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U.S. Citizenship  
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FILE:



OFFICE: ST PAUL, MN    DATE:

**APR 23 2008**

IN RE:

PETITIONER:

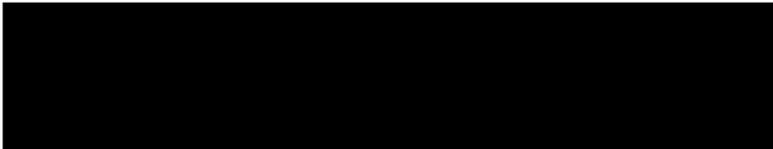
BENEFICIARY:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, St. Paul, Minnesota denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, immigrant visa petition (I-600 Petition.) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the I-600 petition will be denied.

The petitioner filed the I-600 petition on November 14, 2005. The petitioner is a forty-eight-year-old married citizen of the United States. The record reflects that the beneficiary was born in Eritrea on March 29, 2005.

The field office director found the beneficiary did not meet the definition of orphan, as set forth in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F), because her natural mother and father were alive and specifically relinquished their parental rights for the purpose of allowing the petitioner and her husband to adopt the beneficiary.

On appeal the petitioner asserts, through counsel, that the beneficiary was abandoned by her parents and that she therefore meets the definition of an orphan. The petitioner indicates that the beneficiary's natural parents are unmarried and are second cousins, and that a relationship between cousins is socially unacceptable in Eritrea. The petitioner indicates that the beneficiary's natural parents severed all parental ties and obligations to the beneficiary, and gave the child to a cousin (██████████) within a few months of the beneficiary's birth. The petitioner concludes, through counsel, that the beneficiary was therefore abandoned as set forth in the 8 C.F.R. § 204.3(b). In the alternative, the petitioner asserts that the beneficiary's natural mother satisfies the definition of a sole parent, as set forth in 8 C.F.R. § 204.3(b), because the beneficiary was born illegitimately, the beneficiary's father has severed all parental ties with the beneficiary, and her natural mother is unable to provide proper care in accordance with local standards in Eritrea.

Section 101(b)(1)(F)(i) of the Act, defines the term, "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.

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

*Desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws 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. . . .

*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 regulation provides further at 8 CFR 204.3(b) 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.<sup>1</sup>

*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 record contains the following evidence relating to the beneficiary's status as an orphan:

A June 20, 2005, Certificate of Baptism for the beneficiary, containing the beneficiary's natural parents' names ( [REDACTED] and [REDACTED], and listing the beneficiary's Godparent's name as [REDACTED]. The Certificate of Baptism reflects that the beneficiary was baptized at St. Michael D. Selam Parish Church, and that her baptismal name is [REDACTED]. The Certificate of Baptism is signed by the beneficiary's natural father and by the church administrator.

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<sup>1</sup> 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.

The beneficiary's post-adoption birth certificate, registered on February 20, 2006, reflecting that the beneficiary (listed under the name, [REDACTED]) was born in Asmara, Eritrea on March 29, 2005. The birth certificate lists petitioner's name ([REDACTED]) as the beneficiary's mother. The post-adoption birth certificate contains no paternal information for the beneficiary. The record does not refer to, or contain an original birth certificate for the applicant listing her natural parents' names.

A State of Eritrea Regional First Court, Asmara, adoption decision reflecting that the decision, "was given on 18/01/2005." The adoption decision contains a "03/02/2006" filing date and reflects that, through their representative [REDACTED], the petitioner and her husband submitted a petition to adopt the beneficiary on May 1, 2006. It is noted that the January 18, 2005, decision date contained on the adoption decision appears to be in error, as this date would have occurred prior to the beneficiary's birth on March 29, 2005, and is prior to the May 1, 2006, adoption petition filing date. It therefore appears that the adoption decision was issued on February 3, 2006, rather than on January 18, 2005.

The February 3, 2006, adoption decision reflects the "[a]greement reached between the parents of the child by the names [REDACTED] and the adopters [REDACTED] and [REDACTED] for the adoption of [REDACTED] born on 29/03/2005." The decision states that, "[t]he parents of the child, besides they have no legal marriage binding, do not also afford to provide the child with everything, therefore they willing consent that the adopters take care of the child." [Sic]. The decision indicates further that the purpose of the agreement between the adopters and the beneficiary's natural parents is to provide maintenance and a decent life to the beneficiary.

A March 16, 2006, letter signed by [REDACTED], stating that the beneficiary's "[p]arents got the child only under friendship relation, not by legal marriage, so her mother being under 18 year age, and her father unemployed, either afford nor have the maturity or fit to bring up the child." [Sic]. Ms. [REDACTED] states that she, "[b]y humanitarian feeling has been temporarily keeping the child with me in Asmara, seeking further permanent solution."

