U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22365018

Date: MAR. 15, 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 under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center denied the petition, concluding that the record did not establish that the Beneficiary met the definition of an orphan under section 101(b)(1)(F)(i) of the Act. 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 dismiss the appeal.

I. LAW

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 U.S. citizen or is coming to the United States for adoption by a U.S. 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 at 8 C.F.R. § 204.3(k)(1) provides, in pertinent part, that an I-604, Determination on Child for Adoption (I-604) "investigation must be completed in every orphan case" by a consular or USCIS officer. An I-604 investigation "shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation." In cases where an I-604 investigation "reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action."

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed an orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in 2019, based on her adoption of him in January 2018. The Petitioner claimed that the Beneficiary met the definition of an orphan as a child who "has no parents due to death or disappearance of, abandonment or desertion by, or separation or loss from both parents." In support of the orphan petition, the Petitioner submitted three Nigerian birth certificates for the Beneficiary, all listing the Petitioner and her spouse as his parents: the first was issued in September 2017, prior to the Petitioner's adoption, by the [redacted][1] home (orphanage) where the Beneficiary was born; the second was issued by the National Population Commission of Nigeria in October 2017, also prior to the adoption; and the third was issued in November 2019, after the adoption was finalized. She also provided, in relevant part, an [redacted] 2017 foster order and a [redacted] 2018 adoption order issued by the Family Court, Magistrate Section of [redacted] Nigeria (Family Court); a July 2019 letter from the Ministry of Gender Affairs and Social Development in [redacted] describing the circumstances surrounding the Beneficiary's birth in [redacted] 2017 and subsequent adoption; an undated Social Welfare Investigation Report for Adoption; a 2016 petition to adopt filed with the Ministry of Health, Women Affairs, and Social Development[2] in [redacted] a U.S. home study report; financial and identifying documentation; and photographs.

[1] Letters from this entity refer to it as the [redacted]

[2] It is not clear from the record whether the Ministry of Gender Affairs and Social Development, which wrote the July 2019 letter, and the Ministry of Health, Women Affairs, and Social Development, with whom the Petitioner filed her petition to adopt, are the same entity. The Ministry of Health, Women Affairs, and Social Development is listed as a party on the foster and adoption orders. The Petitioner refers only to the "Ministry of Gender Affairs" or "Ministry" in her brief.

In response to a request for evidence (RFE) from the Director informing the Petitioner that the evidence was insufficient to establish that the Beneficiary meets the definition of an orphan, the Petitioner submitted, in pertinent part, an August 2017 affidavit from the Beneficiary's biological mother relinquishing her parental rights and a January 2020 "Intake Report" from the orphanage where the Beneficiary was born. In a second RFE, the Director notified the Petitioner that the consular officer who conducted the I-604 investigation concluded that the orphan petition was not clearly approvable. The Director noted that, per the I-604 investigation, the January 2020 Intake Report was issued more than two years after the Beneficiary's birth and adoption and therefore was not sufficient, credible evidence of the Beneficiary's abandonment. Additionally, the affidavit from the Beneficiary's biological mother was nearly identical to, and signed on the same date as, an affidavit from the biological mother of a second child the Petitioner also adopted, and the affidavits did not include the biological mothers' photographs as required. Also, the Beneficiary's biological mother indicated in her affidavit that she was from [redacted] while the birth and adoption occurred in [redacted] Per the I-604 investigation, the similarities between the two biological mothers' affidavits, lack of required photographs, movement of the Beneficiary's biological mother across state lines, and absence of records created at the time of the Beneficiary's birth and claimed abandonment cast doubt on the authenticity of the documents. Further, the I-604 investigation showed that the Petitioner began fostering the Beneficiary nearly two weeks before his biological mother signed an affidavit relinquishing her parental rights, and more than one month before the Family Court issued the foster order. Finally, the Petitioner obtained birth certificates for the Beneficiary listing herself and her spouse as his parents prior to the adoption, and then obtained a new birth certificate more than a year after the adoption. As the I-604 investigation report states, the timelines of the issuance of relevant documents raise concerns about the claimed abandonment of the Beneficiary and the adoption process.

