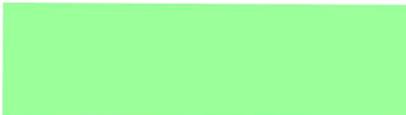
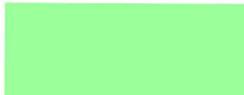


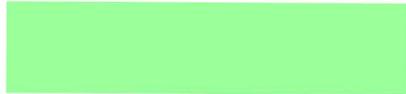
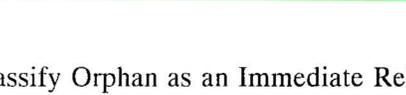
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **JUL 31 2014** OFFICE: NATIONAL BENEFITS CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) 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.

Applicable law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, which 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; who has been adopted abroad by a U.S. citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *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 pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

* * *

- (1)(iii) Evidence that the child is an orphan as appropriate to the case:

* * *

- (B) The death certificate(s) of the orphan's parent(s), if applicable[.]

* * *

- (iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

NON-PRECEDENT DECISION

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not

NON-PRECEDENT DECISION

personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

Facts and procedural history

The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on August 14, 2013, when the beneficiary was 15 years old. The petitioner seeks to classify the beneficiary, a citizen of Bangladesh, as an orphan under section 101(b)(1)(F)(i) of the Act, due to the death of both of her parents.

The director found, in a decision dated January 14, 2014, that the petitioner failed to provide evidence establishing that she obtained legal custody of the beneficiary, in accordance with the law in Bangladesh. The director also found that the petitioner failed to submit a home study report compliant with 8 C.F.R. § 204.3(e); and she failed to submit death certificate evidence for the beneficiary's biological mother, issued within a year of the mother's death, or contemporaneously issued secondary evidence confirming the mother's death. The petitioner therefore failed to establish that the beneficiary qualified for classification as an orphan, and the Form I-600 was denied accordingly. On appeal, the petitioner submits a compliant home study report, and she asserts that proof of legal guardianship over the beneficiary will be submitted once she receives a favorable court ruling in Bangladesh.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will therefore be dismissed.

Analysis

Home Study

The record now contains a home study report that is compliant with 8 C.F.R. § 204.3(e). The beneficiary has therefore satisfied home study submission requirements.

Legal Guardianship over the Beneficiary

The U.S. Department of State (DOS) advises, in pertinent part, that there is no independent central government adoption authority in Bangladesh; that the Family Court has sole jurisdiction over family matters; and that:

Prospective adoptive parents seeking to gain guardianship of a Bangladeshi child must submit an application for legal guardianship to the Family Court having jurisdiction over the child's place of residence[.]

See <http://adoption.state.gov>. Prospective adoptive parents must also obtain a No Objection Certificate from the Ministry of Home Affairs in Bangladesh. *Id.*

The petitioner has not submitted evidence that she applied for, and obtained legal guardianship over the beneficiary before a Family Court in Bangladesh. The record also lacks a No Objection Certificate from the Ministry of Home Affairs in Bangladesh. The petitioner has therefore failed to establish that she obtained legal guardianship of the beneficiary in accordance with the laws in Bangladesh.

Death of Parents

Even if the petitioner had established that she met Bangladeshi legal guardianship requirements, the beneficiary fails to meet the definition of an orphan, in that the petitioner failed to establish, by a preponderance of the evidence, that the beneficiary's biological parents are deceased.

The same evidentiary weight does not attach to a delayed death certificate, as would attach to one contemporaneous with the actual death. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). Here, the death certificates submitted to establish that the beneficiary's biological parents are deceased have diminished evidentiary weight. The death certificate for the beneficiary's biological father [REDACTED] was registered a year after his purported death. The death certificate for the beneficiary's biological mother ([REDACTED]) was registered 14 years after her purported death. Neither death certificate reflects the basis upon which it was issued; moreover, the certificates do not reflect the circumstances of death, and the record contains no contemporaneous corroborative evidence of the beneficiary's biological parents' deaths.

The beneficiary's birth certificate also has diminished evidentiary weight. *See Matter of Bueno-Almonte, supra. See also, Matter of Serna*, 16 I&N Dec. 643 (BIA 1978) (the evidentiary weight of a delayed birth certificate is evaluated in light of other evidence in the record and in light of the circumstances of the case.) Here, the beneficiary's birth certificate was registered after her purported biological parents' deaths, and 14 years after the beneficiary's birth; the certificate does not reflect the basis upon which it was issued; and the record contains no contemporaneous or documentary evidence corroborating the beneficiary's birth to [REDACTED]. The petitioner has therefore 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, due to the death of both parents.

Conclusion

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.