



U.S. Citizenship
and Immigration
Services

F₁

[Redacted]

FILE:

Office: PHILADELPHIA, PA

Date:

DEC 07 2009

IN RE:

Applicant:
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:

[Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative and affirmed her decision to deny the petition in response to a subsequent motion to reopen. The Administrative Appeals Office (AAO) rejected a subsequent appeal and now reopens the matter pursuant to a service motion. The appeal will be dismissed. The petition will be denied.

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 field office director denied the petition on the basis of her determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan, as the term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

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(a) states, in pertinent part, the following:

- (1) [A] child who meets the definition of orphan contained on section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a U.S. citizen if:
 - (i) The U.S. citizen seeking the child’s immigration can document that the citizen (and his or her spouse, if any) are capable of providing, and will provide, proper care for an alien orphan; and
 - (ii) The child is an orphan under section 101(b)(1)(F) of the Act.

A U.S. citizen may submit the documentation necessary for each of these determinations separately or at one time, depending on when the orphan is identified.

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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.

* * *

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.

* * *

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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*.

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.

Orphan petition means Form I-600. . . .

* * *

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 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 regulation at 8 C.F.R. § 204.3(d) states, in pertinent part, the following:

Supporting documentation for a petition for an identified orphan . . . An orphan petition must be accompanied by full documentation as follows:

* * *

- (1)(iii)(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. . . .

The petitioner is a thirty-four-year-old citizen of the United States. According to the petitioner, the beneficiary was born in Liberia on November 26, 1995. The petitioner filed the Form I-600 on June 9, 2008. The field office director denied the petition on September 8, 2008. The petitioner submitted a motion to reopen and reconsider field office director's decision on October 14, 2008 and, on February 2, 2009, she affirmed her decision to deny the petition. The petitioner submitted a

timely appeal on March 9, 2009. The AAO rejected the petitioner's appeal on July 17, 2009. The AAO re-opened the matter, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), on September 8, 2009 for the purpose of entering a new decision.

The basis of the field office director's decision was her determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). Specifically, the field office director found that the petitioner had failed to establish that the beneficiary's birth mother is incapable of providing proper care to the beneficiary. In arriving at this conclusion, the field office director also made the implicit determination that the birth mother meets the regulatory definition of a "sole parent," as that term is defined at 8 C.F.R. § 204.3(b).¹

At the time she filed the petition, the petitioner submitted no evidence to establish that the birth mother was incapable of providing proper care to the beneficiary, consistent with local standards in Liberia. The field office director noted as such in her September 8, 2008 denial, stating the following:

An analysis of your case indicates no evidence has been provided to prove that the birth mother is incapable of providing proper care for the child consistent with the local standards of Liberia. Furthermore, the birth mother and child are residing in the same household and are maintaining a parent/child relationship. As such, the birth mother's relationship to, and custodial care for her child never changed in any way. Although the child's birth mother may have financial difficulties, the fact that she and the child continue to maintain a parent/child relationship and reside in the same household shows that she is indeed capable of providing proper care. . . .

¹ Before adjudicating this petition, the field office director had to first determine the standard under which such adjudication would be conducted. In particular, the field office director had to determine the proper role of the birth father in the proceeding. Were the field office director to find that the birth father had played no role in the child's life since birth, as suggested by the petitioner's submission, then the petition would be adjudicated on either the "sole" or "surviving" parent standard. If not, the petitioner would have to establish that the beneficiary was either abandoned or deserted by, or lost or separated from, by *both* of her birth parents, which is clearly not the case here, as the beneficiary lives with her birth mother.

As the field office director apparently agreed with the petitioner's submissions that the birth father had played no role in the child's life, her next decision was whether to treat the birth mother as either a sole or surviving parent. In that the record clearly does not establish that the birth father is no longer alive, it appears as though the field office director determined that the birth mother satisfied the regulatory definition of the beneficiary's "sole parent," as that term is defined at 8 C.F.R. § 204.3(b). For the purpose of issuing this decision, the AAO will follow this reasoning of the field office director. However, the AAO notes that there is no information in the record regarding the beneficiary's birth father, and the affidavits of record do not provide his name. Moreover, the petitioner is named as the beneficiary's birth father on the March 13, 2008 adoption decree.

