



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

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

In Re: 27524601

Date: SEP. 28, 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.<sup>1</sup>

. . . .

*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.

## II. ANALYSIS

### A. Procedural History

The Petitioner filed this orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in July 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

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<sup>1</sup> 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.

Petitioner later amended the orphan petition to state that the Beneficiary had a sole or surviving parent who was incapable of providing proper care. The Director issued a notice of intent to deny (NOID). In the NOID, the Director instructed the Petitioner to provide a copy of the Beneficiary's birth certificate or appropriate secondary evidence of identity, evidence that the Beneficiary met the definition of an orphan, and evidence that the Petitioner was present in court for the adoption. 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.

On appeal, the Petitioner maintains that full faith and credit should be given to the final adoption order issued in Nigeria and that the Beneficiary does qualify as an orphan. The Petitioner argues that the Director engaged in speculation by listing concerns regarding work by Nigerian officials in neighboring states and the budget available for such travel. The Petitioner further contends that the discrepancies noted by the Director in various documents were either inconsequential, were the result of typographical errors, or were due to the Director's misunderstanding of how those documents were prepared. Finally, the Petitioner indicates that the Beneficiary's identity has been adequately established by the documentation presented, and that no additional birth certificate or proof of identity is available.

#### B. Relevant Documentation

The Petitioner did not provide additional documentary evidence on appeal. The relevant documents provided to the Director include two documents signed by the Beneficiary's biological mother. The first, titled "Biological Mother's Consent" was signed on May 5, 2017 (mother's consent). The mother's consent explains that she was the victim of a sexual assault that resulted in the birth of the child. She indicates she is unable to care for the child and gives her consent for an adoption. The second is an affidavit of facts sworn to before the Magistrate Court [redacted] on May 10, 2017 (mother's affidavit). The mother's affidavit indicates that she had a baby out of wedlock and thereafter handed him over to the "Social Welfare [redacted] for adoption."

The Petitioner also submitted documents from by the Chief Magisterial Court [redacted] Magisterial District (adoption court). The adoption court documents indicate that a petition for fostering and adoption was submitted by the Petitioners. In [redacted] 2018, the adoption court issued an interim order adjourning the final adoption pending an investigation report by the Ministry of Social Welfare, Children, and Women Affairs (the Ministry). It also allowed the Ministry to travel out of state to investigate. The Ministry provided a report on February 15, 2018 (2018 ministry report). The 2018 ministry report indicates that the biological mother appeared on May 10 claiming to have been sexually assaulted. The Ministry undertook a routine inquiry and "took custody of the baby boy and assumed the maintenance and welfare responsibilities of the baby immediately." In [redacted] of 2018, the adoption court finalized the proceedings and authorized the adoption of the Beneficiary.

Two documents relating the results of "home assessments" were included. These documents are not dated and do not appear on government letterhead; however, they are signed by an individual who is listed elsewhere as a Ministry representative. The first of these reports, dated April 28, 2017, indicates that an assessment was completed at the home of the Petitioner's relatives (first home assessment). There, it was observed that the child was being properly cared for by the Petitioner's relatives. The

second report outlines a site visit conducted on June 4, 2018, where the Ministry met with different relatives (second home assessment). The second home assessment indicates that the Beneficiary had been fully accepted by and integrated into the family.

The Petitioner also presented various documents prepared by the Ministry in July 2019. The Petitioner provided a “Child Study Report” (child study report), which noted that the biological mother rejected the baby “despite all persuasion to accept the baby” and that efforts were made to explain the consequences of giving out the child for adoption. As she nonetheless desired to give the baby up, a social welfare officer took custody of the child and cared for the baby until “the next day.” The Petitioner’s relatives then took the Beneficiary home on May 11, 2017. The next form is titled “Intake of Biological Mother From the Social Welfare Office” (intake report). The intake report notes that the mother swore an affidavit on May 10, but was advised to return to the Ministry on May 11. This delay was needed in order to contact the Petitioner’s relatives and have them pick up the baby, as well as to allow the Ministry to “monitor and confirm her story.” The Ministry thereafter released the Beneficiary to the Petitioner’s relatives.

#### 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. We acknowledge the foster order and adoption order, and we have considered the Petitioner’s argument regarding the validity and finality of the adoption procedures. However, 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. However, various documents filed with the petition relating to the child’s origins and separation from his biological mother present inconsistencies and are of uncertain origin; in addition, many of them were also not prepared when the events occurred. We acknowledge the Petitioner’s argument that Nigerian officials are not required to prepare documents contemporaneously. While this is true, documentation prepared years after the incidents described nonetheless raises issues of reliability and consistency and are therefore afforded less evidentiary weight.

