



U.S. Citizenship
and Immigration
Services

F₁



DATE: **OCT 03 2012** 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

Applicable Law

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

(i) a child, under the age of sixteen at the time a petition is filed in his 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[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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*.

* * *

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 30-year-old single U.S. citizen whose application for adoption of the beneficiary was approved on February 12, 2009 by the [REDACTED] Gender and [REDACTED]. The petitioner filed the Form I-600 with United States Citizenship and Immigration Services (USCIS) on December 20, 2011. As the record was insufficient to classify the beneficiary as an orphan, the director issued a request for evidence (RFE) and subsequently a Notice of Intent to Deny (NOID) the petition. Upon review of the petitioner’s response, the director denied the petition determining that the petitioner had not established that the beneficiary’s biological father was deceased or that the petitioner’s biological mother was incapable of providing proper care for the beneficiary as that term is defined in the regulations.

On appeal, the petitioner provides a copy of a death certificate issued by the Office of [REDACTED] [REDACTED] in the Republic of Sierra Leone, registering the death of the beneficiary’s biological father. The petitioner also provides an affidavit signed by the beneficiary’s biological mother on July 13, 2012. The beneficiary’s biological mother declares that the petitioner and the petitioner’s family have been responsible for her general upkeep as well as that of the

beneficiary because she is unemployed. The petitioner also provides copies of notices from Western Union confirming money has been transferred to Sierra Leone on several occasions.

The petitioner asserts that “[i]n a country with a per capita income of less than \$500, it should not be difficult to establish that an illiterate and unemployed woman would be incapable of providing adequately for her offsprings [sic].” The petitioner notes that the beneficiary has an older brother who was not able to finish school because of financial difficulty and that a similar fate would have befallen the beneficiary, if she had not been committed to help the beneficiary. The petitioner also references a previously submitted letter¹ and notes that the director found the letter insufficient to establish that the beneficiary is eligible to be considered an orphan.

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 an orphan.

Upon review of the death certificate submitted on appeal, the petitioner has established that the beneficiary’s biological father is deceased. We withdraw the director’s contrary determination. However, we concur with the director that the petitioner has not established the beneficiary’s eligibility for orphan status under section 101(b)(1)(F)(i) of the Act.

The evidence in the record fails to demonstrate that the biological mother is incapable of providing for the beneficiary’s basic needs, consistent with the local standards in Sierra Leone. As the director observed, the March 28, 2012 statement of the Director of Children’s Affairs, who asserted that the biological could was “unable to provide for [the beneficiary’s] well-being], was not accompanied by the evidence assessed by the Director in making his conclusion as to the biological mother’s ability to provide for the beneficiary’s basic needs. Similarly, although the biological mother’s states that she is unemployed and the petitioner is responsible for her upkeep, the petitioner does not provide any probative details of the biological mother and the beneficiary’s living conditions, or any independent country conditions evidence on Sierra Leone to demonstrate that the biological mother is unable to provide for the beneficiary’s basis needs according to the local standards in Sierra Leone. The petitioner’s general assertion that an illiterate and unemployed woman in Sierra Leone is incapable of providing adequately for her offspring is insufficient to meet her burden of proof in this regard. Without sufficient supporting evidence of the local standards in Sierra Leone and the details surrounding the living conditions of the biological mother and the beneficiary, the petitioner has not demonstrated the beneficiary’s eligibility for orphan classification under section 101(b)(1)(F)(i) of the Act. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the

¹ The record before the director included a March 28, 2012 notarized letter from the [REDACTED] Gender and Children’s Affairs, certifying that the beneficiary’s biological mother is unable to provide for the beneficiary’s well-being and that both the beneficiary and her biological mother are wholly financially supported by the petitioner.

burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Conclusion

Based upon the evidence in the record, the beneficiary is ineligible for status as an orphan under section 101(b)(1)(F)(i) of the Act, as the petitioner has failed to demonstrate that the biological mother is incapable of providing for the beneficiary's needs consistent with the local standards in Sierra Leone.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has not been met.

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