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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HOUSTON DISTRICT OFFICE

Date: OCT 10 2006

IN RE: Petitioner:

Beneficiary:

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, Houston. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], and his wife, [REDACTED] filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on September 2, 2003 on behalf of the beneficiary, [REDACTED], formerly known as [REDACTED]. The district director concluded that the beneficiary did not meet the requirements of the definition of “orphan” under section 101(b)(1)(F) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101(b)(1)(F). The petition was denied accordingly.

The District Director concluded that the beneficiary did not qualify as an “orphan” because her biological mother was not a “sole parent” and she had not been “abandoned” by both parents, as required by the Act, noting that “[a] release by the biological parent(s) to a prospective adoptive parent(s) for adoption does not constitute abandonment.” *Notice of Intent to Deny the I-600 Petition*, September 13, 2004. In response, counsel for the petitioner submitted additional evidence, including an amended I-600 Petition; the beneficiary’s birth certificate, which has a line drawn through the box where the father’s name should appear; a statement by the “putative natural father” of the beneficiary giving up his rights and releasing the child for adoption; and asserting that the beneficiary is “illegitimate” and her biological mother is thus a “sole parent” under the Act and “incapable of providing proper care.” *Response to Notice of Intent to Deny*, October 13, 2006. Counsel also submitted the Adoption Application and April 19, 2002 Adoption Order of the High Court of St. Vincent and the Grenadines authorizing the adoption of the beneficiary by [REDACTED] and [REDACTED], stating that “[t]he adoption was made in part to provide [the beneficiary] a better standard of living and because [the biological mother] requested the Petitioners adopt her.” *Id.* In response to counsel’s assertion that the beneficiary was “illegitimate” the district director noted that under the law of St. Vincent and the Grenadines, the beneficiary was legitimated because “a child born out of wedlock is legitimated at the subsequent marriage of his or her parents” and the record established that the beneficiary’s biological parents had married after her birth. *Notice of Denial*, October 18, 2004.

On appeal, counsel states that the beneficiary’s mother is a “sole parent” of an illegitimate child, despite the fact of marriage to her current husband; and that although her husband claims to be the parent of the beneficiary on the Adoption Application and also signed a release for the child’s adoption by the petitioners, there is no proof that he is the child’s biological father. *Brief in Support of Appeal*, November 17, 2006. In support of this assertion, counsel submits statements by the Family Counsellor/Social Worker of the Family Court of St. Vincent and the Grenadines clarifying that “the alleged father of [the beneficiary] never established legal paternity of the child although he later married [her mother]; and from an attorney “familiar with the law and practice in St. Vincent and the Grenadines relating to Adoption and Legitimation” noting that “nowhere in the record is it revealed that [the alleged father] has ever established or sought to establish that he is the biological father of [the beneficiary].

Given the evidence in the record relevant to this issue, the AAO agrees with counsel that marriage by the beneficiary’s biological mother does not “legitimize” the beneficiary absent proof that the spouse was indeed the biological father of the beneficiary; and in this case there is no proof of paternity. However, contrary to counsel’s assertion, the conclusion that the beneficiary is “illegitimate” does not mean that the biological mother is a “sole parent” under the act. “*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.” *Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b)*. In this case, the beneficiary has acquired a parent – a stepfather – by virtue of her mother’s marriage. The term “parent” includes a relationship that exists by

reason of certain circumstances, including a relationship to a “stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.” *See section 101(b)(1)(B) of the Act.* Although no proof of marriage is in the record in this case, the biological mother’s statements and all forms related to the adoption of the beneficiary refer to the beneficiary’s mother as married, and both parents signed the adoption release. In this case, therefore, the beneficiary is deemed to have two parents, and the Act specifies what requirements must be met by both parents for the child to be deemed an “orphan.”

Section 101(b)(1)(F)(i) of the Act, defines “orphan” in pertinent part as:

[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), 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. (emphasis added).

Volume 8 C.F.R. section 204.3(b) provides definitions of the relevant terms:

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). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

The evidence in the record indicates that [REDACTED] was born in St. Vincent and the Grenadines on October 28, 1995; her birth certificate does not list the name of a biological father. She was adopted by [REDACTED] and [REDACTED] on April 19, 2002 pursuant to that country’s laws and currently lives with [REDACTED] parents in St. Vincent and the Grenadines. The record is inconsistent on exactly when the [REDACTED] met the beneficiary. Counsel for the [REDACTED] states that they met the beneficiary when residing temporarily in St. Vincent and the Grenadines, wanted to adopt her and give her a better life and communicated with her biological mother for that purpose; this is supported by the Adoption Application questionnaire, which in response to the question, “why is the child offered for adoption?” the response is “Request made. Better living standard for child.” However, a letter “To Whom It May Concern” from the Minister of Social Development, Co-operatives, Gender, the Family and Ecclesiastical Affairs, St. Vincent and the Grenadines, dated May 28, 2002, verifies that the Walls applied to be adoptive parents, the process of selecting a child was

done by the Department, the biological mother of the child agreed to the adoption, the Walls were notified of the availability of the beneficiary, “came to visit the child and fell in love with her immediately.” In either case, there is no indication in the record that custody was transferred to a governmental agency, a court of competent jurisdiction, an adoption agency, an orphanage or other qualified agency before the adoption was finalized on April 19, 2002. In fact, the statement accompanying the Application for an Adoption Order, dated February 6, 2002, and attached forms indicate that the beneficiary’s biological mother and stepfather signed a release for adoption on July 2, 2001 and remained as guardians and actual custodians of the beneficiary until at least February 6, 2002. As the adoption was finalized two months later, the evidence supports a conclusion that control over and possession of the child was transferred specifically to the Walls and that the beneficiary was not “abandoned,” but rather relinquished or released by the parents to the prospective adoptive parents or for a specific adoption. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.

The adoption rules of St. Vincent and the Grenadines do not require that children be orphans or that they be abandoned to be eligible for adoption in that country. However, pursuant to U.S. law, an I-600 Petition will not be approved unless the beneficiary is an “orphan” as defined under the Act. Given the fact that both of the beneficiary’s parents are alive, absent evidence in the record that they have disappeared, or abandoned or deserted their child, or have been separated or lost from the child, as provided in the Act, the child is not considered to be an “orphan.” Accordingly, the AAO finds that the beneficiary does not meet the definition of “orphan” as set forth in section 101(b)(1)(F) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.