

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: DEC 20 2013

Office: NATIONAL BENEFITS CENTER

File: [Redacted]

IN RE:

Petitioner:
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:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 The director's decision will be withdrawn and the matter remanded for further processing and entry of a new decision.

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 parent who is incapable of providing proper care to the beneficiary. On appeal, counsel submits a brief and 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

Section 101(b)(2) of the Act states, in pertinent part:

The term "parent," "father," or "mother" means a parent, father, or mother . . . except that, for purposes of paragraph (1)(F) . . . in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

The regulation at 8 C.F.R. § 204.3(b) provides definitions for certain terms found at section 101(b)(1)(F) of the Act and states, in pertinent part:

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.

Factual and Procedural History

The petitioner is a 49-year-old U.S. citizen who seeks to classify the beneficiary, a citizen of Jamaica, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on April 5, 2013, when the beneficiary was two years old. On the Form I-600, the petitioner stated that the beneficiary was an orphan because he had only one parent who was incapable of providing for his support and “the other parent is unknown.” The director subsequently issued a Request for Evidence that the beneficiary was the child of a sole or surviving parent incapable of providing proper care and consequently met the definition of an “orphan” under section 101(b)(1)(F)(i) of the Act. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility. On May 6, 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). A full review of the record, including the additional evidence submitted on appeal, establishes that the beneficiary is an orphan.

Analysis

The director determined that the evidence failed to demonstrate that the beneficiary was an orphan because the petitioner did not establish: (1) the beneficiary’s birth father’s whereabouts; and (2) that the beneficiary’s birth mother is incapable of providing proper care to the beneficiary.

On appeal, the petitioner has established that the beneficiary is the child of a sole parent. The beneficiary’s birth certificate reflects that his birth mother listed an individual named E-J¹ as his father. However, a copy of E-J’s DNA Parentage Test Report shows that the results of DNA testing have excluded him as the beneficiary’s birth father. The record contains investigative reports on the issue of the beneficiary’s parentage from the Child Development Agency (CDA) in Jamaica, the government agency authorized to provide adoption services in the country. According to a March 6, 2013 CDA report, the beneficiary’s birth mother is a single mother of three children and she does not know the name of the beneficiary’s birth father. The birth mother was involved in a relationship with two men at the time of her pregnancy. The man she believed was the beneficiary’s father, E-J-, was listed on the beneficiary’s birth certificate, but a subsequent DNA test revealed that he is not the birth father. *CDA Report on the Circumstances of the Birth Parent(s) and the Adoptee*. An April 26, 2013 letter from the CDA stated that the agency interviewed the

¹ Name withheld to protect the individual’s identity.

beneficiary's birth mother and learned that she had relations with several men during the time she conceived the beneficiary, but could only provide two names as the possible birth fathers, E-J- and "Link-Up." E-J- provided the CDA with DNA documentation to prove that he is not the birth father. The agency visited the birth mother's neighborhood to find the individual the birth mother only knows of as "Link-Up." The agency determined that "Link-Up" was a fictitious person the birth mother created as a cover for her lack of knowledge as to who fathered the beneficiary.² *CDA letter to the National Benefits Center*. Another report from the CDA provided that the beneficiary's birth mother visited the agency on June 28, 2013 and was interviewed regarding the beneficiary's birth father, whose name was recorded as "Link Up." The birth mother stated during her interview that she established a relationship with Link Up for financial reasons and did not know his actual name. The birth mother reported that after she informed Link Up that she was pregnant, he discontinued his visits to her home and she received an anonymous phone call that Link Up had died in a motorcycle accident. The birth mother stated that she has since not heard from Link Up and does not know if he is living or deceased. *CDA report from [REDACTED] Adoption Coordinator*. These statements are reiterated in a July 16, 2013 affidavit from the beneficiary's birth mother.

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. § 204.3(b) (defining the term "sole parent" at section 101(b)(1)(F) of the Act). Here, the beneficiary was born out of wedlock in Jamaica. Jamaica is a country that makes a distinction between children born in and out of wedlock. Under Jamaican law, the only means of "legitimation" of a child born out of wedlock is the marriage of the child's natural parents. *Matter of Hines*, 24 I&N Dec. 544, 548 (BIA 2008). As the beneficiary's biological mother was single at the time of his birth and she has not since married, the beneficiary is considered illegitimate under Jamaican law. The reports from the CDA establish that the beneficiary's birth father disappeared and abandoned the beneficiary's birth mother after learning about her pregnancy. The beneficiary's birth father has therefore severed all parental ties, rights, duties, and obligations to the beneficiary. Accordingly, the beneficiary's birth mother is a "sole parent" as that term is defined at 8 C.F.R. § 204.3(b).

On appeal, the petitioner has also established that the beneficiary's birth mother is incapable of providing proper care to the beneficiary. 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. 8 C.F.R. § 204.3(b). The beneficiary's birth mother stated in her July 16, 2013 affidavit that she is unemployed and resides in "unsatisfactory" conditions. She stated that she gave up the beneficiary because she was unable to meet his needs. According to the March 6, 2013 CDA report, the beneficiary has resided with the petitioner's sister since his birth. The birth mother resides in a one-bedroom home in a low-income community with her two other minor children. Electricity and water in the neighborhood are mostly illegally connected and the

² The agency noted that the name "Link-Up" is an urban slang and is used by men who have casual sexual relations with women they do not know.

neighborhood has sporadic violence and gang war and activities. At the time of the report, the beneficiary's birth mother was employed as a bartender, earning 5,000 in Jamaican dollars per week. *CDA Report on the Circumstances of the Birth Parent(s) and the Adoptee*. The June 16, 2013 CDA report issued a few months later provided that the birth mother had since become unemployed and her only source of income was child support received from the father of her youngest child in the amount of 2,500 in Jamaican dollars. The report reiterated that the beneficiary's birth mother resides with her two children in one-bedroom home located in a "volatile area" without legal electricity and water. The birth mother's income is below the poverty line in Jamaica, which has a national standard minimum wage of 5,000 Jamaican dollars per week. *CDA report from [REDACTED], Adoption Coordinator*. The CDA is a competent authority in Jamaica aware of local standards of living. See *Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg. Comm'r 1980) (citing social welfare agency study as evidence of a sole parent's inability to provide proper care). The CDA's reports attest to the fact that the beneficiary's birth mother lives near or below the poverty line. Therefore, the preponderance of the evidence shows that the sole parent in this case cannot meet the basic needs of the beneficiary.

The record reflects that the beneficiary's birth mother gave in writing her irrevocable consent for the beneficiary's emigration and adoption by the petitioner. On April 3, 2011, the petitioner was granted guardianship over the beneficiary and on March 27, 2013, she was granted a license to adopt the beneficiary. A September 30, 2013 Order from the Supreme Court of Jamaica, the statements from the beneficiary's birth mother and reports from the CDA reflect that the birth mother and her children live near or below the poverty line and that the beneficiary's birth father is unknown. Based on the foregoing, the record establishes that the beneficiary has a "sole parent" who is unable to provide for the child's basic needs consistent with the local standards of Jamaica. Accordingly, the AAO finds that the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

Conclusion

As set forth in the previous discussion, the petitioner established that the beneficiary meets the definition of an "orphan," as that term is defined at section 101(b)(1)(F)(i) of the Act. 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).

ORDER: The May 6, 2013 decision of the National Benefits Center is withdrawn. The matter is returned to the National Benefits Center for further action and entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.