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U.S. Citizenship  
and Immigration  
Services

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AUG 15 2007

FILE:

OFFICE: MIAMI, FL

DATE:

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, Miami, Florida, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600 Petition) in September 2005. The petitioner is a fifty-four-year-old divorced citizen of the United States. The beneficiary was born in Haiti on December 5, 1989. She turned sixteen on December 5, 2005.

The district director determined that the petitioner had failed to provide reliable evidence to establish that the beneficiary met the definition of an *orphan* as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The district director noted that the petitioner had previously filed a Form I-130, Petition for Alien Relative (Form I-130 Petition) on the beneficiary's behalf, on December 21, 2000. The petitioner's Form I-130 petition was denied on May 10, 2003, because the petitioner had failed to establish that the beneficiary resided with her for the required two year period set forth in section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E). The beneficiary thus did not meet the definition of an *adopted child*, as set forth in the Act. The district director noted that the claims and evidence submitted in support of the petitioner's previous Form I-130 petition conflicted materially with the claims and evidence presented in the petitioner's present Form I-600 petition. In particular, the district director noted that the record contained contradictory adoption decree evidence reflecting varying adoption dates for beneficiary. The district director noted that the record also contained contradictory supporting affidavit claims regarding who the beneficiary resided with prior, and subsequent to, her adoption by the petitioner.

On appeal, the petitioner asserts that that her constitutional rights were denied because the district director failed to properly review the evidence in her case.

In the present matter, the petitioner claims that the beneficiary is an *orphan* based on the disappearance and subsequent death of both of the beneficiary's parents, and the petitioner's adoption of the beneficiary prior to her sixteenth birthday. The applicant indicates that around 1996, the beneficiary's natural parents went to the Dominican Republic to find work, and left the beneficiary in the care of a friend [REDACTED]. The applicant indicates that [REDACTED] lost contact with the beneficiary's parents after 1996, and that he learned in 2001 that the beneficiary's father was killed while crossing the border to return to Haiti. Mr. [REDACTED] learned in 2002, that the beneficiary's mother was also killed while crossing the border to return to Haiti. The petitioner indicates that at some point after 1996, [REDACTED] gave the petitioner permission to adopt the beneficiary, based on his loss of contact with the beneficiary's parents.

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 pre-adoption requirements, if any, of the child's proposed residence. (Emphasis added.)

The regulation provides at 8 C.F.R. § 204.3(b) that:

*Disappearance of both parents* means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a *competent authority* in accordance with the laws of the foreign-sending country.

*Competent authority* means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The record contains the following evidence relating to the disappearance and death of the beneficiary's natural parents, and relating to the beneficiary's status as an *orphan*:

A birth certificate issued by the Haitian Ministry of Culture, National Archives, reflecting that the beneficiary was born on December 5, 1989 to [REDACTED] and [REDACTED].

A Haitian [REDACTED] for [REDACTED], reflecting that on December 31, 2001, Mr. [REDACTED] declared that [REDACTED] was dead on December 1, 2001, at 6 pm at Port-au-Prince, Haiti.

A Haitian [REDACTED] for [REDACTED] reflecting that on July 5, 2004, [REDACTED] declared that [REDACTED] died on February 4, 2002 at pm in Port-au-Prince, Haiti.

An affidavit dated January 24, 2007, and signed by [REDACTED], stating that he is an employee of the Ministry of Justice and Public Security in Port-au-Prince, and that the beneficiary's father was a worker at his house. [REDACTED] states that the beneficiary's parents left the beneficiary in his care in 1996, in order to find work in the Dominican Republic. [REDACTED] states that he did not hear from the beneficiary's parents after 1996, and that he heard in 2001 that the beneficiary's father was killed crossing the border to Haiti, and heard in 2002 that the beneficiary's mother was killed in the same fashion. [REDACTED] states that around that time, the petitioner often came to Haiti as a missionary with her church, and that she took pity on the beneficiary and wanted to adopt her. [REDACTED] states that due to the five years of silence from both parents, he gave his authorization to the petitioner to adopt the beneficiary.

A December 10, 2001, "Attestation" from the Haitian Institute of Social Welfare and Researches (IBESR) stating that the IBESR adoption service branch reviewed the beneficiary's adoption file. The "Attestation" verifies that the beneficiary was legally adopted in Haiti on December 9, 1997.

