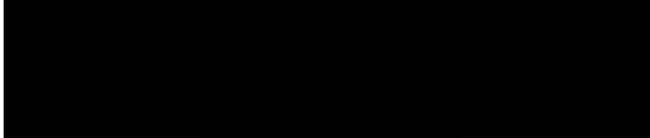


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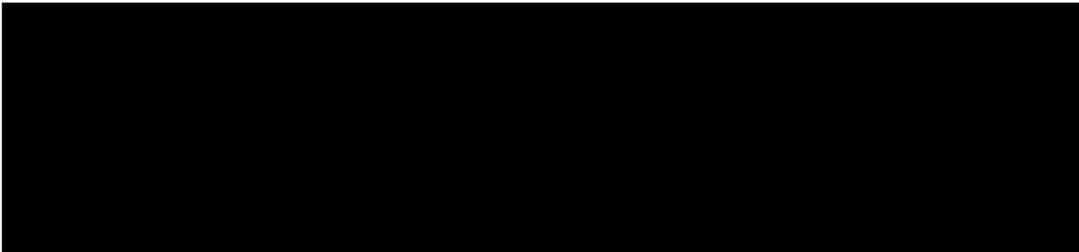
Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Boston. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition), dated April 15, 2004. The district director concluded that the beneficiary, [REDACTED], did not meet the requirements of the definition of “orphan” under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101(b)(1)(F), and that the home study submitted with the I-600 Petition was deficient. The petition was denied accordingly.

The decision of the district director noted that based on the definition of “orphan” under the Act, the beneficiary was not considered an orphan because (1) she was over the age of 16 at the time the I-600 Petition was filed, which the District Director states was April 27, 2004; (2) that the beneficiary’s biological parents were married and living together at the time that the beneficiary was adopted by [REDACTED] **and they did not “abandon” the beneficiary as this term is defined in Title 8 of the U.S. Code of Federal Regulations (8 C.F.R.);** and (3) that the “foster care certification home study” that was submitted by [REDACTED] is not a home study for foreign adoption as it lacks required information, and the update to the home study lacked both the name of the agency and the signature of the preparer. *District Director Decision*, October 4, 2006.

On appeal, counsel for the petitioner asserts (1) that the I-600 Petition was filed and received by USCIS prior to the beneficiary’s 16th birthday; (2) that the beneficiary is an orphan as defined in the Act because she was abandoned by her biological parents; and (3) that “the petitioner and her spouse were approved by the State of Connecticut as both foster parents and as a licensed Day Care provider thus meeting all of the USCIS’ requirements for background and financial standards.” *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, submitted November 3, 2006. In support of these assertions, counsel submits a copy of the “Sender’s Copy” of a FedEx Express USA Airbill dated April 15, 2004 which lists “[REDACTED]” as the sender’s Internal Billing Reference; copies of a cover letter to USCIS, the I-600 Petition (with supporting documentation), and the accompanying Form G-28 and check to USCIS, all dated April 15, 2004. A copy of a “Connecticut Family Assessment, for Use during the Foster Care/Adoption Assessment Process) is also included in the record, indicating that the family is being assessed as a “resource family for foster care.” *State of Connecticut, Department of Children and Families Assessment*, dated November 15, 2002. Also included in the record is a letter from Jewish Family Service (JFS), New Haven, to [REDACTED] informing them that they meet the Connecticut requirements to be an approved foster home, effective for two years. *JFS Letter*, dated November 15, 2002. In response to a request for evidence from USCIS, a “Home Study Update” was submitted stating that “[t]his worker [no name given] visited [REDACTED] and [REDACTED] in their home on November 1, 2004 for the purpose of reapproving them as therapeutic and adoptive parents for Jewish Family Service.” *Home Study Update*, dated November 1, 2004. As noted by the District Director, the document lacks letterhead of the agency and names and signatures of agency personnel. The entire record was reviewed and considered in deciding this appeal.

The threshold issue on appeal in this case is whether the beneficiary meets the definition of an “orphan” for purposes of classification as an immediate relative under U.S. law.

Section 101(b)(1)(F)(i) 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).

“Abandonment by both parents” and “desertion by both parents” are defined terms in the regulations. 8 CFR 204.3(b) states in pertinent part:

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).

