(b)(6)

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: MAY 17 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) 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 The director's decision shall be withdrawn and the matter returned for further processing of the petition.

Applicable Law

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), which defines an orphan, in pertinent part, as:

> a child, under the age of sixteen at the time a petition is filed in his behalf . . . 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 part, the following:

> *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*.
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> * * *
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> *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.

Facts and Procedural History

The petitioner is a 46-year-old married U.S. citizen. He and his wife adopted the beneficiary, a native of Jamaica, on July 26, 2012 in Jamaica. In June 2012, the petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) along with the death certificate of the beneficiary's biological mother. The petitioner seeks to classify the beneficiary as the child of a surviving parent (the biological father) who is incapable of providing proper care to the beneficiary.

The director denied the petition because the evidence failed to establish that that the biological father is incapable of providing proper care to the beneficiary according to the local standards in Jamaica. According to the director, the biological father is a self-employed plumber, rents a room from the family of the mother of one of his children, and provides for two of his other biological children. On appeal, the petitioner resubmits a report from a regional adoption officer of the Child Development Agency (CDA), Jamaica's adoption authority, as well as copies of documents already included in the record.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

The petitioner submitted a *Report on the Circumstances of the Birth Parent(s) and the Adoptee*, dated August 28, 2012, which was prepared by a regional adoption officer (RAO) of the CDA. As part of the adoption process in Jamaica, the CDA conducts its assessment of a child's suitability for adoption.[1] According to the RAO, the beneficiary's biological mother and biological father were in a "visiting relationship" that ended soon after the beneficiary's birth. The RAO stated that after the biological mother's death, the biological father did not "come forward," which resulted in the beneficiary being raised by his maternal relatives. The RAO stated that the beneficiary has never resided with his biological father and has seen him throughout his life only on a few occasions. The RAO stated further that the biological father does not have a steady income for him to provide for the beneficiary and his seven other children, and that a father/son bond between the biological father and the beneficiary is nonexistent. While the director based his decision, in part, on the RAO's statement that the biological father is self-employed as a plumber, the director did not acknowledge that the RAO also reported that the biological father did not complete his secondary education, has not had any formal training in employment skills, and that his earnings are unstable. The RAO noted that the beneficiary's biological father lives in one rented room with his younger daughter and the mother of two of his other children and the family shares a bathroom and kitchen with other tenants. The RAO described the community in which the biological father resides as "plagued by flare ups of gang violence." The RAO determined that the beneficiary's best interests would be served if his adoption by the petitioner were approved.

As an RAO's assessment of a child's suitability for adoption is a required component of an adoption record and relied upon by the Jamaican Adoption Board and the family or magistrate court in an adoption proceeding, the RAO's August 2012 report is sufficient evidence of the biological father's inability to provide proper care to the beneficiary. *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).

Conclusion

On appeal, the petitioner has established that the beneficiary is an orphan due to his biological father's inability to provide the beneficiary with proper care. The director's contrary decision is withdrawn. The matter is returned to the director for continued processing of the petition to ensure that the petitioner has met all the other requirements at 8 C.F.R. § 204.3(d).

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[1] The Department of State provides information on intercountry adoptions at www.adoptions.state.gov. Jamaica is one of the countries profiled.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met his burden in establishing the beneficiary's eligibility for classification as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act.

ORDER: The October 1, 2012 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.