

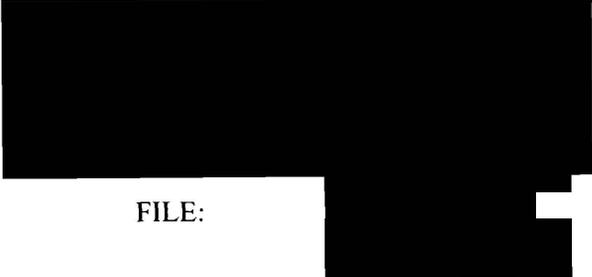
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MAY 01 2007

FILE:

Office: PHILADELPHIA

Date:

IN RE: Petitioner:
Beneficiaries:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, denied the Petitions to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO notes that, though there are two separate petitions and two separate files for the beneficiaries, both petitions were addressed in a single decision by the district director. As there is a single appeal, the AAO will also address both petitions in this decision.

The petitioner filed Petitions to Classify Orphan as an Immediate Relative (I-600 Petition) on August 7, 2006 on behalf of the beneficiaries. The beneficiaries are siblings who were born in Jamaica on December 20, 2005 and June 16, 2004. The petitioner is a 39-year-old married U.S. citizen; her husband is also a U.S. citizen. They claim no relationship to the beneficiaries, though the last name of the beneficiaries is that of the petitioners. According to the beneficiaries' Birth Registration Forms, their current names were added on July 10, 2006; no birth certificates are included in the record indicating their names at birth.

The district director concluded that, based on the documents submitted in support of the I-600 Petitions, "the children's birth certificates, a court ordered grant of custody and a home study," there was no evidence that the beneficiaries' birth mother was incapable of providing them proper care; in addition the record indicated that she and the beneficiaries continued to reside in the same household and maintain a parent/child relationship. *District Director Decision*, December 28, 2006. The district director found that the beneficiaries did not therefore meet the definition of "orphan" under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1101(b)(1)(F). The I-600 Petitions were denied accordingly.

On appeal, the petitioner asserts that the birth mother of the beneficiaries is incapable of providing the children nourishment and shelter necessary for subsistence consistent with local standards of Jamaica and is considered destitute. *Notice of Appeal to the Administrative Appeals Office (Form I-290B) and Supporting Statement*, January 30, 2007. The Supporting Statement includes the following claims:

1. [The beneficiaries' birth mother] is semi-literate and is not employed, nor does she possess any marketable skills. The Jamaica Survey of Living Conditions defines poverty based on the level of consumption that an individual can sustain. In 1998 the poverty line was set a J\$136,949 in reference to a family of five . . . and [the beneficiaries' birth mother] earns well below this threshold.
2. [The beneficiaries' birth mother] suffers from diabetes and cannot adequately manage her disease because she does not possess the means to do so.
3. [The beneficiaries' birth mother] and her eight children (ages 1-16 years old (the oldest of which was pregnant when we were in Jamaica July 2006)) live in a one-room house, with several of them sharing in the kitchen as a bedroom and no bathroom facilities.

The petitioner added that the beneficiaries were in her and her husband's care solely while they were in Jamaica; and that she and her husband "have been responsible for their nutritional, medical, clothing and other needs since being awarded custody and have sent regular aid via a respected legal third party." She states that they "returned the children temporarily to their birth mother in order that the children avoid any additional strain and "avoid the horrid conditions of Jamaica's orphanages."

In support of these assertions, the petitioner later submitted a Special Report from the Department of Correctional Services, Probation Office, Port Antonio, pursuant to an investigation regarding the welfare of the children. *Special Report*, submitted to the Office of Director of Public Prosecution, Kingston, March 16, 2007. The petitioner describes the document as a Comprehensive Background Inquiry Report by the Jamaican police for the courts. *Form I-290B, supra*. The Special Report, signed by two Probation Aftercare Officers, Portland, states the following:

Information received from [the beneficiaries' birth mother] revealed that [she] resides with her seven children in a two-bedroom board house at Belle Castle in Portland. Upon inspection the house appeared clean and neat and equipped with electricity. Pipe water is obtained from a standpipe.

Informant shared that she can scarcely accommodate seven children in one bedroom with one bed. Informant who is unemployed and is at an advanced stage of pregnancy expressed that she is anticipating for guardians [the petitioners] to take two of her children [the beneficiaries] as she is very much unable to care for them, and to offer the moral guidance that they need. . . .

On the 15th of February 2007 Caseworker visited the home of [the father of the beneficiaries' birth mother]. He informed Caseworker that . . . his daughter is not in a position to care for these two children in question . . . [and] . . . that it will be a relief for the family when the guardian[s] take custody of them. He concluded that some days the children do not eat

During the home visit the caseworker observed the beneficiaries, describing them as dirty and crying for food; that one was naked; and that there was insufficient sleeping space for all the children. The report concluded that based on the investigation the beneficiaries appeared to be "grossly in need of proper care and protection" and that their mother's "expression that she is really unable to provide quality care and moral guidance for her children appears to be true."