In addition to the above evidence, the record contains an April 4, 2007, U.S. consular report from the U.S. Embassy in Asmara, Eritrea reflecting that a consular officer interviewed the beneficiary's natural mother (Ms. [REDACTED] and natural father ([REDACTED] a) at the U.S. Embassy, and that consular staff spoke to the beneficiary's listed caretaker (the petitioner's sister, [REDACTED]) at her home.

The consular report noted that some inconsistencies existed between statements made by [REDACTED] during her first interview on March 15, 2007, and her second interview on March 20, 2007. The report indicates that [REDACTED] stated in her initial interview that: she is [REDACTED]'s first cousin; that [REDACTED] maintains some, although infrequent contact with her, and provides no support; and that she works a considerable distance from the beneficiary's present residence. During her second interview, Ms. [REDACTED] stated that she and [REDACTED] are third cousins rather than first cousins, and she stated that she works as a housekeeper in the diplomatic area of Asmara. The consular officer indicated in the report that Ms. [REDACTED] workplace was only about a thirty-minute walk from the beneficiary's listed residence, and that the location is thus not a considerable distance from the beneficiary's present residence.

The consular report reflects [REDACTED]'s statement, during his March 20, 2007 interview, that he has seen the beneficiary two times: once during her baptism on June 20, 2005, and once on March 15, 2007, when he was in front of the U.S. Embassy on the same day as [REDACTED]'s first interview. The consular report additionally reflects [REDACTED]'s statements that: he is unable to help support the beneficiary because he is unemployed; that he does not see his daughter because of family pressures not to do so; and that he "would like to have a father/daughter relationship with the beneficiary if it were not for the family pressures and if he were able to support her."

The consular report reflects that between September 12, 2006 and March 15, 2007, the consular section made repeated unsuccessful attempts to contact the beneficiary's caretaker, [REDACTED]. The report reflects that, "[o]n the afternoon of 3/15/2007, a local member of the Asmara Embassy's Consular Section was able to locate her residence and visit [REDACTED]'s home unannounced. The associate says that he was spoken to outside of the home and was not allowed to look inside or see the child."

The consular report states that, "Eritrean culture has historically viewed as taboo children born either out of wedlock or to relatives as distantly related as 7<sup>th</sup> cousins." The report indicates that the taboo is breaking down, however, and that there are now instances of single mothers raising children in Asmara, and of cousins being married and raising children.

The consular report concludes that the consular officer is unable to determine that the beneficiary is an orphan due to the irrevocable release by the sole or surviving parent.

In response to the concerns raised in the consular report, the petitioner submits:

A September 27, 2007, affidavit signed by the beneficiary's natural mother reflecting that she became pregnant due to unwelcome actions taken against her by [REDACTED]. Ms. [REDACTED] states that she and [REDACTED] are related through their grandparents (her grandmother and Mr. [REDACTED]'s grandfather were siblings) and she states that she wanted to abort the pregnancy, but was told by a hospital that abortion is illegal. Ms. [REDACTED] states that she also wanted to commit suicide, but did not have the heart to do it. Ms. [REDACTED] indicates that she gave birth to the beneficiary at the home of a friend, and she states that she remained at the friends' house for five months. Her friend then died giving birth to her own child, leaving Ms. [REDACTED] homeless. Ms. [REDACTED] states that [REDACTED] did not want anything to do with the beneficiary, stating that he could not raise the child and that it was an unbearable problem for him. She states that in June 2005, her relative, [REDACTED] suggested that the petitioner, [REDACTED]'s sister, adopt the child. Ms. [REDACTED] indicates that she had been cast out, disgraced and isolated from her family because of her pregnancy through her cousin, and she was happy to give the beneficiary to the petitioner and to thereby solve her own problems. Ms. [REDACTED] states that once court papers were filed, she asked [REDACTED] to keep the beneficiary in her care, and she indicates that the beneficiary has lived with [REDACTED] since July 2005, and she wants nothing to do with the beneficiary.

A September 27, 2007, affidavit signed by the beneficiary's natural father reflecting that Ms. [REDACTED] became pregnant due to actions taken by him while he was drunk and unaware of what he was doing. He indicates that the pregnancy caused him to be ostracized by his family, and has caused hatred and pressure from his family. Mr. [REDACTED] states that he did not want to

see the beneficiary when she was born, and that he was forced by a friend to attend the beneficiary's baptism ceremony. He states that, "the American Embassy has severally interviewed me, whether I could support [REDACTED], if I had money, I responded 'yes' reluctantly, because I wanted to get relief and rid of the frequent questions." He states that he heard from [REDACTED], "that the American Embassy told her that I said that I would like to have relation with the child. But it is not true." Mr. [REDACTED] states that he has been insulted, fired and gossiped about due to the beneficiary's birth. He states that he has seen the beneficiary only two times, and does not want to have a relation with her, or think about her. He indicates that this is the reason he immediately accepted the petitioner's request to adopt the beneficiary.

