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FILE:



OFFICE: BALTIMORE, MD

DATE: MAY 12 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:



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 is a forty-four-year old unmarried citizen of the United States. The beneficiary was born in Jamaica on August 23, 2004, and he is presently one years old.

The district director determined that the beneficiary's natural mother did not meet the definition of a "sole parent." The district director determined further that the petitioner had failed to establish that 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). The petition was denied accordingly.

On appeal, counsel asserts that the beneficiary's natural mother qualifies as a "sole parent" for immigration purposes, and that the beneficiary's natural mother falsified an adoption consent form from the beneficiary's father for purposes of the present adoption. Counsel asserts that the beneficiary's natural father's name is not contained on the beneficiary's birth certificate, that the beneficiary's natural mother has not seen the beneficiary's natural father since the beneficiary's birth, and that efforts to locate the beneficiary's natural father have been unsuccessful. Counsel concludes that the beneficiary is thus not a legitimate child under Jamaican law. Counsel asserts further that evidence in the record establishes that the beneficiary's natural mother is unable to provide proper care to the beneficiary, and that the beneficiary therefore qualifies as an "orphan" under section 101(b)(1)(F)(i) of the Act.

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. (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.

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*.

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 reflects that the beneficiary was born in Jamaica on August 23, 2004. The beneficiary's birth certificate reflects that the beneficiary's natural mother is Natricia Reid. The birth certificate contains no information about the beneficiary's natural father.

It is noted that the Jamaican Status of Children's Act of 1976 (Jamaican Act) abolished distinctions between legitimate and illegitimate children. The AAO notes, however, that the Jamaican Act contains explicit provisions requiring proof of paternity prior to legitimation of a child.

In *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981), the Board of Immigration Appeals (Board) held that:

[A] child within the scope of the Jamaican Status of Children Act may be included within the definition of a legitimate or legitimated "child" set forth in section 101(b)(1) of the Immigration and Nationality Act **so long as the familial tie or ties are established by the requisite degree of proof** and the status arose within the time requirements set forth in section 101(b)(1).

(Emphasis added). Pursuant to Section 8 of the Jamaican Act, paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name, a signed legal acknowledgement by the mother naming the child's father, a legal declaration made by the father, or a court order as to paternity.

In the present matter, the applicant's birth certificate does not contain his father's name. The record also contains no evidence to indicate that the applicant's mother has acknowledged or signed a legal document

naming the applicant's father. The record does, however, contain a sworn "Consent to Adoption" form ("Consent Form) signed by [REDACTED] on November 27, 2004, for adoption proceeding purposes. The Consent Form reflects [REDACTED] legal acknowledgment that he is the beneficiary's natural father, and that he legally consents to the petitioner's adoption of his son.

On appeal, counsel asserts that the applicant's natural mother falsified [REDACTED] Consent Form. Counsel asserts further that [REDACTED] does not exist, and that the whereabouts of the beneficiary's natural father are unknown. To support this assertion counsel submits September 2005 advertisements placed in Jamaican newspapers, which attempt to find out any information regarding the beneficiary's father. Counsel additionally submits a June 17, 2005, sworn Declaration signed by the beneficiary's natural mother stating that she was unable to locate the beneficiary's natural father, and that she completed and signed his Consent Form herself. She additionally states that she does not wish to name a father for the beneficiary, and she asks that the [REDACTED] Consent Form be withdrawn. Counsel also submits a June 17, 2005 letter from the Jamaican Adoption Board stating that the beneficiary's natural mother did not name a father for her child when she was interviewed by the Adoption Board, and that she stated that she gave the beneficiary her name.

The AAO finds that the explanation and evidence provided on appeal fail to establish that [REDACTED] does not exist, or that the Consent Form signed by [REDACTED] was falsified. It is noted that the Consent Form clearly refers to the Jamaican Court adoption proceedings, and it appears the Consent Form was submitted to the Jamaican Court for purposes of the beneficiary's legal adoption by the petitioner. The AAO notes that the record also contains a similar sworn, "Consent to Adoption" form signed on November 27, 2004, by the applicant's natural mother. In addition, a March 30, 2005, Jamaican Family Court "Adoption License" contained in the record reflects that the Jamaican Court Judge heard the petitioner's adoption application and was satisfied that all required consents had been given and dispensed with. Based on all of the above factors, it appears that the Consent Form signed by [REDACTED] constitutes a legal declaration of paternity over the applicant. Accordingly, the AAO finds that the applicant has been legitimated under Jamaican law. The "sole parent" definition set forth in 8 C.F.R. § 204.3(b) therefore does not apply to the present matter, and it is unnecessary to address whether the beneficiary's natural mother is "incapable of providing proper care" to the beneficiary.

Because the record contains Consent Forms legally consenting to the petitioner's specific adoption of the beneficiary, the AAO finds that the petitioner has also failed to establish that the beneficiary was "abandoned" as defined by 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 petitioner has failed to establish that the beneficiary meets the definition of "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.