned the child." Moreover, "[t]he Ministry of Social Welfare, Gender and Children's Affairs is the government office responsible for overseeing adoptions and child welfare issues in Sierra Leone." In the present matter the High Court clearly required the consent of the beneficiary's natural parents prior to granting the petitioner's adoption request. Furthermore, the record contains no indication that the Ministry of Social Welfare, Gender and Children's Affairs was involved in the beneficiary's adoption.

The AAO notes that the petitioner additionally failed to establish that the beneficiary's natural mother meets the definition of a "sole parent" for immigration purposes. 8 C.F.R. § 204.3(b) states 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.

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*.

The AAO notes that the record contains no information regarding whether a child born of a polygamous, customary law marriage is considered to be a legitimate child in Sierra Leone, or whether a child born out of wedlock in Sierra Leone is accorded the same legal rights as a child born in wedlock. Regardless of whether or not the applicant is a legitimate child, however, the AAO finds that the record contains no evidence to establish that the beneficiary's natural mother is "incapable of providing proper care" to the beneficiary, as set forth in 8 C.F.R. § 204.3(b).

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 AAO finds that the petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.