

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

(b)(6)

DATE **MAY 17 2013** OFFICE: NATIONAL BENEFITS CENTER FILE: [REDACTED]

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)

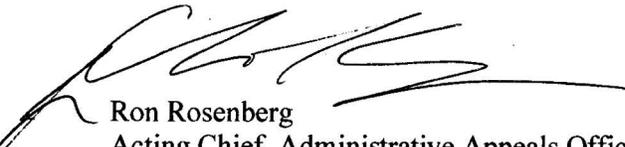
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 The director's decision shall be withdrawn and the matter returned for further processing of the petition.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:

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) . . .

* * *

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*.

* * *

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 33-year-old married U.S. citizen. He and his wife adopted the beneficiary, a native of Jamaica, in January 2012. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) in February 2012 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 record is devoid of any indication that the biological father is incapable of providing for his child." The director noted further: "[T]he beneficiary was

given by direct release to the petitioners by the biological father. This does not qualify the orphan as abandoned.” On appeal, the petitioner submits 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). Our review of the record reveals that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

As a preliminary matter, we withdraw the director’s erroneous conclusion that the beneficiary may not be classified as an orphan because she was not “abandoned,” but was instead directly relinquished to the petitioner and his wife by her biological father. As used in section 101(b)(1)(F)(i) of the Act and the regulations at 8 C.F.R. § 204.3, the term “abandonment” applies to an orphan petition only in a situation where there are two living parents. *See* Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i) (referring to a child “who is an orphan because of the . . . abandonment . . . by . . . both parents”); 8 C.F.R. § 204.3(a) (defining the term *abandonment by both parents*). Here, the record establishes that the beneficiary’s biological mother died and she is the child of a surviving parent, her biological father. Neither the statute nor the regulations prohibits a surviving parent from directly releasing his child to a prospective adoptive parent for a specific adoption.

The director also erred in stating that the record was devoid of any evidence that the biological father was incapable of providing proper care to the beneficiary, consistent with the local standards in Jamaica. As part of the adoption process in Jamaica, the CDA conducts its assessment of a child’s suitability for adoption.¹ The record contains a *Report on the Circumstances of the Birth Parent(s) and the Adoptee*, dated April 2012, which was prepared by a regional adoption officer (RAO) of the CDA and submitted by the petitioner in support of the Form I-600. The petitioner also submits on appeal a report, dated July 12, 2012, from this same regional adoption officer concerning the assessment made of the beneficiary’s suitability for adoption.

According to the RAO’s April 2012 report, after the biological mother’s death in 2003, the biological father “discontinued the minimal support of the child” and the beneficiary began to live with her maternal side of the family. The RAO stated that the beneficiary’s adoption by the petitioner was in the beneficiary’s best interest, in part, because her biological father plays little or no role in her life. The RAO reported that the beneficiary’s biological father “has never held a stable job” and that his current income as a taxi driver barely exceeds his personal living expenses and he is unable to support the beneficiary or his older daughter. The RAO stated that the beneficiary’s biological father lives in “one of the volatile areas on the outskirts of the town of May Pen” in one section of a tenant house with his common-law wife and four children. The family

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

resides in two bedrooms and share a kitchen and bathroom with other tenants of the house. The RAO further reported that when the beneficiary was three years old, she resided with her father briefly, but returned to her mother after only three months when her father was jailed for gun charges.

In the July 2012 report submitted on appeal, the RAO stated further that the beneficiary's biological father "has not maintained meaningful contact [with the beneficiary] or assisted with her care in any way." According to the RAO, when the biological father "was encouraged to play a role in [the beneficiary's] life, he said that she was alright and did not need him." The RAO explained further that when the biological father had asked relatives for money to visit the beneficiary, he did not use the money for its intended purpose. The RAO provided a list of the beneficiary's expenses for food, clothing, school, medical care and miscellaneous items, and stated that the biological father makes no contribution to any of these expenses. The RAO explained:

Although her father appears to be relatively settled at this time, nothing can be expected of him regarding [the beneficiary's] care and supervision as he has, in words and actions refused to play any role in her life.

The RAO reiterated her determination that the beneficiary's best interests would be served by her adoption by the petitioner.

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 April and July 2012 reports are 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 because her surviving parent is incapable of providing her 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).

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 June 7, 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.