In the brief he submitted in support of the October 14, 2008 motion to reopen or reconsider, counsel stated that the petitioner and her husband have been providing financial assistance to the birth mother; that the beneficiary currently lives in a “sub-standard environment”; that the beneficiary lacks readily available access to amenities and educational opportunities; and that the petitioner and her husband are no longer able to provide adequate funds to the birth mother. Counsel made similar assertions on the Form I-290B. Counsel also submitted two affidavits from the birth mother: one dated August 28, 2008, and one dated October 10, 2008. In her August 28, 2008 affidavit, which is a consent to guardianship, the birth mother made no reference to her inability to care for the beneficiary. In her October 10, 2008 affidavit, the birth mother stated that she was financially incapable of supporting the beneficiary.

The field office director found counsel’s assertions unconvincing and affirmed her decision to deny the petition on February 2, 2009.

The record contains the following documentation pertinent to the issue of the birth mother’s purported inability to provide proper care to the beneficiary:

- A March 31, 2009 from the beneficiary’s birth mother;
- A March 31, 2009 affidavit from [REDACTED] the beneficiary’s aunt;
- A March 31, 2009 affidavit from [REDACTED] the beneficiary’s cousin;
- An April 3, 2009 “Medical Certificate of Health” regarding the birth mother;
- An April 9, 2009 “Medical Report” regarding the birth mother;
- Information regarding wire transfers from the petitioner’s husband to the beneficiary over a period of several years; and
- Counsel’s undated appellate brief.

In their March 31, 2009 affidavits, which the AAO notes are virtually identical to one another, the birth mother, [REDACTED], and [REDACTED] all state that the petitioner and her husband support the beneficiary. The April 3, 2009 “Medical Certificate of Health” states that the birth mother “is found medically unfit,” and the April 9, 2009 “Medical Report” states that the birth mother was diagnosed with anemia and peptic ulcer disease on April 3, 2009. The MoneyGram International transaction history indicates that the petitioner’s husband has made numerous wire transfers since 2002.

In his appellate brief, counsel contends that the field office director erred in denying the petition. Counsel states that the birth mother suffers from sickle cell anemia and has been unable to care for the beneficiary due to her illness. Counsel repeats his assertions made on motion that the petitioner and her husband have been providing financial assistance to the birth mother; that the beneficiary currently lives in a “sub-standard environment”; that the beneficiary lacks readily available access to amenities and educational opportunities; and that the petitioner and her husband are no longer able to provide adequate funds to the birth mother.

Upon review of the entire record of proceeding, the AAO agrees with the determination of the field office director that the petitioner has failed to establish that the birth mother is incapable of

providing proper care to the beneficiary, consistent with local standards in Liberia. In order to establish that the birth mother is incapable of providing proper care, the record must demonstrate that she is unable to provide for the child's basic needs, consistent with local standards. First, the petitioner has submitted no evidence whatsoever regarding "local standards" in Liberia. Moreover, although the petitioner submits information indicating that the birth mother has anemia and a peptic ulcer, such information, alone, does not establish that she is unable to provide proper care to the beneficiary. The petitioner makes no effort to explain why having anemia or a peptic ulcer renders the birth mother incapable of providing proper care to the beneficiary consistent with the standards of Liberia. Although counsel asserts that the birth mother suffers from sickle cell anemia, he submits no evidence to support such assertion. Although the medical certificate stated that the birth mother is "medically unfit," it does not state for what she is unfit. Although the affidavits from the birth mother, [REDACTED] and [REDACTED] state that the petitioner's husband supports the beneficiary, such testimony does **not establish** that the birth mother is incapable of providing proper care.

The petitioner's claim that the beneficiary's birth mother is unable to provide proper care, therefore, is based largely on the petitioner's own assessments and is not supported by any reference to the birth mother's actual income or earning capacity, or to local standards in Liberia. Nor do the wire transfer receipts establish that the birth mother is unable to provide proper care to the beneficiary.

For all of these reasons, the AAO concurs with the determination of the field office director that the petitioner has failed to establish that the birth mother is incapable of providing proper care to the beneficiary, consistent with local standards in Liberia.

In that she has failed to establish that the beneficiary's birth mother is incapable of providing proper care consistent with local standards in Liberia, the petitioner has failed to establish that the beneficiary qualifies for classification as an orphan as the term is defined at section 101(b)(1)(F)(i) of the Act. Accordingly, the AAO will not disturb the field office director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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