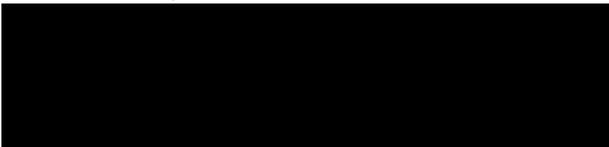




U.S. Citizenship
and Immigration
Services

FI



FILE: [REDACTED] Office: HOUSTON, TEXAS Date: SEP 14 2005

IN RE: Petitioner: [REDACTED]
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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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, Houston, Texas 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 February 20, 2004. The petitioner is a 54-year-old unmarried U.S. citizen. The beneficiary was born in Jamaica on April 28, 1988, and she is seventeen years old.

On May 17, 2004, the district director issued a Notice of Intent to Deny the I-600 petition. The I-600 petition was denied on September 9, 2004, based on the petitioner's failure to submit requested initial home study report evidence and based on a finding that the petitioner had failed to establish that the beneficiary was an orphan.

In a Motion to Reopen, and subsequently on appeal, the petitioner indicates that she has submitted the required initial evidence requested by the district director, and that the evidence establishes that the beneficiary qualifies as an orphan.

The AAO notes that the district director's incomplete home study report concerns, which related to approval of the petitioner's Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application), have been overcome. The issue on appeal is whether the evidence submitted by the petitioner is sufficient to establish that the beneficiary meets the definition of an "orphan" as defined by section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), and as defined in Volume 8 of the Code of Federal Regulations (8 C.F.R.).

Background information contained in the January 15, 2003, Home Study Report and in the July 2004, Home Study Report Update (Home Study Reports) reflects that the beneficiary's biological father is the petitioner's brother. The home study reports indicate that the beneficiary's biological mother abandoned the beneficiary and her siblings when they were young, and that the petitioner's mother took the children in and raised them. The home study reports additionally reflect that all of the petitioner's seven siblings live in Jamaica and that the petitioner's mother died in July 1999. The home study reports indicate that the beneficiary's brother is unemployed and is not able to adequately care for the beneficiary, and an August 24, 2004 letter written by the petitioner reflects that the beneficiary presently lives with one of the petitioner's sisters. The home study reports reflect that the petitioner's motivation for adopting is to provide a female role model to the beneficiary. The petitioner also wants to help her brother and the family by bringing the beneficiary to the U.S. to complete her high school education and to obtain a college scholarship. The home study reports additionally reflect that the petitioner plans to allow the beneficiary to maintain regular phone contact with her family in Jamaica and that the beneficiary will visit her family in Jamaica at least once a year.

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).

8 C.F.R. § 204.3(b) states, in pertinent part:

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.

The AAO finds that the "sole parent" definition is inapplicable to the present matter. The record contains no evidence to indicate that the beneficiary was born illegitimately to her mother. Moreover, the Jamaican Status of Children's Act of 1976 abolished distinctions between legitimate and illegitimate children once proof of paternity is established. See *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981). Section 8 of the Jamaican Status of Children Act provides that paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name. The record reflects that the beneficiary's birth certificate contains her biological father's name. The beneficiary's biological father's paternity over the beneficiary was therefore established at the time of her birth and the beneficiary was legitimated pursuant to Jamaican law.

8 C.F.R. § 204.3(b) provides that:

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 petitioner does not claim that the beneficiary's biological mother is dead, nor is there evidence in the record to support such a claim. The "surviving parent" definition and requirements contained in 8 C.F.R. § 204.3(b) thus also does not apply to the present matter.

8 C.F.R. § 204.3(b) provides that:

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. (Emphasis added).

The petitioner has failed establish that the beneficiary was abandoned by both of her parents, as set forth in 8 C.F.R. § 204.3(b). The record contains no evidence to establish that the beneficiary's biological parents surrendered their parental rights by placing the beneficiary in the custodial care of a third party authorized under Jamaican child welfare laws to act in such a capacity. The record additionally contains no evidence to establish that the beneficiary's biological mother abandoned or deserted the beneficiary or that she at any time gave up her parental rights, obligations and claims to the beneficiary. Moreover, although the record contains evidence that the beneficiary's biological father signed an Irrevocable Release of his parental rights over the beneficiary before the Kingston, Jamaica Adoption Board on July 12, 2003, the Release does not contain an official stamp, and the record reflects that his release was done with the intent of transferring his rights specifically to his sister, the petitioner. The AAO notes further that the home study report information contained in the record indicates that the release was not truly irrevocable, in that the beneficiary's father was to maintain regular phone contact with the beneficiary and was to receive yearly visits from the beneficiary.

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 establish that the beneficiary was abandoned by her parents, as defined in 8 C.F.R. § 204.3, and the petitioner has failed to establish that the beneficiary meets the orphan definition set forth in section 101(b)(1)(F)(i) of the Act. The petitioner has therefore not met her burden in the present matter and the appeal will be dismissed

ORDER: The appeal is dismissed.