



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

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

In Re: 26903044

Date: OCT. 31, 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 who is 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 Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), concluding that the record did not establish that the Beneficiary met the definition of an orphan. 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 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 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 persons. . . . 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.

. . . .

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.¹

. . . .

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

. . . .

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.

¹ The remaining means of showing a Beneficiary's orphan status are: parental disappearance, loss from parents due to some calamitous event, or separation due to a competent authority ordering involuntary severance from the parents. The record does not support a finding of orphanhood under any of these definitions.

II. ANALYSIS

A. Procedural History

The Petitioner filed this orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in April 2021. The Petitioner indicated that the Beneficiary met the definition of an orphan as a child who was abandoned or deserted by both parents or had endured a similar type of permanent separation. The Director requested additional evidence then issued a notice of intent to deny (NOID). In the NOID, the Director instructed the Petitioner to provide evidence that the Beneficiary met the definition of an orphan. The Director also alerted the Petitioner to concerns raised by the U.S. Consulate regarding the adoption process. After receiving the response to the NOID, the Director denied the petition, finding that the Beneficiary's orphan status was not supported by credible evidence.

The Petitioner argues on appeal that he and his family followed all of the processes laid out by the Ministry for Gender Affairs and Social Development (the ministry). The Petitioner did not circumvent these procedures at any time and was diligent in following all requirements. He argues that any deficiencies in the documentation provided are due to the recordkeeping deficiencies present in official bodies throughout Nigeria. He also highlights the steps taken to bond with the Beneficiary and to provide for her throughout the pendency of the adoption and the orphan petition.

B. Relevant Documentation

On appeal, the Petitioner submits additional photographs, receipts for bank transfers made to Nigeria, a letter prepared by an archdeacon, and a letter from the Petitioner and his spouse. The relevant documents provided to the Director include two consent letters and an affidavit signed by the Beneficiary's biological mother. In the consent letters, the mother indicates that she has "no interest to care of the child" and is giving her up willingly. In her affidavit, the mother notes that she is 21, unmarried, and is an unemployed spinster; therefore, she "resolved that I cannot take care of the baby."

Additional information about the mother and the biological father is contained in documents provided by the hospital and by the ministry. The hospital provided an undated report indicating that efforts to trace the mother's family were unsuccessful. A ministry report from 2021 indicates that the mother was single and unemployed. It also notes that she had multiple sexual partners, and that the identity of the biological father is unknown.

C. The Petitioner Has Not Established that the Beneficiary is an Orphan

While the Petitioner has submitted documentation tending to show that the Beneficiary was adopted in Nigeria, orphan petitions are limited to children who meet the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act. The existence of a final adoption decree does not alter the requirement that an adopted child must meet the definition of an orphan under U.S. law to qualify for emigration with an orphan petition. As noted above, the Petitioner must either establish that the child was permanently separated from both parents in some way, or that the biological mother was a sole parent who was incapable of providing care and who released the child for adoption.

The record contains limited documentation regarding the Beneficiary's biological father, much of which was prepared months or years after the birth and fostering had occurred. The documents directly signed by the mother provide no details regarding the Beneficiary's father, and there is no documentation signed or prepared by the father. Although the mother claimed to be single, the documents provided do not indicate that the hospital or the ministry confirmed her marital status or conducted an investigation to determine that the father had severed parental ties. The ministry noted in 2021 that the father's identity was unknown due to the mother having multiple sexual partners, and the hospital also noted in a 2021 letter that there was "no trace of the biological father." However, the mother did not directly affirm this information in either of the consent letters or in the affidavit. The ministry and the hospital did not detail any further inquiries made into the mother's partners or attempts to determine the identity of the father. Because the information relating to the father was not directly confirmed by the mother and was not asserted until a significant length of time after the birth and fostering, the Petitioner has not met his burden of showing the father had severed all parental ties and the mother should be considered a sole parent. As a result, the Petitioner cannot demonstrate that the Beneficiary was abandoned or deserted by both parents, as required for orphan status.²

Even if the mother did meet the definition of a sole parent, the Petitioner has not shown by a preponderance of the evidence that she was incapable of providing care. As noted above, to be incapable of providing care, the mother must have been unable to provide for the child's basic needs according to Nigerian standards. The handwritten consent letters signed by the mother do not address her ability to care for the Beneficiary. The affidavit signed by the mother notes that she is an unemployed spinster. However, we give this document limited evidentiary weight; while the mother's biographical information is handwritten, other similarly personalized details, including her marital status and economic circumstances, are typewritten in what appears to be a prefilled form.

The remaining information regarding the mother's economic situation comes from hospital or ministry documents created well after the mother had surrendered the child. The hospital indicated it attempted to locate other members of the mother's family but did not specify what steps were taken during this inquiry. The ministry indicated that the mother was unemployed and could not provide "care, attention, proper upbringing and education" but did not otherwise indicate that it investigated the mother's circumstances or her ability to care for the child. Because these documents do not outline what steps, if any, were taken to confirm the mother's ability to care for the Beneficiary according to Nigerian standards, they are also insufficient to meet the Petitioner's burden of proof.

² The Director primarily focused on abandonment as the basis for the petition. In the response to the NOID, the Petitioner asserted that the Beneficiary had also been deserted, as her time at the hospital made her a ward of the Ministry. However, the Petitioner has not provided information regarding which Nigerian law outlines the process for making an individual a ward of a competent authority. The provided court documentation does not describe the child as a ward of the court. While the Petitioner has submitted evidence tending to show that the hospital is authorized to work with the Ministry, the provided document describes these hospitals only as "partnering" with the Ministry. The documentation references the Child's Rights law of [redacted] State but does not mention a specific section of that law or otherwise state that children who remain in these facilities are considered wards of the court or a competent authority. Without further information, the Petitioner has not met his burden of establishing that the Beneficiary was made a ward of the court or competent authority in Nigeria, as required to show desertion by the parents.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the definition of an orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act. The Petitioner has not established that the Beneficiary's mother meets the definition of a sole parent because the Beneficiary is an illegitimate child whose father has severed all parental rights. In addition, the Petitioner has not demonstrated that the Beneficiary's mother was incapable of meeting the Beneficiary's basic needs in accordance with the local standards of Nigeria.

ORDER: The appeal is dismissed.