



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 15 2014 OFFICE: NATIONAL BENEFITS CENTER

IN RE: Petitioner:
Beneficiary:

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

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 of the National Benefits Center (“the director”) initially approved the Petition to Classify Orphan as an Immediate Relative (Form I-600) but ultimately revoked the approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

Applicable Law

Regarding the revocation of approved visa petitions, section 205 of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1155, states, in pertinent part:

The Secretary of Homeland Security may, at any time, for what [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition[.]

The regulation at 8 C.F.R. § 205.2 governs the procedures for revoking approved visa petitions on notice, and states, in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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. . . . *Provided,* That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

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

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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.

Facts and Procedural History

The petitioner is a married U.S. citizen who seeks to classify the beneficiary, who is her niece and a national of Nigeria, as an orphan. On March 17, 2011, the Magistrate's Court at [REDACTED] Nigeria granted the petitioner and her husband's adoption of the beneficiary. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on April 25, 2012. On August 7, 2012, USCIS approved the Form I-600. On September 19, 2012, the U.S. Consulate in [REDACTED] Nigeria returned the approved Form I-600 to the director because it could not issue a visa to the beneficiary. The consular officer determined that the beneficiary's adoption decree was invalid because the Magistrate's Court at [REDACTED] does not have authorization over adoption cases in Imo State. The consular officer further determined that the beneficiary does not meet the definition of an "orphan."

The director issued a Notice of Intent to Revoke (NOIR) the approval of the petition on March 27, 2013, notifying the petitioner that the Form I-600 was approved in error because: (1) the

beneficiary's adoption decree was not issued by the Magistrate's Court at Owerri, which has authorization over adoption cases in [REDACTED] and (2) the record did not contain evidence from a competent authority that parental rights over the beneficiary had been terminated due to the disappearance of, abandonment or desertion by, or separation or loss from both of her biological parents. The director provided the petitioner a period of 33 days in which to respond to the NOIR. The petitioner responded to the NOIR with: an adoption decree for the beneficiary, dated April 16, 2013, from the Magistrate's Court at [REDACTED] a letter confirming the beneficiary's adoption from the [REDACTED] and evidence of the petitioner's travel to Nigeria during the court proceedings in [REDACTED]. The director found this additional evidence insufficient to fully overcome the grounds for revocation. On May 10, 2013, the director concluded that the beneficiary did not meet the definition of an "orphan" under section 101(b)(1)(F)(i) of the Act and revoked approval of the petition. The petitioner filed a timely appeal.

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility to be classified as an orphan.

The petitioner submitted in addition to the documentation previously discussed, the following evidence related to the adoption of the beneficiary: a letter dated March 1, 2011 from [REDACTED]; an affidavit dated January 27, 2012 from the beneficiary's biological father's friend, [REDACTED]; an "affidavit of relinquishment" dated November 2, 2011 from the beneficiary's biological father; two (2) [REDACTED] Local Government Area Social Welfare Department reports on the beneficiary's adoption, respectively dated March 11, 2011 and July 16, 2012; and an affidavit dated February 20, 2003 from the beneficiary's biological father.

The beneficiary's biological father recounted in his February 20, 2003 affidavit that his wife, who is the beneficiary's biological mother, abandoned the beneficiary three years prior. In his November 2, 2011 affidavit he explained that his wife abandoned him and their children when the beneficiary was four years old. He stated that he is unemployed and unable to provide for his seven children's basic needs. He stated that he relinquished the beneficiary to his sister (the petitioner) and her husband after his wife's abandonment. The affidavit from [REDACTED] contains similar assertions.

[REDACTED] Local Government Area social welfare officer, [REDACTED], stated in her letter, dated March 1, 2011, that the beneficiary's biological parents allowed the petitioner to adopt the beneficiary because they "are poor and are not capable of taking care of all their children." In her

¹ The social welfare office of the state where the child is located is considered Nigeria's adoption authority. See *Intercountry Adoption, Nigeria*, U.S. Department of State, http://adoption.state.gov/country_information/country_specific_info.php?country-select=nigeria (last visited January 6, 2013).

