



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

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

MATTER OF I-B-

DATE: MAY 31, 2017

APPEAL OF NATIONAL BENEFITS CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Director of the National Benefits Center revoked the petition, concluding that the Beneficiary does not meet the definition of an orphan, as required under section 101(b)(1)(F)(i) of the Act.

On appeal, the Petitioner states that the Beneficiary meets the definition of an orphan due to the Beneficiary's mother being a sole parent who is incapable of providing proper care and in writing has irrevocably released the Beneficiary for emigration and adoption.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Regarding the revocation of approved visa petitions, section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

Section 101(b)(1)(F)(i) of the Act provides the definition for an orphan to be classified as an immediate relative child (unmarried person under 21 years of age):

[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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

If the orphan has only a sole or surviving parent the Petitioner must submit 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. 8 C.F.R. § 204.3(d)(1).

II. ANALYSIS

The issue on appeal is whether the Beneficiary meets the definition of an orphan, specifically due to being the child of a sole parent. The record includes, but is not limited to, statements from the Petitioner and the Beneficiary's mother, a Child Development Agency (CDA) report, and country conditions information for Jamaica. The Director addressed the reasons that a child may be defined as an orphan, and concluded that the Beneficiary does not meet any of those definitions. The Petitioner asserts on appeal that the Beneficiary meets the definition of an orphan due to the Beneficiary's mother being a sole parent who is incapable of providing proper care and in writing has irrevocably released the Beneficiary for emigration and adoption.¹

A full review of the record demonstrates that the Director did not have good and sufficient cause to revoke approval of the orphan petition. We find that the Petitioner has established that the Beneficiary is the child of a sole parent who is incapable of providing proper care.

A. Eligibility

The Petitioner asserts that the Beneficiary should be classified as an orphan under section 101(b)(1)(F)(i) of the Act as the child of a sole parent.

¹ We issued a request for evidence (RFE), as the record did not include a written statement irrevocably releasing the Beneficiary for emigration. The Petitioner provided this statement in response to the RFE.

The regulation at 8 C.F.R. § 204.3(b) provides:

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 regulation at 8 C.F.R. § 204.3(b) provides further relevant definitions, including:

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*.

The record reflects that the Beneficiary's mother is a sole parent. First, she has established that the Beneficiary is illegitimate. 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). 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) (*overruled on other grounds by Matter of Cross*, 26 I&N Dec. 485 (BIA 2015)). As the Beneficiary's mother was single at the time of her birth and she has not married the Beneficiary's father, the Beneficiary is considered illegitimate under Jamaican law.

Second, the Beneficiary's mother has not married anyone, therefore the Beneficiary has not acquired a parent within the meaning of section 101(b)(2) of the Act. Third, the Beneficiary's mother states in her affidavit that she is not certain as to the Beneficiary's father's identity. She further states that no one has come forward to claim paternity or contributed to the Beneficiary's support. The CDA is the adoption authority in Jamaica.² The CDA report identifies the Beneficiary's alleged father, but states that he has never accepted paternity and has not played any role in the Beneficiary's life. The CDA report also states that the alleged father's whereabouts are unknown and he has relinquished his responsibility to the Beneficiary. Based on the record, we find that the Beneficiary's father has severed all parental ties, rights, duties, and obligations to the Beneficiary.

² See U.S. Department of State, Intercountry Adoption, Jamaica, <https://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/jamaica.html> (last visited May 30, 2017).

Fourth, the Beneficiary's mother has in writing irrevocably released the Beneficiary for emigration and adoption. Finally, the Petitioner has established that the Beneficiary's 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 mother states that she is deaf and mute, and she has been unable to provide adequate care and support for the Beneficiary due to her disabilities. She explains that she decided to give up the Beneficiary for adoption due to her inability to provide adequate support and care. According to the CDA report, the Beneficiary's mother was born deaf, she left school when she was 12 years old, and she is currently unemployed and does not earn an income. The CDA report reflects that the Beneficiary's mother lives with her mother (the Beneficiary's grandmother) who helps financially support her. The CDA report states that the Beneficiary's mother receives additional support from the father of her other two children and she receives public benefits. An addendum to the CDA report, however, states that even with this financial assistance, the Beneficiary's mother "is living below the poverty line and the local acceptable standard of living in Jamaica."³ Based on the foregoing, the record establishes that the Beneficiary is the child of a sole parent who is unable to provide for her basic needs consistent with the local standards of Jamaica.

III. CONCLUSION

We find that the Beneficiary meets the definition of an "orphan" as set forth in section 101(b)(1)(F)(i) of the Act, due to having a sole parent who is incapable of providing proper care.

ORDER: The appeal is sustained.

Cite as *Matter of I-B-*, ID# 96063 (AAO May 31, 2017)

³ 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).