

MATTER OF LOVELL
In Visa Petition Proceedings

A-14389539

Decided by Regional Commissioner January 17 1966

Petition to classify alien as eligible orphan as defined in section 101(b) (1) (F), Immigration and Nationality Act, as amended by P. L. 89-236, is denied since adoption of the beneficiary by her widowed aunt does not meet the statutory requirement of adoption by a United States citizen and spouse.

This matter is before the Regional Commissioner on appeal from the denial of the petition to classify the alien as an eligible orphan under section 101(b) (6) of the Immigration and Nationality Act. This section has since been repealed by P.L. 89-236, effective December 1, 1965, and the definition of the term "child" in section 101 (b) (1) (F) of the Act has been amended to read as follows:

(F) a child, under the age of fourteen 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 which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse 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 who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this act. (Emphasis supplied.)

The instant petition discloses that the beneficiary was born December 13, 1954 at Barbados, West Indies; that she presently resides with her mother at Belleplaine, St. Andrew, Barbados; that she has only one parent; that the latter is unable to provide for her support. It is further reflected that the child's aunt, a 49-year-old United States citizen whose husband is deceased, intends to adopt the beneficiary in this country.

Interim Decision #1547

It has been held in *Matter of D—*, 8 I. & N. Dec. 628, that the adoption of a child by an aunt who is divorced does not meet the statutory requirement under section 4 of the Act of September 11, 1957 that the adoption of an eligible orphan be by a United States citizen *and* spouse. Similar language is contained in section 101(b)(1)(F) of the Immigration and Nationality Act, as amended, as previously noted above. The adoptive parents must be a married couple and, therefore, the instant petition by the alien's widowed aunt cannot be approved. Accordingly, this appeal will be dismissed.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.