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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

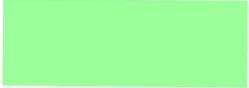


U.S. Citizenship  
and Immigration  
Services

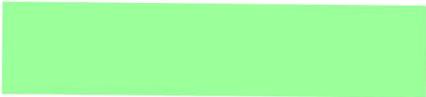


Date: DEC 20 2013

Office: NATIONAL BENEFITS CENTER

File: 

IN RE: Petitioner:  
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:

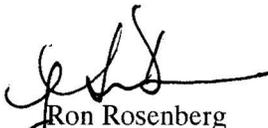
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director (“the director”) of the National Benefits Center, denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks to classify the beneficiary as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The director denied the petition on the basis of his 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. Specifically, the director found that the petitioner failed to establish that the beneficiary’s birth mother is a sole or surviving parent who is incapable of providing the proper care to the beneficiary. On appeal, the petitioner submits additional evidence.

*Applicable Law*

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 . . . .

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

*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.

*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.

*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.

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:

\* \* \*

(1)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;

(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. . . .

\* \* \*

(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 . . . .

*Factual and Procedural History*

The petitioner is a 46-year-old married U.S. citizen who seeks to classify the beneficiary, a citizen of Haiti, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on April 2, 2013. On the Form I-600, the petitioner stated that the beneficiary

was an orphan because she has only one parent who is the sole or surviving parent. The director subsequently issued a Request for Evidence of, among other things: (1) a full and final adoption of the beneficiary in accordance with the laws of Haiti; and (2) that the beneficiary is the child of a sole or surviving parent incapable of providing proper care. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility. On June 28, 2013, the director denied the Form I-600 and the petitioner timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed for the following reasons.

### *Analysis*

The director determined that the evidence failed to demonstrate that the beneficiary was an orphan because the petitioner did not establish: (1) that the beneficiary is the child of a sole or surviving parent; (2) that the beneficiary's birth mother is incapable of providing proper care to the beneficiary; and (3) that the petitioner has a full and final adoption of the beneficiary completed in accordance with the laws of Haiti. On appeal, the petitioner provides: a birth certificate for the beneficiary; a transcript of court proceeding for the birth mother's relinquishment of the beneficiary; a social history report of the beneficiary; a psychological evaluation of the beneficiary; a death certificate; and the birth mother's national identification document and birth certificate.

Section 101(b)(1)(F)(i) of the Act states, in part, that a child may be deemed an orphan if "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 petitioner has not established that the beneficiary has a surviving parent. The regulation at 8 C.F.R. § 204.3(d)(1)(iii)(B) specifically requires submission of a copy of the deceased birth parent's death certificate. The petitioner submitted a death certificate (*Acte De Deces*) filed with the local authorities, which provides that an individual named [REDACTED] died on May 5, 2012. However, the petitioner does not indicate whether this individual is the beneficiary's birth father. None of the documents in the record provide information on the birth father's name. Moreover, the petitioner has not submitted an official death certificate, the Extract of Death Certificate, from the Haitian National Archives, as required by the l'Institut du Bien Être Social et de Recherches (IBESR), Haiti's adoption authority, to establish eligibility.<sup>1</sup>

The petitioner has also not established that the beneficiary has a sole parent. The definition of "sole parent" does not apply "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 . . . ." 8 C.F.R.

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<sup>1</sup> See U.S. Department of State's website on intercountry adoption, <http://adoption.state.gov>, which provides that the National Archives in Port-au-Prince is the only Haitian agency with the authority to issue extracts related to acts of birth, death, marriage, and divorce. Each of these documents is based on an "acte" of birth, death, marriage, and divorce, but the "acte" alone is rarely sufficient for IBESR or U.S. immigration purposes.

§ 204.3(b) (defining the term “sole parent” at section 101(b)(1)(F) of the Act). The laws of Haiti appear to distinguish between children born in and out of wedlock. The Board of Immigration Appeals (BIA) explained that the Civil Code of Haiti separates children into three groups: (1) legitimate children; (2) natural children; and (3) illegitimate children. *Matter of Richard*, 18 I&N Dec. 208, 211 ( BIA 1982). Children born in wedlock are classified as legitimate children; children born out of wedlock are classified as natural children; and children who were conceived and born under adulterous or incestuous circumstances are classified as illegitimate children. *Id.* Although the beneficiary’s birth certificate (Acte De Naissance) states that she is a “natural child” and her birth was registered by her mother with the local authorities, the petitioner has not submitted the beneficiary’s official birth certificate, the Extract of Birth Certificate, available from the Haitian National Archives, as required by IBESR. Nor has the petitioner provided any evidence to demonstrate that the beneficiary’s birth father has severed all parental ties, rights, duties, and obligations to the child, or, in writing, irrevocably released the child for emigration and adoption.

Even if it had been established that the beneficiary's birthmother is her sole or surviving parent, the beneficiary would still not meet the definition of an orphan under either standard, as the record does not demonstrate that her birthmother is incapable of providing her with the proper care, consistent with local standards in Haiti. 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 the foreign-sending country.” The petitioner has submitted no evidence regarding local standards in Haiti. Nor does the record demonstrate that the beneficiary’s birth mother is incapable of providing proper care to the beneficiary consistent with such standards. The record contains a court transcript, which provides that on January 28, 2013, the beneficiary’s birth mother declared that she is unable to provide for the beneficiary “because of her precarious economic situation.” The petitioner submits on appeal a social history report of the beneficiary, which provides that the beneficiary’s birth mother “cannot provide her with adequate care because of economic poverty.” The social history report further provides that the beneficiary’s birth mother relinquished the beneficiary because she “is confronted with serious economic problems.” These documents speak only in general terms of the birth mother’s economic situation. The record provides no detailed, probative information to establish that the birth mother’s economic, social or medical situation renders her unable to provide for the beneficiary’s basic needs.

The record does not show that the beneficiary is an orphan under any other criteria delineated at section 101(b)(1)(F)(i) of the Act and defined at 8 C.F.R. § 204.3(b). The record does not indicate that both of the beneficiary’s birth parents have died, that they have abandoned her, disappeared, or that the beneficiary has become a ward of competent authority as the result of her birth parents’ desertion. The record also does not indicate that the beneficiary was involuntarily severed from her birth parents by action of a competent authority for good cause and in accordance with the laws of Haiti. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from her birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of her birth parents and as verified by a competent authority.

Finally, the petitioner has not provided evidence of a full and final adoption of the beneficiary completed in accordance with the laws of Haiti, as required by as required by 8 C.F.R. § 204.3(d)(1)(iv). The U.S. Department of State advises that the process for finalizing an adoption in Haiti generally includes: (1) birth parent(s)' consent to the prospective adoptive parent(s)' adoption before a Justice of the Peace (as well as the Dean of the civil courts in the Port-au-Prince jurisdiction); (2) IBESR approval of the adoption and issuance of an Authorization of Adoption (Autorisation d'Adoption); and (3) the issuance of an Adoption Act (Acte d'Adoption) from the civil court with jurisdiction over the child's residence to finalize the adoption.<sup>2</sup> The petitioner has not provided any of these documents. The record therefore does not establish that the beneficiary's birth mother in writing irrevocably released the child for emigration and adoption. Nor does it show that the petitioner and her husband received approval of the adoption from IBESR and that the adoption was finalized in a civil court.

*Conclusion*

As set forth in the previous discussion, 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. Consequently, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

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<sup>2</sup> *Id.*