In response to the second RFE, the Petitioner provided in relevant part a July 2021 "Response to Request for Evidence" letter ("Response to RFE letter") from the orphanage director, stating that the January 2020 Intake Report was created in response to the first RFE but was based on records at the orphanage. The orphanage director noted that the orphanage was listed as a party on the foster and adoption orders issued in 2017 and 2018, and that "there is every reason to believe that [the Beneficiary] w[as] indeed admitted to [the] orphanage, and that [the orphanage] would also have a record regarding the guardianship and custody of [the Beneficiary] prior to [his] transfer to [his] adoptive parents." Further, the orphanage director stated that the biological mothers' affidavits did not include their photographs because it is not required before Family or Magistrate Courts in [redacted] and that the two affidavits appeared identical because the orphanage "took both biological mothers . . . to Court on the same day to fill out and formalize their respective Affidavits," but that both had expressed their intent prior to the births to put their children up for adoption. Additionally, the orphanage director indicated that the Beneficiary's biological mother was from a neighboring state but requested to stay at the orphanage, against which there were no restrictions.

The Director denied the orphan petition based on a determination that the Beneficiary did not meet the definition of an orphan under section 101(b)(1)(F)(i) of the Act. Specifically, the Director explained that the evidence was insufficient to show that the Beneficiary was abandoned due to the lack of credible, consistent documentation created around the time of his birth, claimed abandonment, and adoption. On appeal, the Petitioner argues that the Director's determination was in error and she submitted sufficient evidence to show that the Beneficiary was unconditionally given up for adoption at the orphanage, which is authorized by the local government to handle adoptions.

B. The Petitioner has not Established that the Beneficiary Meets the Definition of an Orphan under Section 101(b)(1)(F) of the Act

Upon de novo review, we agree with the Director that the Petitioner has not submitted sufficient evidence to meet her burden of showing that the Beneficiary is an orphan under section 101(b)(1)(F) of the Act due to his abandonment. As discussed, the regulation provides that a child who is an orphan due to abandonment by both parents is one whose 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)." 8 C.F.R. § 204.3(b). Forsaking one's parental rights must include both the intention and "the actual act of surrendering such rights, obligations, claims, control, and possession," and the relinquishment of parental rights "to the prospective adoptive parents or for a specific adoption does not constitute abandonment." *Id.* Similarly, the "relinquishment or release of the child . . . to a third party for custodial care in anticipation of, or preparation for, adoption," does not qualify as adoption, unless that "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." *Id.* Where a child "has been given unconditionally to an orphanage," they will be considered to be abandoned. *Id.*

In this case, the evidence indicates that the Beneficiary was placed in the foster care of the Petitioner for the purpose of adoption prior to his biological mother's relinquishment of her parental rights and the issuance of a court order authorizing the foster placement. According to the January 2020 Intake Report, the Beneficiary was born on [redacted] 2017 and was placed in foster care with the Petitioner on August 12, 2017. As the I-604 notes, the legal authority and person or entity responsible for this foster placement is unclear, as the Beneficiary's biological mother did not sign an affidavit relinquishing her rights until August 25, 2017, and the Family Court did not issue its foster order authorizing the Beneficiary's placement "under foster/care" of the Petitioner and her spouse until October 2017. The July 2021 Response to RFE letter from the orphanage director indicates that the foster placement with the Petitioner was based on the Petitioner's prior application to adopt, which was pending at the time of the Beneficiary's birth, and that the biological mother had come to the orphanage "for the purpose of giving up [her] child[] for adoption." The Response to RFE letter states that the Petitioner and her spouse had expressed interest in adopting both a baby boy and a baby girl, so the birth of the Beneficiary and a baby girl at the orphanage to separate biological mothers "on the same date perfectly fitted into the present circumstance and the Orphanage obliged the adoptive parents this opportunity of having both children born on the same date." According to the Response to RFE letter, the baby girl needed medical attention after birth, so "the relatives of the adoptive parents opted to take the children" to a hospital and then "to take the children home together." This occurred despite the fact that the baby girl's biological mother was ill after the birth and "[h]er health condition made it impossible for her to go to court immediately to formalize her Affidavit of Consent after delivery to relinquish the child," and the Beneficiary's biological mother was not taken to court to sign her own affidavit until the baby girl's mother was well enough to go with her.

