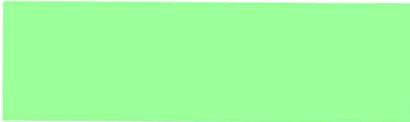


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



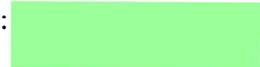
U.S. Citizenship
and Immigration
Services

(b)(6)

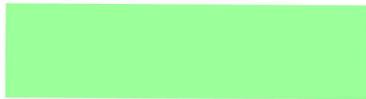


DATE: SEP 24 2014 OFFICE: NATIONAL BENEFITS CENTER

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 (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 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 appeal will be sustained. The director's decision shall be withdrawn and the matter returned to the director for further processing of the petition.

Applicable law

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), defines an *orphan*, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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. . . . *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

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

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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.

The pertinent provisions of 8 C.F.R. § 204.3(d)(1) state, in pertinent part, that an orphan petition must be accompanied by the following:

- (i) Evidence of approval of the advanced processing application;

* * *

- (iii) (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[.]

Facts and procedural history

The petitioner is a 66-year-old U.S. citizen who, together with her spouse, adopted the beneficiary, a native of Haiti, in September 2013. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on November 18, 2013, and seeks to classify the beneficiary as the child of a sole parent who is incapable of providing proper care to the beneficiary. The director found, in a decision dated March 22, 2014, that the petitioner failed to establish that the beneficiary's biological mother is incapable of providing proper care to the beneficiary, and that the Application for Advance Processing of Orphan Petition (Form I-600A), upon which the Form I-600 is based, had been denied. The petition was denied accordingly.

On appeal, the petitioner asserts that evidence in the record establishes that the beneficiary's biological mother is incapable of providing proper care to the beneficiary in accordance with local standards in Haiti. In support of this claim, the petitioner submits the beneficiary's birth certificate, adoption evidence, a letter, and a psychological report for the biological mother. The Form I-600A was appealed separately.

Analysis

Advanced Processing Application

The director denied the petitioner's Form I-600A on March 22, 2014. The matter was appealed separately, and we have sustained the petitioner's appeal. The petitioner therefore meets the requirement that her advanced processing application be approved, as set forth in 8 C.F.R. § 204.3(d)(1)(i).

Sole Parent

To establish that the beneficiary's biological mother meets the definition of a *sole parent*, the record contains Haitian adoption-related court documents reflecting that the beneficiary's biological mother does not have a job, that due to her economic situation she is unable to provide for the beneficiary's basic needs, and that the applicant and her spouse adopted the beneficiary with his parent's consent. A social worker indicates in a social history of child report dated September 5, 2012, that the

beneficiary's biological mother is unable to care for the beneficiary; the biological mother has no profession; and that since August 6, 2009, the petitioner has provided physical, emotional and material care to the beneficiary. The [REDACTED] states further, in a report dated September 13, 2013, that adoption is in the beneficiary's best interest.

The social worker's report, which was relied upon by the [REDACTED] in its decision to authorize the beneficiary's adoption by the petitioner, is sufficient evidence of the biological mother'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). Furthermore, the beneficiary's biological mother, grandmother, aunt, and uncles state, in a letter dated April 21, 2014, that the beneficiary's biological father left during the biological mother's pregnancy;¹ the biological mother does not work; and the biological mother has no ability to work or to care for the beneficiary. A psychological report from the [REDACTED] dated April 28, 2014, also reflects that the beneficiary's biological mother has no profession or husband, and that she is unable to care for the beneficiary due to her economic situation.² Upon review, the evidence in the record demonstrate that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Haiti, as required under 8 C.F.R. § 204.3(b). The petitioner has also established that the beneficiary was born out of wedlock, that he was not legitimated, and that he has not acquired another parent within the meaning of the Act, as set forth in 8 C.F.R. § 204.3(b). As of January 27, 1959, all persons born out of wedlock in Haiti and acknowledged by their natural father are deemed to be legitimate children. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). Here, the beneficiary's birth certificate contains no paternal information. The beneficiary was therefore not acknowledged by his biological father, and he was not legitimated under Haitian law. Evidence reflects further that the beneficiary's biological mother did not marry. Accordingly, the petitioner has established that the beneficiary's mother meets the definition of a *sole parent* as set forth in 8 C.F.R. § 204.3(b).

Conclusion

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 been met. The appeal will therefore be sustained.

ORDER: The appeal is sustained. The director's decision shall be withdrawn and the matter returned to the director for further processing of the petition.

¹ The record contains the beneficiary's birth certificate, containing no paternal information.

² The report reflects that the beneficiary's biological mother experiences concentration, adaptability, relational, and psychological behavior problems; she lacks a sense of reality; and that she exhibits symptoms of schizophrenia.