

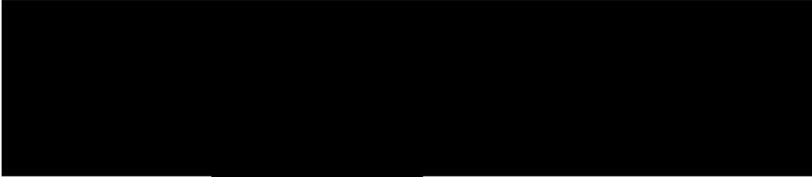


U.S. Citizenship
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FILE: [REDACTED] OFFICE: KANSAS CITY, MO (ST. LOUIS, MO) DATE: MAR 30 2007

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

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 District Director, Kansas City, Missouri, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn, and the case remanded to the district director for further action and consideration.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 Petition) in October 2006. The petitioner is a 56-year old married U.S. citizen. The beneficiary was born in Uganda on December 10, 2005.

The I-600 Petition was denied on November 27, 2006, based on a finding that (1) the petitioner failed to comply with documentary requirements by failing to provide the beneficiary's birth certificate and the death certificate of her father; and (2) the beneficiary's natural mother had specifically released the beneficiary to the petitioner for adoption, an action prohibited under the "abandonment" and "orphan" definitions contained in Volume 8 of the Code of Federal Regulations (8 C.F.R.) and section 101(b)(1)(F) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(1)(F).

On appeal, the petitioner provided the requested birth and death certificates. She also explained that she met the beneficiary after the child had been surrendered to an orphanage, but that under Ugandan law the biological parent(s) must consent to a specific adoption. The petitioner also submitted numerous court documents and affidavits in support of her I-600 Petition to show that she had met Ugandan legal requirements, that the beneficiary had been delivered to an orphanage after her father had died, and her mother was unable to care for her.

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. section 204.3(b) provides in pertinent part 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.

The AAO finds that the district director erroneously applied 8 C.F.R. § 204.3(b), “abandonment by both parents” requirements to the petitioner’s case. The AAO notes that where it is established that the beneficiary has only one surviving parent, the definition of “abandonment by both parents” found at 8 C.F.R. 204.3(b) should not be referred to or relied upon in the adjudication of the I-600 Petition. Rather the definitions of “surviving parent” and “incapable of providing proper care” are the relevant definitions in 8 C.F.R. 204.3(b). These definitions state 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.

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*.

Neither definition cited above specifically prohibits a surviving parent from relinquishing or releasing his or her child to a specific individual in preparation for an adoption. Accordingly, any evidence in the record which shows that the beneficiary’s natural mother relinquished her parental rights for a specific adoption does not bear on the determination of whether a beneficiary, who has only one surviving parent, as is alleged in this case, may be classified as an “orphan.”

The evidence relating to the ability of the beneficiary’s birth mother to provide proper care to the beneficiary was not considered by the district director in coming to a conclusion in this case. The petitioner was misinformed about the evidence needed to support her petition, *i.e.*, the requirements in the case of a beneficiary with a sole or surviving parent. There is also no indication in the present record that the documents provided by the applicant have been reviewed for sufficiency in light of the adoption requirements of Uganda. The record has been supplemented by the petitioner in response to the district director’s decision of November 27, 2006, and the entire record, as supplemented, should be taken into consideration. The AAO notes that another question that remains pending is the validity of the death certificate to prove the death of the beneficiary’s father. The summary format of the death certificate may indicate the need for an additional certificate.

The record is remanded to the district director to review the case in accordance with the proper section of the Act and render a new decision after following procedures for adjudication of an I-600 Petition. Should the decision be adverse to the petitioner, the AAO requests that the decision be certified to the AAO.

ORDER: The decision of the district director is withdrawn and the case remanded to the district director for further action and consideration as indicated above.