This description of events indicates that the orphanage made the decision to "oblige[] the adoptive parents" and allow them to foster the Beneficiary soon after his birth, due to their pending adoption application, prior to his biological mother's legal relinquishment of her parental rights or the issuance of a foster order by the Family Court. While the Beneficiary's biological mother eventually released

her rights to the child, the evidence does not indicate that she had done so by the time he was placed in foster care with the Petitioner. Additionally, the Beneficiary's biological mother stated in her affidavit that no one "influenced [her] decision nor arranged for the baby boy to be placed in a foster home," which is contrary to the evidence showing the orphanage had already placed the Beneficiary in foster care nearly two weeks earlier.

Accordingly, the evidence does not show that the Beneficiary was "given unconditionally to [the] orphanage" and that his biological mother willfully performed "the actual act of surrendering [her] rights, obligations, claims, control, and possession" such that he could be considered abandoned under 8 C.F.R. § 204.3(b) when he entered the Petitioner's care and custody. Although the Director discussed this issue, the Petitioner does not specifically address on appeal the Director's concern, as raised in the I-604 investigation, that the record lacks evidence of the orphanage's legal authority to place the Beneficiary in the Petitioner's care on August 12, 2017 for the purpose of fostering and adoption. Instead, she states in her appeal brief that the Beneficiary "was fostered to the adoptive parents" in [redacted] 2017, without acknowledging that the orphanage initiated the foster placement in August 2017.[3]

On appeal, the Petitioner argues that the January 2020 Intake Report from the orphanage director was actually a letter describing events that occurred in the past, rather than a true intake report created at the time the Beneficiary and his mother were admitted to the orphanage. She states that the orphanage director who signed the Intake Report was also listed on the 2017 foster order and 2018 adoption order, which shows that the orphanage had contemporaneous information about the birth, abandonment, and adoption. Further, she asserts that if the information the orphanage provided was "enough to convince the Family Court in [redacted] that this child was abandoned," it should be sufficient for USCIS. However, as discussed, the evidence is not sufficient to show that the Beneficiary had been abandoned at the time the orphanage placed him in foster care for the purpose of adoption, which occurred prior to any order by the Family Court. As the I-604 investigation indicated, the timeline of events casts doubt on the authenticity of the documents relating to the Beneficiary's claimed abandonment. The evidence also does not show whether the Family Court was aware, at the time it issued the foster and adoption orders, that the Beneficiary had been placed in the Petitioner's foster care prior to its issuance of such orders or the relinquishment of parental rights by the biological mother. Further, although the Petitioner states that the 2020 Intake Report "should not be construed as an 'intake report' in the strictest sense," she does not state whether an actual intake report or other records were in fact created at the time of the biological mother's admission to the orphanage or the birth of the Beneficiary. And while the orphanage director stated in the Response to RFE letter that "there is every reason to believe that . . . [the orphanage] would also have a record regarding the guardianship and custody of [the Beneficiary] . . . ," the only records the Petitioner has provided are those created weeks, months, or years after the events in question.

The Petitioner also states that the Director erred in suggesting "that there must be proof of direct communication between the Ministry [and] the orphanage at the time of the intake of the child at the orphanage in order to meet the requirement for abandonment with a third party." She states that "even

[3] The Petitioner also focuses in her brief on whether the Beneficiary's father abandoned him, but this was not an issue in the Director's denial and is not a question on appeal. The evidence shows that the Beneficiary's father abandoned him prior to his birth, but does not show that his mother abandoned him per the definition in the regulation.

if the orphanage never informed the Ministry about the abandonment," the Beneficiary could qualify as an abandoned child as described at 8 C.F.R. § 204.3(b) because he was unconditionally given up for adoption to the orphanage, an entity authorized to prepare adoptions in [redacted] She also notes that both the orphanage and the Ministry were listed as parties on the foster and adoption orders, and both the Social Welfare Investigation Report for Adoption and the Ministry's July 2019 letter described communications between the orphanage and Ministry in preparation for the adoption. We acknowledge that the letters and documents issued by the orphanage and the Ministry indicate that they were aware at some point of the Beneficiary's birth, placement in foster care, claimed abandonment, and subsequent adoption. However, the records of those events were created later and indicate that the Beneficiary was not legally abandoned by his biological mother prior to his placement in the Petitioner's foster care for the purpose of later adoption. Accordingly, the record lacks sufficient credible evidence to show that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act as a child who was abandoned by both parents, as the Petitioner claims.

III. CONCLUSION

The Petitioner has not provided sufficient evidence to overcome the conclusions in the I-604 investigation. Therefore, the Petitioner has not established by a preponderance of the evidence that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act.

ORDER: The appeal is dismissed.