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.

The AAO finds that neither documents submitted on appeal nor documents submitted in support of the I-600 Petition support the petitioner's assertions that the beneficiary was abandoned or deserted by her biological parents as those terms are defined by regulation. In fact, the evidence reflects an intention by both parents to **transfer their rights over their child to the petitioner**, which is expressly prohibited under the definition.

Evidence in the record includes the following:

Affidavits by [REDACTED] and her husband stating (1) that the beneficiary is their grandniece, that they have known her since birth, and that they had been trying to support her because of her biological parents' inability to do so; and (2) that the beneficiary's biological parents have six other children and were suffering economic hardship, stating, "We learned that [the biological parents] were prepared to place [REDACTED] up for adoption, and we approached them about our interest in the adoption." *Affidavits of Petitioner and Spouse*, dated April 15, 2004. The [REDACTED] also state that they adopted the beneficiary on November 28, 2000 in Jamaica, that the beneficiary continued to live with her biological parents until mid-December 2001, when "they abandoned her" and the [REDACTED] arranged for the beneficiary to be cared for by [REDACTED], and that they support the beneficiary, financially and emotionally. *Id.*

An affidavit by [REDACTED], confirming that the [REDACTED] asked her to "take charge of their daughter [the beneficiary] after it became clear that her natural parents . . . were no longer able to support and sustain her. *Affidavit of [REDACTED]*, dated March 29, 2002. She adds that she has kept [REDACTED] with her since mid-December 2001 and that the [REDACTED] constantly send money to pay for her schooling and other necessities. *Id.* She states that she is personally aware that [REDACTED] biological parents "consented to placing their daughter for adoption and supported the adoption of her by [REDACTED]." *Id.*

The record reflects that [REDACTED] was born in Litchfield District, Wait-A-Bit, Trelawny (Parish), Jamaica. [REDACTED] with whom the beneficiary currently resides, also lists that as her place of residence. The beneficiary was born there on April 18, 1988, and is currently 18 years old. An Adoption Order included in the record indicates that the beneficiary was adopted by [REDACTED] and her husband on November 28, 2000 in a Magistrate's Court in Trelawny.

The AAO finds that the evidence listed above supports the conclusion that the beneficiary has not been abandoned, but rather there was an agreement to adopt between her biological and adoptive parents and that the beneficiary was given up for a specific adoption. The evidence shows that the beneficiary is related to her adoptive mother and that the biological parents and adoptive parents discussed the possibility of the adoption; that during the year following the adoption, the beneficiary continued to reside with her biological parents. There has been a continuous intention by the beneficiary's biological parents to transfer parental rights over the beneficiary to the petitioner and her husband. The regulations specify that such a relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. 8 C.F.R. § 204.3(b), *supra*. Moreover, there is no evidence that the biological parents ever "deserted" the beneficiary, as that term is defined by the regulations, as they did not willfully forsake her resulting in her becoming a ward of a competent authority in Jamaica, but rather she was adopted by a relative, even while her biological parents continued to care for her.

Other than unsupported statements of counsel and petitioners, there is no evidence in the record to show that the beneficiary is "an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents." Section 101(b)(1)(F) of the Act, *supra*.

There is also nothing in the record to show that the beneficiary was under the age of 16 when the I-600 Petition was filed, as required under the Act. The record reflects that the I-600 Petition had been lost, but the District Office claims that it was filed on April 27, 2004; counsel claims that it was filed on April 16, 2004.

As the beneficiary turned 16 on April 18, 2004, the discrepancy is material. Neither the District Office nor the petitioner offer evidence proving the date of filing: no stamped copy of the I-600 Petition showing time and date of actual receipt appears in the record; and no proof of delivery has been submitted by the petitioner – a copy of a FedEx sender’s receipt without proof of delivery is not proof of filing. However, it is the burden of the petitioner to establish eligibility for a requested immigration benefit. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b)(1). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As noted in the District Director Decision, *supra*, the petitioner has also not met the requirements of the home study, which is needed to support an I-600 Petition, as set forth in 8 C.F.R. § 204.3(e). The documents submitted are either not credible because of lack of signature and letterhead, or do not pertain to adoption, but rather to foster care.

Given the evidence in the record, 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. The petitioner has not met her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.