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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: JAN 07 2009

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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner,), filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on April 18, 2007 on behalf of the beneficiary, . The beneficiary was born in Jamaica on May 3, 2003 and is currently five years old. claims that she and the beneficiary are sisters as her father, who was killed in 2005, had informed her that he had also fathered The I-600 Petition was denied on March 11, 2008.

The director found that (1) the home study submitted in support of the I-600 Petition was not valid as it did not fully comply with federal regulations; (2) Jamaican laws regarding adoptions had not been followed, as the government office responsible for adoptions in Jamaica, the Child Development Agency (CDA), had not been involved in the case; (3) the beneficiary's birth certificate submitted in support of the I-600 Petition was counterfeit, and the name of the birth father had been altered; and (4) the record contains no credible evidence that the beneficiary's birth mother, who claimed to be the beneficiary's surviving parent, was incapable of providing proper care for her daughter. *Notice of Denial,* March 11, 2008. The director concluded that, regardless of whether the petitioner had submitted a valid home study, the beneficiary did not meet 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). The I-600 Petition was denied accordingly.

On appeal, submits additional evidence and her statement in response to the Notice of Denial. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)* and attachments, filed April 11, 2008. She provides an updated home study which added the information that was missing, evidence that neither the petitioner nor her husband had a history of abuse or violence or had been previously rejected as a prospective adoptive parent or had been the subject of an unfavorable home study. *Home Evaluation,* by April 9, 2008. She also submits a copy of a "Pre-Adoption Information Form for Applicants" printed by the Adoption Board (Ministry of Health) in Kingston, Jamaica, which, according to a notation by the petitioner, was mailed to and received by the CDA in April 2008.

Regarding the problems with the beneficiary's birth certificate, explains that she had initially received birth certificate, a "Birth Registration Form" showing a registration date of October 26, 2005, from birth mother, , but was surprised to see that the name of the birth father was given as " " instead of her father. when confronted, said that she had made a mistake when she registered the birth and agreed to have the record corrected. She then provided the corrected version, which the petitioner submitted in support of her I-600 Petition. She asserts that neither she nor knew the document was counterfeit, although they both were aware that the document had been changed to correct the record to show that was actually the birth father. On appeal, submits the original "Birth Registration Form" she had received from which gave the name of birth father as ," and a copy of a "Deed Poll," an official document signed by the Justice of the Peace of St. Catherine Parish in Jamaica at the request of changing her daughter's name from

" to " on January 17, 2007. also stated on appeal that she would provide the results of a DNA test to show that she and the beneficiary were sisters as claimed, both daughters of To date, the AAO has not received such test results.

also submits numerous documents on appeal regarding her family's income and other assets, but does not address the birth mother's ability to provide proper care for

The issue on appeal is whether the beneficiary meets the definition of "orphan" as defined in the Act, specifically whether the petitioner has shown by a preponderance of the evidence that the beneficiary has one surviving parent and, if so, whether the surviving parent is incapable of providing for the beneficiary's care and has irrevocably released her for emigration and adoption. Also at issue is whether the petitioner failed to follow Jamaican adoption procedures as required. The above noted documents have been reviewed and taken into consideration in rendering this decision.

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) of [the Act], 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).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3 provides in pertinent part:

> (b) *Definitions.*
>
> *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.

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.*

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.

(d) *Supporting documentation for a petition for an identified orphan. . . .*

(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; and

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country . . .

Evidence that has only a sole or surviving parent

The record reflects that was born in Jamaica on May 3, 2003; that her mother is ; and that her birth was registered on October 26, 2005. Her Birth Registration Form shows as the father and lists and as informants, both residing at in Jones Town, St. Andrew Parish. *Birth Registration Form,* certified copy issued November 27, 2006. As noted above, this document was submitted on appeal along with a "Deed Poll" requested by changing her daughter's name from " to " on January 17, 2007. The beneficiary and deny that is s father. There is no allegation or evidence that is a "sole parent," which would be the case if it were established that the father of the beneficiary "has severed all parental ties, rights, duties, and obligations to the child, or . . . has, in writing, irrevocably released the child for emigration and adoption." 8 C.F.R. § 204.3(b).

claims, however, that her father, who died in 2005, is also father, making mother a "surviving parent." In support of this claim, submitted a counterfeit version of the beneficiary's Birth Registration Form in which the name of the petitioner's father, ' n," replaced the name ' " The record also includes a copy of s death certificate showing that he died in Jamaica on July 27, 2005. Aside from statements from the petitioner and there is no evidence in the record

indicating that is Paultika's father. In fact, documentary evidence contradicts that claim. 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)).