On appeal, the Petitioner takes issue with the Director’s characterization of various documents as discrepant, in particular the first home assessment. The Petitioner argues that the year 2017 was listed on the first home assessment as the result of a typographical error. The Petitioner also contests the Director’s determination that the Ministry would not have had jurisdiction to oversee site visits in another state or would not have had the budget. Regarding the date of the assessment, the Petitioner notes that the first home assessment refers to “Saturdays [sic] 28th April, 2017” as the visit date. He argues that in 2017 April 28 fell on a Friday, and that it fell on a Saturday in 2018. Therefore, he contends that USCIS should credit this visit as having occurred in 2018. At the outset, we note that the Petitioner has not provided documentation from the author of the report confirming such an error. We also note that the proposed revised date of April 27, 2018, raises conflicts with the court adoption records.

By the time of the proposed home assessment dates of April 27, 2018, and June 4, 2018, the Petitioner had already been granted full parental authority and the Ministry had been relieved of involvement in the Beneficiary's care. The court adoption order entered into effect on [ ] 2018, and specifically stated that "the applicants are by this order therefore at liberty to take [the Beneficiary] to wherever they are staying." As part of this order, full parental rights were transferred from the Ministry to the Petitioner. Irrespective of whether the Ministry had been granted jurisdiction to travel or had the budget to do so, a site visit to the prior interim caretakers would not have been necessary following the entry of the final adoption order.<sup>2</sup> Additionally, in the first home assessment, the Beneficiary is referred to once as an "adopted Child" but the Petitioner is repeatedly referred to as a foster parent, and the report purports to be assessing the suitability of the foster placement. If, however, this visit occurred April 27, 2018, it is unclear why the report would continue to refer to the Petitioner as a foster parent.

We also note that the second home assessment was allegedly carried out by the Ministry on June 4, 2018. In this report, the Petitioners are again referred to as the foster parents despite the finalized adoption. In addition, the second home assessment refers to the Beneficiary as having been "wholly accepted in the family" and "integrated" into the family at the Petitioner's permanent home, and notes that his position "is permanent and uncontested at all time." However, the Beneficiary had been residing at another location five weeks prior and therefore the Ministry's conclusions in the second report regarding his acceptance and integration appear to have limited foundation.

Turning to the documentation signed by the biological mother, the mother's consent and the mother's affidavit present different accounts of circumstances of the child's birth. The mother's consent, signed on May 5, indicates that the conception occurred as a result of a sexual assault and the child's father was unknown. As a result, her community rejected the baby and she was unable to care for him. By contrast, the mother's affidavit, sworn on May 10, indicates that she had a child out of wedlock and handed that child over voluntarily. No explanation was given as to why the mother's previously disclosed details of sexual assault - disclosures that were made within her own community - were not included in an account presented five days later.

Adding to the concerns around these documents, the mother's consent is not addressed to a particular agency or individual. This form indicates that "everything has been explained to me in the presence of my family and I perfectly understand." It is not specified who explained any processes to the biological mother. The only other reference to an explanation of the ramifications of an adoption is outlined in the Ministry's child study report. Notably, however, the mother's consent was signed five days prior to any Ministry involvement according to the child intake report, which indicates the mother appeared before the Ministry on May 10. It is also unclear when the mother's consent came into the Ministry's possession, as a Ministry stamp on the document reflects July 18, 2019, the same date as other documents prepared on Ministry letterhead, after the conclusion of adoption proceedings. This document is not otherwise stamped by the Ministry or by court during the pendency of the adoption proceedings.

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<sup>2</sup> As noted by the Director, the date listed on the report in 2017 is only one day after the Beneficiary's birth. If this date is credited, the first home assessment creates separate issues regarding the timing of the fostering and adoption process, as it would have occurred prior to any Ministry involvement.

Finally, as noted by the Director, the timeline of the Ministry's initial involvement is unclear. The mother's affidavit, signed on May 10, notes that she "handed over the baby boy to the Social Welfare [redacted] State," implying that the Ministry had already taken custody over the Beneficiary on that date. The child study report also indicates that the Ministry took custody on May 10, and the 2018 ministry report states that the Ministry took custody immediately. However, the intake report states that, after signing the affidavit, the mother was instructed to come back to the Ministry on May 11, as additional steps were required including verification and contacting the Petitioner's relatives. The intake report states that the Ministry *thereafter* took over custody of the child. The documentation purportedly created by the same Ministry in describing its own official actions is internally inconsistent.

The adoption court took notice of various documents referenced above and relied on the Ministry's reporting in determining the circumstances of the child's birth. Because no original, official birth certificate has been provided, our understanding of the child's possible classification as an orphan is limited to the information provided in the documents signed and prepared by the biological mother and Ministry officials. However, because of the inconsistencies and discrepancies in these documents that have been noted above, we do not find these documents to be sufficient to meet the Petitioner's burden of proof to demonstrate that the child meets the definition of an orphan.

### 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 documentation provided to establish the Beneficiary's origins is insufficient to meet the Petitioner's burden of proof.

**ORDER:** The appeal is dismissed.