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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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FILE: [Redacted]  
AAO 10 043 50019

Office: HOUSTON, TEXAS

Date: **FEB 03 2010**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED<sup>1</sup>

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).

erry Rhew  
Chief, Administrative Appeals Office

<sup>1</sup> The AAO notes that the appeal was prepared by an attorney. However, counsel did not submit a Form G-28, Notice of Entry of Appearance as Attorney or Representative. Accordingly, counsel will not be notified of the outcome of this proceeding.

**DISCUSSION:** The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The field office director denied the petition on the basis of her determination that: (1) 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; and (2) the petitioner had failed to establish that the birth father has irrevocably released the child for emigration and adoption, in writing.

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(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.

*Desertion by both parents* means that the parents have willfully forsaken the 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.

*Disappearance of both parents* means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

*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.

\* \* \*

*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)(3) provides that orphan petitions filed concurrently with an advanced processing application must contain the documentation required by 8 C.F.R. § 204.3(c), as well as the documentation required by 8 C.F.R. § 204.3(d)(1), except for the documentation required by 8 C.F.R. § 204.3(d)(1)(i).

Whether the petitioner has satisfied the criteria at 8 C.F.R. § 204.3(c) is not at issue. The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

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

\* \* \*

- (iii) Evidence that the child is an orphan as appropriate to the case:
  - (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or
  - (B) The death certificate(s) of the orphan's parent(s), if applicable;
  - (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:
  - (A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad . . . ; or
  - (B) If the orphan is to be adopted in the United States because there was not adoption abroad . . . and/or the adoption abroad was not full and final:
    - (1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;
    - (2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;
    - (3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. . . .
    - (4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act. . . .

The petitioner is a fifty-two-old citizen of the United States. The beneficiary was born in Ethiopia on November 12, 1993. The beneficiary is the biological niece of the petitioner.

The petitioner filed the Form I-600 on February 27, 2008. The field office director issued a request for additional evidence on March 5, 2008. The petitioner responded to the field office director's request on May 16, 2008. The field office director issued a notice of intent to deny (NOID) the petition on July

30, 2008, and the petitioner submitted a response on October 20, 2008. The field office director denied the petition on May 6, 2009. A timely appeal was submitted on June 3, 2009.

As was noted previously, the field office director denied the petition on two grounds: (1) 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; and (2) her determination that the petitioner had failed to establish that the birth father has irrevocably released the child for emigration and adoption, in writing.

#### Whether the beneficiary meets the statutory definition of an “orphan”

The issue before the AAO is whether the petitioner has established that the beneficiary qualifies for classification as an orphan as that term is defined in the Act. As noted previously, in order to meet the definition of an orphan as set forth at section 101(b)(1)(F)(i) of the Act, the petitioner must establish that the beneficiary 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. The AAO will address each of these definitions in turn.

##### *I. Death or disappearance of both parents*

No assertions have been made that both of the birth parents have died. Although the record does indicate that the birth mother may have disappeared, the AAO notes that the “disappearance of both parents” standard encompasses, as indicated by its title, the disappearance of *both* birth parents. As the birth father has not “disappeared,” this definition does not apply to the instant case. As such, the beneficiary does not meet the definition of an orphan as a result of the death or disappearance of both birth parents.

##### *II. Abandonment by both parents*

The term “abandonment by both parents” is specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been abandoned by both of her parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must demonstrate that both of her parents had “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).” The petitioner fails to satisfy this requirement for three reasons.

First, the AAO notes that the “abandonment by both parents” standard encompasses, as indicated by its title, the intentions of *both* birth parents. Although the petitioner maintains that the beneficiary’s birth mother is not involved in the beneficiary’s life, such lack of involvement is not sufficient to establish her abandonment of the beneficiary. Again, as set forth at 8 C.F.R. § 204.3(b), the mere *intention* to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child is not sufficient. The actual *act* of surrendering parental rights, obligations, claims, control, and possession must also be demonstrated. The record of proceeding does not

establish that the birth mother has engaged in the *actual act* of surrendering her parental rights, obligations, claims, control, and possession of the beneficiary.

Second, even if the AAO were to find that such a demonstration had been made, the record would still be insufficient to demonstrate abandonment by both parents, because although the record does establish that the birth father is *willing* to surrender his parental rights, obligations, claims, control, and possession, it does not establish that he has *actually* done so. For example, the record indicates that the beneficiary currently resides with the birth father and, as such, that he has not surrendered his *actual* possession and control of the beneficiary.

Third, even if the previous two deficiencies were not present, the beneficiary would not qualify as an orphan under the “abandonment by both parents” standard for an additional reason. As noted previously, 8 C.F.R. § 204.3(b) states that “relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.” Here, the birth father has relinquished the beneficiary to a specific person – the petitioner (and his wife). Again, the regulation specifically states that if the birth parents release the child to a specific person, such release does not constitute abandonment. For all of these reasons, the beneficiary does not meet the definition of an orphan as a result of having been abandoned by both of her birth parents.

