

PHOTOCOPY



U.S. Citizenship
and Immigration
Services

Identified information related to
prevent...
information...
JUN 10 2004

[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NY

Date:

IN RE: Petitioner:

[Redacted]

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:

[Redacted]

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

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on April 28, 2004. The petitioner is a forty-six-year-old unmarried citizen of the United States. The beneficiary was born in Haiti on October 10, 2000, and she is four years old.

The district director issued a Notice of Intent to Deny the I-600 petition on October 18, 2004. The petitioner responded to the Notice of Intent to Deny, stating that the beneficiary's parents had abandoned the beneficiary to the petitioner's mother approximately three years ago because they were unable to provide for the child. The petitioner stated that the child has resided with the petitioner's mother for over three years, and that the petitioner is the child's sole source of financial support. The petitioner additionally stated that the Ministry of Social Affairs of Haiti authorized the adoption of the child after the biological parents formally relinquished their parental rights and consented to the petitioner's adoption of the beneficiary.

The district director denied the I-600 petition on November 24, 2004, based on a finding that the petitioner had failed to establish the beneficiary was "abandoned" as defined in 8 C.F.R. §204.3(b), and based on a finding that the beneficiary failed to 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).

On appeal, counsel asserts that the beneficiary's biological parents are unable to care for the beneficiary, and that they released their parental rights over the beneficiary to the Civil Court of Port au Prince in Haiti, so that she could be adopted by the petitioner. Counsel indicates that the court is authorized to act in a guardian capacity for adoptions. Counsel concludes that the petitioner has therefore established that the beneficiary was "abandoned" as set forth in 8 C.F.R. § 204.3(b), and that the beneficiary meets the definition of an "orphan" for immigration purposes.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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

Abandonment by both parents is a defined term in the regulations. 8 CFR 204.3(b) states:

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.

The evidence relating to the beneficiary's status as an orphan consists of the following:

A Haitian birth certificate, reflecting that the beneficiary was born in [REDACTED] (father) and [REDACTED] (mother), on October 10, 2000.

A synopsis of the Haitian Court hearing granting the petitioner legal guardianship over the beneficiary, dated November 25, 2002, stating in pertinent part that [REDACTED] biological parents of Thatiana Jean, relinquished their parental rights to [REDACTED] for the legal adoption of their above-named daughter.

A Haitian Adoption Certificate certifying that the petitioner's adoption of the beneficiary was finalized in September 2003.

The AAO finds that the information contained in the Haitian legal guardianship hearing synopsis as well as in the assertions made by the applicant and by counsel reflect that the beneficiary was not "abandoned" by her parents as defined in 8 C.F.R. 204.3(b). A review of the evidence in the record establishes that the Haitian Court did not unconditionally divest the beneficiary's parents of their parental rights over the beneficiary. Rather, the record reflects that the beneficiary's biological parents surrendered their parental rights over the beneficiary in court with the specific intent of transferring those rights to the petitioner for adoption purposes. The beneficiary was therefore not "abandoned" by her parents, and the AAO finds that the beneficiary does 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 his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.