



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-D-S-

DATE: FEB. 8, 2016

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE
RELATIVE

The Petitioner, a citizen of the United States, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) § 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director, National Benefits Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner is a 52-year-old U.S. citizen who, on [REDACTED] was issued an adoption order by the High Court of Justice, Commonwealth of Dominica, for the Beneficiary, a native of Dominica born on [REDACTED]. The Petitioner filed a Form I-600 on behalf of the Beneficiary on January 14, 2015. On May 21, 2015, the Director denied the application upon determining that the Petitioner had not demonstrated that the Beneficiary became a ward of a competent authority in accordance with the laws of her country as required under the definition of desertion by both parents, that the Beneficiary was involuntarily severed from her parents by action of a competent authority as required under the definition of separation from both parents, and that the Beneficiary's mother was unable to provide for her basic needs consistent with Dominica standards.

On appeal, the Petitioner asserts that the Beneficiary, as the child of a sole and surviving parent, her mother, is not required to demonstrate that she became a ward of a competent authority or was involuntarily severed from her parents. The Petitioner also asserts that the record demonstrates that the Beneficiary's mother is unable to provide the Beneficiary with proper care and support.

The Petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in relevant part, as:

a child, under the age of sixteen at the time a petition is filed in [her] 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 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 relevant part, the following:

....

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

....

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.

....

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

....

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.

Relevant provisions of 8 C.F.R. § 204.3(d) state the following:

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

Matter of K-D-S-

explanation together with other proof of identity and age;

(iii) Evidence that the child is an orphan as appropriate to the case:

....

(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; and

(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:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner ... saw the orphan prior to or during the adoption proceeding abroad[.]

The record contains a Dominica birth certificate for the Beneficiary, born on [REDACTED] containing the names of her birth parents. The record also contains a death certificate for the Beneficiary's birth father dated [REDACTED] 2012, and the Beneficiary's mother states that she has never been married to any individual, including the Beneficiary's father. Accordingly, the Beneficiary's birth mother is the surviving parent of the Beneficiary and, in accordance with section 101(b)(1)(F) of the Act, the Petitioner must establish that the Beneficiary's mother is incapable of providing proper care and has irrevocably released her for emigration and adoption.

As the Beneficiary's mother is a surviving parent, the Petitioner need not demonstrate that the Beneficiary is a ward of competent authority or severed from her parents, as would be requisite in cases of desertion by both parents or separation from both parents, respectively. At issue in this matter is whether the Petitioner has demonstrated that the Beneficiary's mother is incapable of providing proper care to the Beneficiary and has irrevocably released her for emigration and adoption. .

The record contains a documented consent of parent to adoption order filed with the High Court of Justice, Commonwealth of Dominica, signed by the Beneficiary's mother on [REDACTED] 2013. In the consent document, the Beneficiary's mother states that she understands the adoption order will permanently deprive her of her rights to the Beneficiary as a parent and consents to the creation of the adoption order. On the basis of this consent, the High Court of Justice, Commonwealth of Dominica issued an adoption order of the Beneficiary to the Petitioner on [REDACTED]. The record also contains an unconditional and irrevocable surrender document, signed by the Beneficiary's mother on

August 7, 2015, stating that she voluntarily surrendered her parental rights and obligations to the Beneficiary so that the Beneficiary could be adopted and emigrate to the United States.

The record contains adoption reports of the guardian ad litem, Social Welfare Division, Commonwealth of Dominica, dated January 16, 2013, and April 13, 2015. The guardian ad litem identifies the poverty standard of Dominica and states that for an individual to live above sub-humane conditions, he or she must have at least two bedrooms with piped water, a flushing toilet, and a regular minimum wage of 200 dollars monthly. The guardian ad litem further indicates that the Beneficiary's family in Dominica lives below this standard, as they reside in a one-bedroom structure without access to a pit toilet. The guardian ad litem states that a close scrutiny of the surroundings reflects that Beneficiary is living in poor housing and sub-humane conditions; the Beneficiary's mother is not gainfully employed; she gets a day job on very rare occasions to wash and clean for other people; she injured her hand and is temporarily incapacitated; her cohabitating partner works part-time for minimum wage; and she admitted that sometimes she did not have enough food to feed the family and the Beneficiary would go to bed hungry.

The Beneficiary's mother, in an affidavit dated April 7, 2015, states that she, her family, and her live-in boyfriend lived as seven people in a one-bedroom structure without a bathroom or running water until the Beneficiary was moved to her aunt's home in Dominica. The Beneficiary's mother asserts that the Beneficiary's father provided financial support for the Beneficiary before his death, as the Beneficiary's mother only worked sporadic odd jobs. Accordingly, the Beneficiary's mother contends that she is no longer financially able to care for the Beneficiary. The Beneficiary's mother further asserts that she is currently not working at all due to a hand injury and her live-in partner works part-time in a minimum wage job. The Beneficiary's mother asserts that, due to her financial circumstances, she could not always afford to provide food to her family, including the Beneficiary. The Beneficiary's mother further indicates that a physician diagnosed the Beneficiary with gastric problems resulting from an inadequate food supply.

Overall, based on the findings of the guardian ad litem and the statements of the Beneficiary's mother, the record is sufficient to establish that the Beneficiary's surviving parent is unable to provide for the Beneficiary's basic needs, consistent with the standards of Dominica. As such, the facts demonstrate the Beneficiary's eligibility for orphan classification as the child of a surviving parent who is incapable of providing the proper care for the Beneficiary and has, in writing, irrevocably released the child for emigration and adoption.

The Petitioner has the burden of proving eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of K-D-S-*, ID# 15278 (AAO Feb. 8, 2016)