A Haitian Ministry of Cultural Affairs, National Archives Excerpt from the Adoption Certificates Registers (Extrait des Registres des Actes de Naissance d'Adopt) authenticating the beneficiary's adoption by the petitioner on December 9, 1997.

An April 19, 2002, Excerpt from the minutes of the Tribunal of the Peace of the City of Port-au-Prince, Eastern Section ("Extrait des Registres du Greffe du Tribunal de Paix de Port-au-Prince, Section Est.") indicating that [REDACTED] legal guardian, appeared before the tribunal as a representative of [REDACTED] (the petitioner), and declared that he intends to adopt, and does adopt the beneficiary for and on behalf of the petitioner.

A March 8, 2002, Haitian Ministry of Justice and Public Security, "Unconditional Release of Parental Rights" reflecting that [REDACTED] irrevocably and unconditionally renounced all legal rights and privileges over [REDACTED], in his capacity as guardian and keeper of the child after the death of her parents, and that he entrusted and transferred the beneficiary unconditionally and irrevocably to the petitioner.

A Form I-130 petition filed by the petitioner on December 21, 2000, on behalf of the beneficiary, [REDACTED]. The Form I-130 petition contained the following supporting evidence:

A Haitian Adoption Certificate reflecting that the petitioner adopted the beneficiary in Port-au-Prince, Haiti on January 26, 1995.

A January 16, 2003, letter signed by [REDACTED] stating that the beneficiary lived at her house for many years and was financially supported by the petitioner, who travels frequently to Haiti to see her daughter.

A January 15, 2003, letter signed by [REDACTED] certifying that the beneficiary is the petitioner's adopted daughter.

Several additional letters dated in January 2003, stating that the petitioner adopted the beneficiary in 1997, and that she provides for the beneficiary.

Upon review of the totality of the evidence, 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.

The petitioner failed to establish the *disappearance of both parents*, as defined in 8 C.F.R. § 204.3(b). The petitioner failed to establish her claim that the beneficiary's parents left the beneficiary with [REDACTED] sometime in 1996, and that they subsequently failed to contact him. The record contains Form I-130 petition evidence that the petitioner obtained an adoption certificate for the beneficiary in January 1995, prior to the beneficiary's parents' claimed disappearance date. Moreover, the statement by [REDACTED], that the beneficiary has lived at her house for many years and been supported by the petitioner, contradicts the claim that the beneficiary was left at [REDACTED]'s home, and has lived with him. The evidence in the record additionally fails to establish that prior to the beneficiary's adoption, a Haitian court or governmental

agency with jurisdiction and authority to make decisions in adoption matters determined that a reasonable effort to locate the beneficiary's parents had been made.

The AAO finds that the petitioner additionally failed to establish the death of the beneficiary's parents. The Haitian adoption procedure guidance information provided by the U.S. Department of State (DOS) at [REDACTED] reflects that, "[i]f the biological parents of the child are deceased, their 'extrait de deces' (extract of death) from the National Archives" is required. The DOS information indicates that an "extrait" is not to be confused with an "acte de deces." The DOS information reflects further that the:

'Archives National d'Haiti' is the National Archives in Port-au-Prince and is the only Haitian agency with the authority to issue extracts related to acts of birth, death, marriage, and divorce. Each of these documents is based on an 'acte' of birth, death, marriage, and divorce; this 'acte' is rarely sufficient for IBESR or U.S. immigration purposes.

In the present matter, the record contains only the "Actes des Deces" death certificates for the beneficiary's parents, which were created on the basis of one person's declaration to the deaths. The record does not contain an "extrait de deces" from the Haitian National Archives, for the beneficiary's parents. The AAO notes further that the reliability of the petitioner's claim that the beneficiary's natural parents died in 2001 and 2002, are put into serious question, as the petitioner adopted the beneficiary and filed a Form I-130 petition on her behalf prior to the claimed deaths of the beneficiary's parents. Moreover, there is no mention of the beneficiary's deaths in any of the January 2003 documentation that was submitted in support of the petitioner's Form I-130 petition.

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 in the present matter, the petitioner has failed to meet her burden of establishing that the beneficiary is an *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and the petition will be denied.

**ORDER:** The appeal is dismissed. The petition is denied.