

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

FI

[Redacted]

FILE: [Redacted]

Office: PROVIDENCE, RHODE ISLAND Date:

DEC 07 2010

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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:

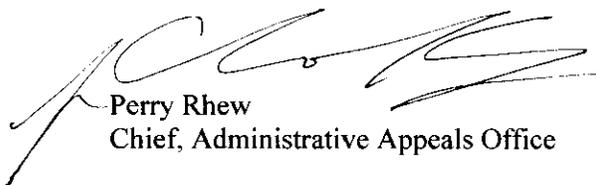
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Field Office Director, Providence, Rhode Island, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(b)(1)(F). The director denied the petition because: (1) the beneficiary did not meet the definition of an orphan; and (2) the petitioner's home study was no longer valid. On appeal, the petitioner states that he and his wife adopted the beneficiary in Ethiopia because his birth parents were unable to bring him up. The petitioner also indicates that he will obtain and submit a new home study.

Section 101(b)(1)(F)(i) of the Act defines an 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) of this title, 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; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation at 8 C.F.R. § 204.3(b) defines the relevant terms as follows:

*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.

\* \* \*

*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.

*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.

\* \* \*

*Loss from both parents* means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

\* \* \*

*Separation from both parents* means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

*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.

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

\* \* \*

The record reflects that the petitioner is a married U.S. citizen. The beneficiary is a nine-year-old native and citizen of Ethiopia. On March 31, 2008, the beneficiary's birth parents executed an adoption contract releasing the beneficiary to the petitioner and his wife for adoption. *See Adoption Contract*, dated Mar. 31, 2008.<sup>1</sup> On April 10, 2008, the Federal First Instance Court of Ethiopia issued a judgment approving the adoption contract. *See Judgment*, dated Apr. 10, 2008. The court's judgment indicates that the beneficiary's birth parents "signed the adoption contract due to their total incapacity to raise the adopted child." *Id.*

The petitioner filed a Petition to [REDACTED] as an Immediate Relative (Form I-600), on August 25, 2008. The director issued a Notice of Intent to Deny the Petition on December 5, 2008. The petitioner responded with additional evidence, which the director found insufficient. The director denied the petition, and the petitioner timely appealed.

The director correctly found that the beneficiary does not meet the definition of an orphan. Specifically, a child may be recognized as an orphan due to "the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents." Section 101(b)(1)(F)(i) of the Act. Here, the beneficiary cannot qualify as an orphan due to abandonment by his parents because his birth parents released him to the petitioner and his wife for adoption. *See* 8 C.F.R. § 204.3(b) ("A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment."); *Adoption Contract; Judgment*. Further, the beneficiary does not qualify as an orphan due to the death or disappearance of, desertion by, or separation or loss from, his birth parents. *See* 8 C.F.R. § 204.3(b). Although the petitioner contends that the beneficiary's birth parents are incapable of providing proper care for him, *see Letter on Appeal*, a parent's inability to provide proper care is applicable to the orphan definition only when a child has a "sole or surviving parent," section 101(b)(1)(F)(i) of the Act; 8 C.F.R. § 204.3(b).

In addition, although the petitioner indicated on appeal that he had requested a new home study, no updated home study has been received by this office. Accordingly, this additional ground for denial of the petition has not been overcome on appeal.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has not met the burden of proving that the beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> The record also includes an English translation of a similar adoption contract dated August 25, 2001.