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first report, dated March 11, 2011, [REDACTED] recounted that she conducted an investigation and determined that the beneficiary's biological mother abandoned the beneficiary's biological father and their seven children "several years ago." [REDACTED] stated that local government authorities and community leaders searched for the beneficiary's biological mother, but she was not found. She stated that a medical report indicated that the beneficiary's biological father suffered from a facial benign tumor that rendered him unable to work and provide for his children. In her second report, dated July 16, 2012, [REDACTED] added that in June 2002, the beneficiary's biological father brought three of his children, including the beneficiary, to the Social Welfare Department and declared his inability to care for the children and consented to their adoption.

In the revocation notice, the director determined that the petitioner did not submit proof that the beneficiary has been "orphaned" due to the death or disappearance of, abandonment or desertion by, or separation or loss from both parents. On appeal, the petitioner submits as additional evidence: an April 16, 2013 letter from the [REDACTED] attesting to the approval of the petitioner's adoption of the beneficiary; a letter from the beneficiary's biological father, dated April 6, 2013, consenting to the petitioner's adoption of the beneficiary and termination of his parental rights; and a "letter of recommendation" from [REDACTED] Local Government Area social welfare officer, dated May 20, 2013.

In her May 20, 2013 letter, [REDACTED] provided that the beneficiary and her two brothers were "abandoned" in the [REDACTED] Local Government Area Social Welfare agency by their father on February 23, 2003. She stated that a few days later the petitioner and her husband came from the United States to the agency to adopt the beneficiary. [REDACTED] explained that after meeting all the requirements as stipulated by the agency, the beneficiary, who was then six years old, was given to "her new parents" with the consent of the beneficiary's biological father. [REDACTED] statement of the timeline of events is in conflict with her July 16, 2012 adoption report, in which she recounted that in June 2002, when the beneficiary was four years old, the beneficiary's biological father brought the beneficiary and her siblings to the Social Welfare Department, at which time he declared his inability to care for the children and consented to their adoption. In his November 2, 2011 "affidavit of relinquishment," the beneficiary's biological father also stated that he relinquished the beneficiary to the petitioner and her husband when the beneficiary was four years old.

The term "abandonment by both parents" is specifically defined at 8 C.F.R. § 204.3(b), and the petitioner has not established that the beneficiary meets the definition of an orphan as a result of having been abandoned by both of her birth parents. In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must demonstrate that both of the beneficiary's birthparents 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). If the child was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made 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. *Id.*

However, the regulation proscribes that a child temporally placed 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.” *Id.* In this case, the record shows that the beneficiary’s biological father did not unconditionally give the beneficiary to an orphanage. He instead exhibited an ongoing parental interest in the beneficiary by his direct relinquishment of the beneficiary to his sister, the petitioner, for the beneficiary’s adoption, only a few days after he placed the beneficiary with the social welfare agency. Accordingly, the petitioner has not established that the beneficiary was “abandoned by both parents,” as the term is defined at 8 C.F.R. § 204.3(b).

The record 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 biological parents have died, that they have disappeared, or that the beneficiary has become a ward of competent authority as the result of her birth parent’s desertion. The record also does not indicate that the beneficiary was involuntarily severed from her biological parents by action of a competent authority for good cause and in accordance with the laws of Nigeria. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from her biological parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of her biological parents and as verified by a competent authority.

Although a competent authority determined that the beneficiary’s biological mother abandoned the beneficiary, the record indicates that she is living - the petitioner has not provided a death certificate or any other evidence to prove otherwise. As such, neither the beneficiary’s biological mother nor biological father is a “surviving parent.” Finally, the record does not establish that the beneficiary meets the definition of an orphan because she has a sole parent incapable of providing proper care. The regulation prescribes that the term “sole parent” means the mother of an illegitimate child who has not acquired another parent. The record in this case indicates that the beneficiary was born in wedlock and is the legitimate child of her biological parents. Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of “orphan,” as that term is defined at section 101(b)(1)(F)(i) of the Act. This deficiency provided the director with good and sufficient cause to revoke approval of the orphan petition.

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. Approval of the petition remains revoked.