



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

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

In Re: 26451567

Date: DEC. 05, 2023

Appeal of National Benefits Center Decision

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 denied the petition, concluding that the record did not establish that the Petitioner's prior marriages had been terminated, that the Beneficiary met the definition of an orphan, that legal custody of the Beneficiary had been secured in Iran, and that an irrevocable release for emigration and adoption had been provided. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

A child who meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act is eligible for classification as the immediate relative of a U.S. citizen. 8 C.F.R. § 204.3. An orphan is defined as a child, under the age of 16 at the time a petition is filed on their behalf, 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, or who is coming to the United States for adoption by a United States citizen; provided, that the Secretary of Homeland Security is satisfied that proper care will be furnished if the child is admitted to the United States. Section 101(b)(1)(F)(i) of the Act.

The regulation requires petitioners to provide the following documentation in support of an orphan petition:

- (A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or
- (B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:
 - (1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;
 - (2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country.

8 C.F.R. § 204.3(d)(1)(iv).

The Petitioner filed a Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition) on behalf of the Beneficiary, a citizen of Iran. The Petitioner claimed that the Beneficiary met the definition of an orphan as a child who had been permanently separated from both parents: from the biological father due to his death, and from the biological mother due to her abandonment. The Petitioner indicated that a full and final adoption would be completed in the United States. After requesting additional information from the Petitioner, the Director denied the orphan petition, finding that the Petitioner had not provided requested information to fulfill four requirements. First, the record did not contain evidence of legal termination of the Petitioner's previous marriages. 8 C.F.R. § 204.3(c)(1)(iii). Second, the Petitioner had not provided sufficient proof that the Beneficiary met the definition of an orphan as defined in the Immigration and Nationality Act (the Act) at section 101(b)(1)(F)(i). Third, the Beneficiary was not adopted in Iran and the Petitioner did not show that she had secured legal custody of the Beneficiary in Iran. 8 C.F.R. § 204.3(d)(1)(iv)(B)(1). Fourth, the Petitioner did not provide an "irrevocable release of the orphan for emigration and adoption" from the entity that had prior custody of the Beneficiary. 8 C.F.R. § 204.3(d)(1)(iv)(B)(2).

On appeal, the Petitioner provides a divorce decree for her first marriage. She also provides a letter from the Director of the Interests Section of the Islamic Republic of Iran in [redacted] (Director's letter) indicating that his office has no objection to the custody, guardianship, and adoption of the Beneficiary. The Petitioner has submitted various letters to provide updates on the Beneficiary's living situation, as well as additional information regarding attempts to locate the Beneficiary's biological mother. Finally, the Petitioner submits a letter from the Beneficiary's mother indicating that she has a disability, that she is unable to care for the Beneficiary, and that she consents to the Petitioner acting as a guardian for the Beneficiary.

We issued a notice of intent to dismiss (NOID) after receipt of the appeal. We advised the Petitioner that, upon review of the application and the additional documentation submitted on appeal, three of the four grounds for denial had been overcome. We advised the Petitioner that legal termination of all previous marriages had been established by a preponderance of the evidence, that the documentation provided showed that the Beneficiary met the definition of an orphan, and the Petitioner had established that she had been granted custody of the Beneficiary in Iran.

When issuing the NOID, we attached an advisory opinion from the Law Library of Congress (LOC). Report for USCIS, *Iran: Case Study – Orphan Custody and Guardianship*, The Law Library of Congress, Global Legal Research Directorate (LL File no. 2023-022593). After reviewing Iranian custody and guardianship laws outlined in this LOC report, we determined that the Petitioner had secured custody over the Beneficiary as required by 8 C.F.R. § 204.3(d)(1)(iv)(B)(2). However, we advised the Petitioner that an irrevocable release for emigration and adoption, as required by regulation, was not located in the record. 8 C.F.R. § 204.3(d)(1)(iv)(B)(2). The Director's letter and the letter from the Beneficiary's biological mother did not satisfy this requirement, as neither of these individuals had immediately previous legal custody of the Beneficiary. Rather, the Petitioner had immediately previous legal custody over the Petitioner.

The Petitioner has responded to the NOID and provided additional legal arguments and documentation. First, she argues that, having reviewed the LOC report, she now believes the documentation provided demonstrates that a full and final adoption was completed in Iran. In addition, she indicates that she became the Beneficiary's guardian and executor after the death of her brother, the Beneficiary's biological father. She argues that she retained this guardianship until the entry of a new guardianship deed in 2021. Therefore, she notes that she is the person having immediately previous legal custody of the Beneficiary and is therefore the person who must provide an irrevocable release for adoption and emigration. In support of this requirement, she has signed and provided a document titled "Irrevocable Release for Adoption and Emigration."

The Petitioner's arguments on appeal are based in part on the conclusions drawn in the LOC report, which was prepared and issued after the Director's decision. The Petitioner has also provided substantive new information and documentation on appeal. Because the Petitioner has submitted new, material evidence on appeal that is directly related to the Director's decision to deny the case, we will remand the case to the Director for further consideration of the Petitioner's eligibility and the issuance of a new decision on the orphan petition.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.