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FILE: [REDACTED] Office: CHICAGO, IL (MILWAUKEE, WI) Date: SEP 22 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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, Director  
Administrative Appeals Office

<sup>1</sup> It is noted that the alien number, [REDACTED] as been consolidated into the present [REDACTED] alien number.

**DISCUSSION:** The Officer in Charge, Milwaukee, Wisconsin denied the immigrant visa petition. A Motion to Reopen was subsequently denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on November 6, 2003. The petitioner is a 51-year-old married U.S. citizen. The beneficiary was born in Jamaica on May 31, 1996, and she is nine years old.

On May 10, 2004, the officer in charge issued a Notice of Intent to Deny the I-600 petition. The I-600 petition was denied on June 16, 2004, based on a finding that the petitioner had failed to establish the beneficiary was abandoned or that the beneficiary met the definition of an orphan as set forth in the Immigration and Nationality Act (the Act) and in Volume 8 of the Code of Federal Regulations (8 C.F.R.). On October 29, 2004, the district director denied a Motion to Reopen based on the petitioner's failure to establish with new evidence that the beneficiary was abandoned, or that she met the definition of an orphan.

On appeal, the petitioner requests reconsideration of the denial of her I-600 petition. The petitioner asserts that legal documentation from Jamaica reflects the beneficiary's biological mother and father have irrevocably released their parental rights over the beneficiary. The petitioner asserts further that she has obtained legal guardianship over the beneficiary and that she is the beneficiary's sole source of financial support.

Section 101(b)(1)(F) 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 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 (Emphasis added).

8 C.F.R. § 204.3(b) states, in pertinent part:

*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.

8 C.F.R. § 204.3(b) provides that:

*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.

The record contains the following evidence relating to the beneficiary's status as an orphan:

A Jamaican birth certificate reflecting that the beneficiary was born on May 31, 1996, to [REDACTED]. The birth certificate was signed by both of the beneficiary's biological parents.

September 1999, Legal Guardianship application documents filed by the petitioner with the court in St. Ann's Bay, Jamaica. The documents state in pertinent part that the petitioner has supported the beneficiary financially for three years, that the beneficiary lives with her biological mother, and that the beneficiary's biological father's whereabouts are unknown.

A copy of an Irrevocable Release signed by the beneficiary's biological mother on June 18, 2003, reflecting that she relinquished her parental rights over the beneficiary.

A November 26, 2003, letter from [REDACTED] of the Kingston, Jamaica Adoption Board stating, in pertinent part that Adoption Board records show the beneficiary's biological mother is unemployed, and that the beneficiary's biological father severed links with the beneficiary when she was eighteen months old and cannot be located.

A copy of a July 25, 2003, adoption license issued to the petitioner by the St. Ann, Jamaica, Magistrate's Court, reflecting that the petitioner and her husband legally adopted the beneficiary.

A May 18, 2004, letter signed by the beneficiary's biological mother stating, in pertinent part, that she is an unemployed single mother and that the petitioner offered to adopt the beneficiary and has provided financial support to the beneficiary since she was a baby.

A January 9, 2004, U.S. Immigration and Customs Enforcement (ICE) Report of Investigation reflecting, in pertinent part that the ICE investigator interviewed the beneficiary's biological mother in Jamaica and obtained conflicting information regarding the beneficiary's biological father's abandonment of the beneficiary and regarding the biological mother's ability to locate the beneficiary's biological father in order to obtain a letter denoting his irrevocable release of parental rights. The ICE investigator also obtained conflicting information relating to the beneficiary's biological mother's actual place of residence in Jamaica and relating to the length of time that the beneficiary has resided with her biological mother subsequent to the petitioner's guardianship and adoption of the child.

A June 9, 2004, letter from [REDACTED] of the Kingston, Jamaica Adoption Board stating in pertinent part that "[t]he Court in Jamaica accepted that the birth father's right to consent to the child's adoption be dispensed with" based on the birth mother's statements that he had not been in the

beneficiary's life since 1999, and based on Jamaican Child Development Agency records and inquiries regarding the beneficiary's biological father's whereabouts.

A copy of an Irrevocable Release letter signed by the beneficiary's biological father on August 9, 2004, reflecting that he has relinquished his parental rights over the beneficiary. The AAO notes the CIS officer in charge determination that the petitioner submitted a photocopy of the Irrevocable Release letter, and did not submit an original court copy of the letter.

Upon review of the evidence, the AAO finds the petitioner has failed to establish that the beneficiary meets the orphan definition contained in section 101(b)(1)(F) of the Act.

The "sole parent" definition contained in 8 C.F.R. § 204.3(b) is inapplicable to the present matter. The AAO notes that the record contains contradictory information and evidence regarding whether the beneficiary's biological father severed or irrevocably released his parental ties to the beneficiary. Moreover, the Jamaican Status of Children's Act of 1976, abolished distinctions between legitimate and illegitimate children once proof of paternity is established. *See Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981). Section 8 of the Jamaican Status of Children Act provides that paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name. The present record reflects that the beneficiary's birth certificate contains her biological father's name. The beneficiary's biological father's paternity over the beneficiary was therefore established at the time of her birth and the beneficiary was legitimated pursuant to Jamaican law.

The AAO notes that the "surviving parent" definition and requirements contained in 8 C.F.R. § 204.3(b) also do not apply to the present matter. The petitioner does not claim that the beneficiary's biological father is dead, nor is there evidence in the record to support such a claim.

The petitioner has also failed to establish that the beneficiary was abandoned by both of her biological parents, as set forth in 8 C.F.R. § 204.3(b).

8 C.F.R. § 204.3(b) provides that:

*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 record contains no evidence to establish that the beneficiary's biological parents surrendered their parental rights by placing the beneficiary in the custodial care of a third party authorized under Jamaican child welfare laws to act in such a capacity. Moreover, the evidence relating to whether the beneficiary's biological father abandoned or deserted the beneficiary, or whether he, in writing, gave up his parental rights, obligations and claims to the beneficiary, is contradictory and unreliable. The AAO notes further that even if the Irrevocable Release signed by the beneficiary's biological father were considered to be an original, official document, the evidence in the record would clearly demonstrate that the beneficiary's biological parents relinquished their parental rights with the specific intent of transferring those rights to the petitioner, in violation of 8 C.F.R. § 204.3(b) provisions.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act; 8 U.S.C. § 1361. The petitioner has failed to establish that the beneficiary meets the orphan definition set forth in section 101(b)(1)(F)(i) of the Act. The petitioner has therefore failed to meet her burden in the present matter and the appeal will be dismissed

**ORDER:** The appeal is dismissed.