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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: DEC 30 2013

Office: NATIONAL BENEFITS CENTER

File: [REDACTED]

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

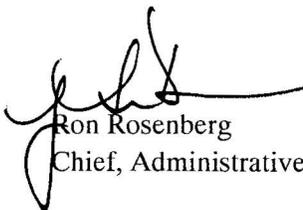
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director (“the director”) of the National Benefits Center, denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks to classify the beneficiary as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F). The director denied the petition on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan as that term is defined at section 101(b)(1)(F)(i) of the Act. On appeal, the petitioner submits a statement and additional evidence.

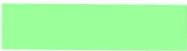
Applicable Law

Section 101(b)(1)(F)(i) of the Act defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, 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

The regulation at 8 C.F.R. § 204.3(b) provides definitions for certain terms found at section 101(b)(1)(F) of the Act and states, in pertinent parts:

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.



Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

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.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign-sending country.

* * *

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

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.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

Factual and Procedural History

The petitioner is a 47-year-old U.S. citizen who seeks to classify the beneficiary, a citizen of Ethiopia, as an orphan. The petitioner, who is the beneficiary's maternal uncle, adopted the beneficiary in Ethiopia on April 28, 2008. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on April 15, 2013, when the beneficiary was 14 years old. The petitioner initially submitted: the beneficiary's birth certificate; the adoption agreement between the beneficiary's birth mother ("beneficiary's mother") and the petitioner; a judgment granting the petitioner adoption of the beneficiary; a home study of the petitioner; evidence of the petitioner's U.S. citizenship; and a certification from the [REDACTED] of the petitioner's adoption of the beneficiary.¹

The director subsequently issued a Request for Evidence (RFE) to demonstrate that the beneficiary is an orphan under section 101(b)(1)(F)(i) of the Act. The petitioner responded with, among other things: an affidavit from the beneficiary's mother; nearly identical affidavits from the beneficiary's mother's three acquaintances, [REDACTED] and [REDACTED] the beneficiary's birth parents' divorce decree; a second statement from [REDACTED] and statistical information on Ethiopia from the [REDACTED]. The director found this evidence insufficient to establish eligibility and denied the petition. The petitioner timely appealed.

On appeal, the petitioner submits: a statement; photographs of the petitioner with the beneficiary; the petitioner's birth certificate; and the beneficiary's mother's birth certificate.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record, as supplemented on appeal, does not demonstrate the beneficiary's eligibility as an orphan for the following reasons.

¹ [REDACTED] operating under the [REDACTED] is the primary adoption authority in Ethiopia. *See Intercountry Adoption, Ethiopia*, U.S. Department of State, http://adoption.state.gov/country_information/country_specific_info.php?country-select=ethiopia (last visited December 5, 2013).

Analysis

The beneficiary's mother recounted in her affidavit that she and her former husband, the beneficiary's birth father ("beneficiary's father"), were married, but living separately during the beneficiary's August 12, 1998 birth. She stated that she was granted a divorce from the beneficiary's father on July 25, 2008 and she does not know where he is currently located. *Affidavit of the beneficiary's birth mother*, dated May 24, 2013. The divorce decree in the record reflects that the beneficiary's birth parents' marriage dissolved on July 25, 2008, when he was nine years old. The beneficiary's mother's statements are reiterated in the affidavits from her acquaintances. See *Affidavits of* [REDACTED] *and* [REDACTED] [REDACTED] dated May 24, 2013. The adoption agreement between the beneficiary's mother and the petitioner states that the beneficiary's father's address is "not clearly known" and he does not support and care for the beneficiary. The agreement also states that the beneficiary's mother is unemployed and she does not have the means to raise the beneficiary. *Adoption Agreement*, dated February 17, 2008. The adoption decree reflects that the petitioner was granted adoption of the beneficiary based upon the assertions in the adoption agreement. *Ethiopian Federal First Instance Court, Judgment*, dated April 28, 2008. Mr. [REDACTED] provided in his second statement that the petitioner has granted him power of attorney over the beneficiary. Mr. [REDACTED] reiterated that the beneficiary's father has not supported the beneficiary and the beneficiary's mother is unemployed and cannot fulfill his basic needs. *Letter of* [REDACTED] dated May 29, 2013.

The director correctly determined that the record lacked sufficient evidence to establish that the beneficiary meets the definition of an orphan defined in section 101(b)(1)(F)(i) of the Act. On the Form I-600, the petitioner indicated that the beneficiary is an orphan because he has only one parent who is the sole or surviving parent. The petitioner stated that the beneficiary's father abandoned the beneficiary and his whereabouts are unknown. A mother may be classified as a *sole parent* only when the beneficiary is illegitimate and has not acquired another parent within the meaning of section 101(b)(2) of the Act. The regulation at 8 C.F.R. § 204.3(b) prescribes that the term "sole parent" only applies to children born out of wedlock. The record in this case indicates that the beneficiary was born in wedlock and is the legitimate child of his birth parents. The record also indicates that both of the beneficiary's birth parents are living. As such, neither the beneficiary's mother nor father is a "surviving parent," as that term is defined in the regulation.

On appeal, the petitioner asserts that the beneficiary is now residing with Mr. [REDACTED] because his mother has abandoned him. The petitioner contends that the beneficiary is an orphan because of the "disappearance of, abandonment or desertion by" his birth parents, as that term is defined at 8 C.F.R. § 204.3(b). In order for the beneficiary to meet the definition of an orphan as a child who has been abandoned, the petitioner must demonstrate that both of the beneficiary's birth 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). The regulation emphasizes further that "relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not

constitute abandonment.” *Id.* As the adoption agreement shows that that the beneficiary’s mother directly relinquished the beneficiary to the petitioner for a specific adoption in the United States, the petitioner has not established that the beneficiary is an orphan because he was “abandoned by both parents,” as that term is defined at 8 C.F.R. § 204.3(b).

The record also does not show that the beneficiary is an orphan under any other criteria delineated at section 101(b)(1)(F)(i) of the Act and defined at 8 C.F.R. § 204.3(b). The record does not indicate that both of the beneficiary’s birth parents have died. Nor does it show that they have disappeared with their whereabouts unknown after a reasonable effort to locate them as determined by a competent authority, or that the beneficiary has become a ward of a competent authority as the result of his birth parent’s desertion. The record also does not indicate that the beneficiary was involuntarily severed from his birth parents by action of a competent authority for good cause. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from his birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of his birth parents and as verified by a competent authority.

Conclusion

As set forth in the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an “orphan,” as that term is defined at section 101(b)(1)(F)(i) of the Act. Consequently, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.