Evidence that a sole or surviving parent is incapable of providing for the orphan's care

While it has not been established that the beneficiary's mother is a "sole or surviving parent," the AAO will also address the director's finding that the petitioner failed to submit any credible evidence that birth mother is incapable of providing proper care for the child. For the child to meet the definition of "orphan," the sole or surviving parent must provide evidence that she is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country, in this case, Jamaica. 8 C.F.R. § 204.3(b), *supra.*

Regarding ability to provide proper care for the beneficiary, the petitioner has not submitted any documentation from "a competent authority" as evidence. She has provided only her own statement and that of that does not have the resources to support her child. The record contains no official assessment of s status, economic or otherwise, other than details she provided in connection with applications for a Non-immigrant Visa to the United States for herself on April 3, 2006 and on March 1, 2007 and for her daughter on April 19, 2007; she indicated that she was either working as a housekeeper, was unemployed, or, most recently, that she was living and working in Turks and Caicos. According to information based on interviews conducted in May 2007 as part of the Home Evaluation, *supra,* resided with her mother at that time; the I-600 Petition confirms this, contradicting the petitioner's statement, dated April 25, 2007, that "has given up all rights to the child, as she has no means to support her and has signed documents to that effect."

The record lacks any evidence establishing that the beneficiary's birth mother did not or could not support her child. The evidence instead reflects that has remained under the care of her mother; it fails to establish that at any time the petitioner or anyone else covered the basic needs of the beneficiary or that her mother was not able to provide proper care. Moreover, the record lacks any reference to the birth mother's actual income or earning capacity or to local standards in Jamaica. Relevant reports and poverty income guidelines for Jamaica are not included in the record

Failure to follow Jamaican laws regarding adoptions

The petitioner must establish that "the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of [Jamaica]." 8 C.F.R. § 204.3(d).

According to U.S. State Department guidance on intercountry adoption, all applications for adoptions of Jamaican children, both for Adoption Licenses (allowing a Jamaican citizen child to be taken to a "scheduled country," in this case, the United States, and adopted there) and Adoption Orders, must be made to the government office responsible for adoptions in Jamaica, the CDA; and, as part of the process to finalize the adoption (or gain legal custody) in Jamaica, generally the CDA must

approve the adoption and forward the case to the courts. U.S. State Dept., *Intercountry Adoption,* http://adoption.state.gov/country/jamaica.html (updated November 2008). As noted by the director, the CDA has not been involved in the adoption process in the present case. While submitted on appeal a copy of a "Pre-Adoption Information Form for Applicants," which she claimed was mailed to and received by the CDA in April 2008, that document is not evidence that the CDA was in any way involved in the adoption process for the beneficiary or that adoption procedures were followed as required.

Conclusion

In this case, there are contradictory statements and contradictory evidence regarding the identity of the beneficiary's biological father and whether the beneficiary's mother is incapable of providing proper care to her child. Lacking documentary evidence of paternity as claimed by the petitioner, there is no basis to conclude that the beneficiary's father is dead and her mother is, therefore, a "surviving parent"; there is also no evidence that the beneficiary's father, if living, has severed his parental ties or irrevocably released the beneficiary for emigration and adoption, making her mother a "sole parent." The record also contains contradictory evidence regarding whether the beneficiary's mother, if considered to be a sole or surviving parent, is incapable of providing for the beneficiary's basic needs in a manner consistent with local standards in Jamaica; the record contains no assessment of the mother's financial situation and lacks authoritative reports on local standards of living in Jamaica. Statements from the petitioner and others are not to be disregarded, but if not supported by the conclusions of a competent authority or other objective evidence, such statements cannot be afforded much weight. *See, e.g. Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). As noted above, 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. at 165. Moreover, the record clearly establishes that the petitioner has failed to follow Jamaican adoption procedures as required.

Upon review of all of the evidence contained in the record, and for the reasons noted above, the AAO finds that the petitioner has failed to establish by a preponderance of the evidence that the beneficiary meets 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. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met her burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.