A letter from the Eritrean Defense Forces Center, stating that [REDACTED] arrived at the Defense Training Center on July 12, 2007, and that he will complete his National Service in an undetermined department of the government upon completion of his training. The letter indicates that [REDACTED] is unable to appear before the U.S. Embassy in person, and the letter empowers [REDACTED] to represent [REDACTED] in all legal acts.

An August 31, 2007, letter signed by [REDACTED] reflecting that [REDACTED] is his cousin's son, that the family was unable to accept the beneficiary when she was born, and that the beneficiary's natural parents and the child were ostracized. [REDACTED] states that he later advised [REDACTED] to take care of the child and to help the mother, but Mr. [REDACTED] wanted nothing to do with them. Mr. [REDACTED] states that he forcefully took [REDACTED] to the beneficiary's baptism, and made him take part in the baptism ceremony.

An October 4, 2007, letter signed by [REDACTED] reflecting that she was present at [REDACTED]'s interview with the U.S. Embassy, and stating that the consular report conclusions are based on misunderstandings and erroneous interpretations. [REDACTED] indicates that neither of the beneficiary's natural parents are permanent residents of Asmara, and she indicates that [REDACTED] was not asked to spell out the degree of her relationship to Mr. [REDACTED] until her second interview. [REDACTED] states that the beneficiary has been with her for over two years, and that [REDACTED] has not ever come to see the child. [REDACTED] indicates further that the U.S. Embassy did not have her phone number until March 15, 2007, when a staff member came to her home and told her to appear at the consular office for an interview. She states that she did not deny a U.S. Embassy representative access to the beneficiary and her house because no one from the U.S. Embassy asked to see the house or the child. [REDACTED] indicates that the U.S. Embassy staff member told her on March 15, 2007, that she needed to go to the U.S. Embassy for a consular interview, and that she needed to get the beneficiary's natural parents there too. [REDACTED] states that she was able to reach [REDACTED] and convince him to present himself at the U.S. Embassy's gate, but that he was called for a later interview instead. She indicates that she does not wish to continue caring for the beneficiary, and that the beneficiary will be abandoned if she is unable to join the petitioners in the United States.

A copy of [REDACTED]'s Eritrean identity card, issued on February 13, 2006, reflecting that she was born in Kerecha in 1984, and that her address is in Kerecha.

The AAO finds, upon review of the evidence, that the petitioner has failed to establish that the beneficiary's natural parents deserted or abandoned the beneficiary, as defined in 8 C.F.R. § 204.3(b).

The record contains no evidence to establish that the beneficiary's natural parents legally surrendered their parental rights, obligations and claims over the beneficiary to [REDACTED]. Moreover, the petitioner failed to establish that [REDACTED] is a governmental agency, adoption agency, orphanage or individual authorized under Eritrean child welfare laws to have legal custody or control over an orphan. [REDACTED] thus does not qualify as a competent authority or authorized third party, as set forth in the desertion and abandonment definitions contained in 8 C.F.R. § 204.3(b). Furthermore, the court adoption decision contained in the record clearly reflects that the beneficiary's natural parents specifically transferred their parental rights over the beneficiary to the petitioner and her husband. Accordingly, the petitioner failed to establish that the beneficiary's natural parents deserted or abandoned the beneficiary.

The AAO finds that the petitioner has additionally failed to demonstrate that the sole parent definition contained in 8 C.F.R. § 204.3(b) is applicable in the present matter. Although the evidence contained in the record reflects that the beneficiary was born out of wedlock, the AAO notes that the Eritrean Constitution, adopted July 1996, provides equal rights to all citizens, regardless of social status or any other factors. Specifically, the Eritrean Constitution provides at Chapter III, Article 14 that:

- (1) All persons are equal before the law.
- (2) No person may be discriminated against on account of race, ethnic origin, language, colour, sex, religion, disability, political belief or opinion, or social or economic status or any other factors.
- (3) The National Assembly shall, pursuant to the provisions of this Article, enact laws that can assist in eliminating inequalities existing in the Eritrean society.

*See <http://www.loc.gov/law/help/guide/nations/eritrea.html>.* Because Eritrean law does not distinguish between a child born in or out of wedlock, the AAO finds that the beneficiary is not considered to be an illegitimate child under Eritrean law. Under the terms set forth in 8 C.F.R. § 204.3(b), the sole parent definition is thus not applicable to the present case.

The petitioner has therefore failed to establish that the beneficiary meets the definition of an orphan as defined in the Act.

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 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 I-600 petition will be denied.

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