There is no further evidence in the record relevant to a determination of the biological mother's ability to provide proper care for the beneficiary. The above noted documents have been reviewed and taken into consideration in rendering this decision.

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 provides in pertinent part:

(b) *Definitions.* . . .

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

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*.

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 reflects that the petitioner and her husband were granted legal guardianship or custody of the beneficiaries by order of the Resident Magistrate for the Parish of Portland, Jamaica, in July 2006. *Order for Legal Guardianship (Court Order)*, July 13, 2006. The Court Order relies on an application and affidavit made by the children's birth mother and upon hearing from her and the petitioners. *Id.* These documents or transcripts are not included in the record. The Court Order makes no reference to emigration and adoption and there is no evidence in the record that the "sole parent" has in writing irrevocably released the child for emigration and adoption, as required under the Act. Moreover, if a child is to be adopted in the United States, supporting documentation must accompany the I-600 Petition to show that the petitioner has custody of the beneficiary for purposes of emigration and adoption in accordance with the laws of the foreign-sending country. *See* 8 C.F.R. § 204.3(d)(iv). According to U.S. State Department guidance on intercountry adoption, the government office responsible for adoptions in Jamaica is the Child Development Agency (CDA), and all applications for adoptions of Jamaican children must be made to the CDA. <http://www.travel.state.gov/family/adoption/country>, last updated March 2006. An Adoption License allows a Jamaican citizen orphan to be taken to "scheduled countries," including the United States, and adopted

¹ It is noted that the provisions of Public Law 104-51, which changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, replaced the words "legitimate child" with the words "child born in wedlock," and replaced "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The regulatory definition of "sole parent" contained in 8 C.F.R. § 204.3 has not been amended to conform to these changes.

there. It is the local Resident Magistrate's Court that supervises adoptions in most parishes, the court that in this case issued the custody order; however, there is no evidence that custody was granted for purposes of emigration and adoption and no evidence that the CDA, the competent authority in Jamaica over adoptions, has had any involvement in this case. The record does not therefore support a conclusion that the birth mother of the beneficiaries, the "sole parent," has irrevocably released her children for emigration and adoption or has followed Jamaican law regarding adoptions.

Regarding the sole parent's ability to provide proper care for the beneficiaries, the petitioner has not submitted any documentation from "a competent authority" as evidence, other than the Special Report, *supra*. As noted above, the CDA has not been involved, and the Court Order granting custody did not refer to the birth mother's status, economic or otherwise or incorporate information from the Special Report. The Special Report was prepared by a "Probation Aftercare Officer" with the Probation Office in Portland, and clearly indicates concern over the welfare of the children in the birth mother's household. It also describes a small clean house and observes that the beneficiaries appeared dirty and hungry, indicating a "very inhumane condition" and children in need of proper care. However, the report's conclusion that the birth mother was unable to provide proper care was largely based on her statements and the statements of her father; and the report did not refer to the family's actual income or earning capacity or to local standards in Jamaica.

Details regarding local standards of living in Jamaica are absent from the record, other than a statement from the petitioner referring to poverty standards defined by a Jamaica Survey of Living Conditions and asserting that the birth mother earns well below the threshold poverty line set in 1998. The relevant reports are not included in the record, however; and no evidence regarding the birth mother's earnings is included. The petitioner also states that the beneficiaries' birth mother suffers from diabetes and lives in a one-room house with her eight children, the eldest of whom was pregnant in July 2006; the Special Report was somewhat contradictory, referring to seven children residing in a two-bedroom house and stating that the birth mother was in an advanced state of pregnancy. There is no documentary evidence of how many children actually reside with the birth mother and no medical records regarding her state of health or pregnancy. The petitioner also stated that she and her husband sent regular aid to Jamaica to cover the basic needs of the beneficiaries, but again failed to provide evidence.

Statements from the petitioner and the birth mother, as reported in the Special Report, are not to be disregarded, but if not supported by the conclusions of a competent authority or other objective evidence, such statements cannot be afforded much weight. *See, e.g., Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). In this case, there are contradictory statements, no documentary evidence to support the claims of the birth mother or the petitioner, and no authoritative reports on local standards of living in Jamaica. As a result, such statements cannot be given much weight. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not therefore support a conclusion that the birth mother of the beneficiaries is incapable of providing for the beneficiaries' basic needs in a manner consistent with local standards in Jamaica.

Upon review of all of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the sole parent is incapable of providing proper care for the beneficiaries and has failed to establish

that the sole parent has in writing irrevocably released the beneficiaries for emigration and adoption. Accordingly, the AAO finds that the beneficiaries do not meet the definition of "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. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.