U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: DETROIT, MI Date: JUN 11 2008

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:

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Detroit, Michigan, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600). 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 Form I-600 in July 2007. The petitioner is a forty-year-old married citizen of the United States. The beneficiary was born in Haiti on December 20, 1999, and he is eight years old.

The field office director found that the beneficiary did not qualify as an orphan, as set forth in section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F), because: 1) the beneficiary was admitted into the United States as a nonimmigrant visa holder, and because he is now unlawfully present in the United States, and 2) the beneficiary's parents released their parental rights over the beneficiary for purposes of a specific adoption by the petitioner and his wife. The Form I-600 petition was denied accordingly.

On appeal, the petitioner asserts that the beneficiary's parents were unable to provide for the beneficiary's needs and abandoned him. The petitioner asserts further that he erroneously believed that the beneficiary still held a valid nonimmigrant status.

The regulation at 8 C.F.R. § 204.3(k)(3) states:

> *Child in the United States*. A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

The record contains no evidence to establish that the beneficiary is in the United States in parole status, as required by 8 C.F.R. § 204.3(k)(3). Rather, statements made by the petitioner, as well as non-immigrant visa information contained in the record, reflect that the beneficiary was admitted into the United States as a B-2 nonimmigrant visa holder in December 2005. The beneficiary has remained in the United States with the petitioner and his family since that time. His nonimmigrant visitor status was extended through June 5, 2007, and he has remained in the United States in an unlawful status since then.

A child in the U.S. either as a nonimmigrant or illegally, is ineligible for the benefits of an orphan petition. Accordingly, the petitioner has failed to establish that the beneficiary qualifies for consideration as an orphan pursuant to section 101(b)(1)(F) of the Act.

The AAO notes the field office director's additional finding that the petitioner failed to establish that the beneficiary was abandoned by both of his parents, or that he meets the definition of an orphan as set forth in the Act.

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

In the present matter, the record contains a June 3, 2007, Haitian Adoption Decree reflecting that the beneficiary's natural parents consented to the petitioner's adoption of the beneficiary.

The regulation at 8 C.F.R. § 204.3(b) states 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 record contains no evidence to establish that the beneficiary was a ward of a competent authority at the time of his adoption. Moreover, the adoption decree reflects that the beneficiary's natural parents released the beneficiary for adoption with the intent of having the petitioner adopt the beneficiary. The beneficiary therefore does not qualify as abandoned under the regulations or the Act.

The regulation at 8 C.F.R. § 204.3(b) provides in pertinent part 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. [1]
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> *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 in the present matter does not establish whether or not the beneficiary's natural parents were married. The AAO finds, however, that the sole parent definition contained in 8 C.F.R. § 204.3(b) is not applicable to the present matter, as the beneficiary's natural father appears to have acknowledged the beneficiary as his child, and a child born out of wedlock after January 27, 1959 is legitimate upon acknowledgement by the natural father. *Matter of Mesias,* 18 I&N Dec. 298 (BIA 1984).

The AAO notes further that the petitioner's adoption of the beneficiary does not appear to fully comply with Haitian international adoption requirements. Haitian adoption procedure guidelines provided by the U.S. Department of State (DOS) at http://travel.state.gov reflect that the Haitian courts issue adoption decrees and other legal documents, but that the Institute du Bien Etre Social et de Recherches (IBESR) is the sole authority to provide authorization to adopt. Documentation from both the Haitian courts and from IBESR is required to adopt a child in Haiti. The present record contains no authorization to adopt from IBESR. The petitioner therefore failed to establish that the beneficiary's adoption is an authorized adoption in Haiti.

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 not met his burden of proof in the present matter. The appeal will therefore be dismissed and the petition will be denied.

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

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[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.