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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

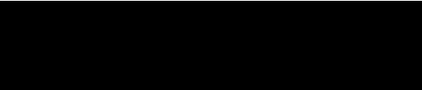


F1

DATE: Office: NATIONAL BENEFITS CENTER

FILE: 

JUN 14 2011

IN RE: Petitioner:
Beneficiary: 

APPLICATION: 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 APPLICANT:

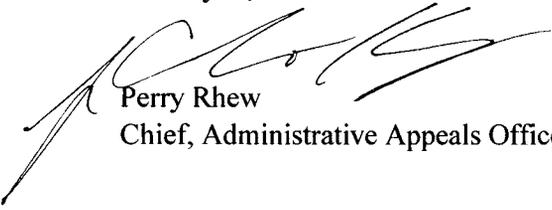
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, 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 director determined that the petitioner failed to establish that that beneficiary met the definition of an orphan, and denied the petition accordingly. On appeal, the petitioner submits additional information, and requests approval of the petition. *See Form I-290B*, Notice of Appeal, filed Feb. 28, 2011; *Letter from Marcia Brown*, dated Jan. 25, 2011. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 phrase “[s]urviving 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.” 8 C.F.R. § 204.3(b). Further, “[i]ncapable 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*.” *Id.*

An orphan petition filed concurrently with an advanced processing application, as is the case here, must contain the advanced processing documentation required by 8 C.F.R. § 204.3(c), as well as the orphan petition documentation required by 8 C.F.R. § 204.3(d)(1) (except for evidence of approval of the advanced processing application). 8 C.F.R. § 204.3(d)(3).

The record reflects that the petitioner is U.S. citizen, and her spouse is a lawful permanent resident of the United States. The beneficiary was born in Jamaica on January 24, 1994, to [REDACTED]. *See Birth Certificate for [REDACTED]*. The

beneficiary's birth father died on July 25, 2005. *See Death Certificate for [REDACTED]*. The petitioner and her husband adopted the beneficiary in Jamaica on August 12, 2009. *See Adoption Order*, dated Aug. 12, 2009; *Adopted Children Register*, dated Aug. 3, 2010.

The petitioner and her husband filed the instant Form I-600 on December 1, 2009. The director issued a Request for Evidence (RFE) on November 2, 2010, and a Notice of Intent to Deny on November 17, 2010. On December 9, 2010, the director issued a final RFE for proof that the beneficiary's sole or surviving parent is unable to provide for his basic needs consistent with the local standards of Jamaica, and proof that the sole or surviving parent has, in writing, irrevocably released the child for emigration and adoption to the United States. The director reviewed the petitioner's response and determined that the petitioner failed to provide sufficient information to establish that the beneficiary meets the definition of an orphan. On appeal, the petitioner explains that the birth mother's original irrevocable release was misplaced, and she submits a copy of this statement. *See Letter from [REDACTED]*. The petitioner also states that her grandson is in need of being with his family in the United States. *See Form I-290B, Notice of Appeal*.

The record as supplemented on appeal is insufficient to overcome the director's denial of the petition. Specifically, the petitioner has not established that the beneficiary is an orphan under any of the categories listed in section 101(b)(1)(F)(i) of the Act.

Here, the beneficiary's father is deceased. However, in order for the beneficiary's birth mother to meet the definition of a surviving parent described in 8 C.F.R. § 204.3(b), the petitioner must show that the child has not acquired another parent, which can include a stepparent. *See* sections 101(b)(2) and 101(b)(1)(B) of the Act. The petitioner's home study indicates that the beneficiary's mother had another child and has been living in France with that child's father. *See Home Study*, dated July 9, 2010, at 6. It is unclear whether the beneficiary's mother has married the father of that child. Accordingly, in order for the beneficiary to meet the definition of an orphan, the petitioner must show that the beneficiary has not acquired a stepfather.

Additionally, the petitioner has not shown that the beneficiary's mother is incapable of providing proper care consistent with local standards, as defined by the regulation at 8 C.F.R. § 204.3(b) and required to establish the beneficiary's eligibility as an orphan. Here, the beneficiary's mother stated that she is "not able to financially care for [her] son nor provide for his basic needs." *Letter from [REDACTED] a*. She also states that after her son was born, she "realized that [she] was to[o] young to be a mother and he spent most of his youth with his father (who is now deceased) and grandparents . . ." *Id*. However, no explanation was provided to support the birth mother's claim that she is unable to provide for the beneficiary's basic needs, and no evidence was submitted regarding local standards in Jamaica. Accordingly, the beneficiary does not meet the definition of an orphan as a child whose surviving parent is incapable of providing proper care.

Conclusion

Although the evidence submitted on appeal satisfies the written irrevocable release requirement set forth in section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(d)(1)(iii)(C), the petitioner has failed to satisfy all of the requirements for an orphan petition set forth in 8 C.F.R. § 204.3(d)(1). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.