

MATTER OF B—

In VISA PETITION Proceedings

A-12154402

Decided by Board September 30, 1960

Adopted child—Section 101(b)(1)(E)—Two-year period of custody following adoption held essential.

Child adopted on July 29, 1959, under 1956 Jamaican Adoption of Children Law found ineligible for immigration benefits as "adopted child" in view of present inability to satisfy two-year legal custody requirement imposed by section 101(b)(1)(E) of the 1952 Act.

BEFORE THE BOARD

DISCUSSION: The case comes forward on appeal from the order of the District Director, Cincinnati, Ohio, dated June 16, 1960, denying the visa petition for preference status under section 203(a)(3) of the Immigration and Nationality Act on behalf of the beneficiary for the reason that the required relationship of parent and child has not been established.

The petitioner, a native and citizen of Jamaica, British West Indies, 57 years old, male, is a permanent resident alien. The beneficiary, a native and citizen of Jamaica, British West Indies, 13 years of age, is the adopted daughter of the petitioner. Evidence has been submitted that the beneficiary was adopted by the petitioner and his wife on July 29, 1959, by decree of the Resident Magistrate's Court at Kingston, Jamaica.

Section 203(a)(3) of the Immigration and Nationality Act, as amended by the Act of September 22, 1959, grants third preference status to the unmarried sons or daughters of aliens lawfully admitted for permanent residence. Section 205(b) provides that no petition for preference in behalf of a son or daughter under paragraph (2), (3) or (4) of section 203(a) shall be approved unless the petitioner establishes that he is a parent as defined in section 101(b)(2) of the Immigration and Nationality Act. The term "parent" is defined in section 101(b)(2) in reference to the circumstances existing in section 101(b)(1).

Subparagraph (E) of section 101(b)(1) contains the definition of an adopted child which is relevant to the circumstances of the

present case. That subparagraph defines an adopted child for immigration purposes as a child adopted while under the age of 14 years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

In the instant case the beneficiary was adopted on July 29, 1959. She was under 14 years of age at that time. However, the adoptive parents have not had legal custody for two years subsequent to the adoption as required by the statute.¹ The beneficiary accordingly does not as yet qualify. It is noted that the required two-year period of legal custody subsequent to adoption will not occur until July 29, 1961, at which time the application for a visa petition may again be submitted.

We have taken note of the brief submitted by the petitioner, including the unsigned letter of January 28, 1960, from the Adoption Board at Jamaica. We have examined section 22 of the Jamaican Adoption of Children Law, 1956, and the other information contained in the letter. Careful consideration of the information therein does not change our conclusion that the two-year period of legal custody subsequent to adoption required by section 101(b)(1)(E) of the Immigration and Nationality Act, as amended, has not been satisfied. The visa petition must be denied at this time.

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

¹ Cf. *Matter of M—*, 8—118, in which there existed both the required period of residence and of legal custody subsequent to the decree of adoption.