### *III. Desertion by both parents*

The term “desertion by both parents” is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been deserted by both of her parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must demonstrate that both of her parents “have willfully forsaken the 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”

First, as was the case under the disappearance and abandonment standards, the beneficiary does not meet the definition of an orphan under this standard because there is no evidence that her birth father has deserted her. Again, in order to qualify under this standard the actions of *both* parents must be examined. Second, the AAO notes that the beneficiary has not “become a ward of a competent authority.” For both of these reasons, the beneficiary does not meet the definition of an orphan as a result of having been deserted by both of her birth parents.

### *IV. Separation from both parents*

The term “separation from both parents” is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been separated from both of her parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must provide evidence of “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.” No such evidence has been presented.

Accordingly, the beneficiary does not meet the definition of an orphan as a result of having been separated from both of her birth parents.

*V. Loss of both parents*

The term “loss of both parents” is also specifically defined at 8 C.F.R. § 204.3(b), and the AAO finds that the petitioner has not established that the beneficiary meets the definition of an orphan as a result of losing both parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must provide evidence of “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.” Again, no such evidence has been presented. Accordingly, the beneficiary does not meet the definition of an orphan as a result of the loss of both of her birth parents.

*VI. Sole parent incapable of providing proper care and who has, in writing, irrevocably released the child for emigration and adoption*

The terms “sole parent” and “incapable of providing proper care” are both defined at 8 C.F.R. § 204.3(b). The birth father does not meet the definition of a sole parent, as this definition applies to birth mothers only. See 8 C.F.R. § 204.3(b).

Even if the petitioner could establish that the birth father is the beneficiary’s “sole parent,” as that term is defined in the regulation, the beneficiary would still not meet the definition of an orphan under this standard, as the record does not further demonstrate that he is incapable of providing proper care to the beneficiary. As noted previously, the phrase “incapable of providing proper care” is specifically defined at 8 C.F.R. § 204.3(b) as “mean[ing] that a sole or surviving parent is unable to provide for the child’s basic needs, consistent with the local standards of [Ethiopia].” Although the petitioner has supplemented the record in this regard on appeal, the record still fails to establish that he is unable to provide for the beneficiary’s basic needs, consistent with local standards in Ethiopia. First, the petitioner has submitted no evidence whatsoever regarding “local standards” in Ethiopia. Moreover, although the petitioner and the affiants state that the birth father is unemployed, they fail to submit any evidence or offer any explanation as to why he cannot obtain gainful employment which would enable him to provide proper care to the beneficiary, consistent with local standards in Ethiopia. Finally, although the petitioner submits an affidavit from [REDACTED] on appeal which states that the birth father suffers from Post Traumatic Stress Disorder, social withdrawal and isolation, anxiety, depression, and dysphoria as a result of his experience as a soldier from 1989 until 1991, the AAO finds this affidavit insufficient to establish that the birth father is incapable of providing proper care. First, the AAO notes that, prior to the denial of the petition, the petitioner’s claim that the birth father is incapable of providing proper care was based upon his unemployment; no mention was made of any mental health issues until after the petition was denied. Second, this single affidavit, alone, is insufficient to establish that the birth father suffers from the previously-mentioned conditions.

*VII. Surviving parent incapable of providing proper care and who has, in writing, irrevocably released the child for emigration and adoption*

The terms “surviving parent” and “incapable of providing proper care” are both defined at 8 C.F.R. § 204.3(b). The birth father does not meet the definition of a surviving parent, as there is no indication in the record that the birth mother has died. Even if the petitioner could establish that the birth father is the beneficiary’s “surviving parent,” as that term is defined in the regulation, the beneficiary would still not meet the definition of an orphan under this standard, as the record does not further demonstrate that he is incapable of providing proper care to the beneficiary. The AAO incorporates here its previous discussion as to why the petitioner has failed to establish that the birth father is incapable of providing proper care to the beneficiary consistent with local standards in Ethiopia.

*VIII. Conclusion*

As set forth in the previous discussion, the AAO finds that the petitioner has failed to establish that the beneficiary meets the definition of an orphan under any of the seven definitions discussed above: (1) the death or disappearance of both parents; (2) abandonment by both of her parents; (3) desertion by both of her parents; (4) separation from both of her parents; (5) the loss of both of her parents; (6) the incapability of her sole parent, who has in writing irrevocably released the child for emigration and adoption, to provide her with proper care; or (7) the incapability of her surviving parent, who has in writing irrevocably released the child for emigration and adoption, to provide her with proper care. Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of 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), and the field office director properly denied this petition. 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.