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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 09 2013** OFFICE: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

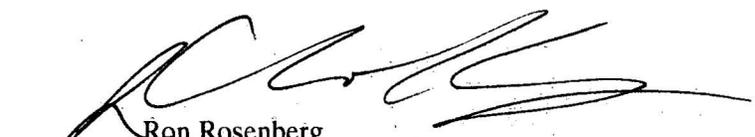
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INSTRUCTIONS:

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, 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 classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). 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. Specifically, the director found that because the petitioner's adoption of the beneficiary was the result of a direct relinquishment or release, the petitioner had failed to establish that the beneficiary had been abandoned by both birth parents as that term is defined in the regulation.

Applicable Law

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 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.

NON-PRECEDENT DECISION

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.

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)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;
- (iii) Evidence that the child is an orphan as appropriate to the case:
 - (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or
 - (B) The death certificate(s) of the orphan's parent(s), if applicable;
 - (C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. . . .

Facts and Procedural History

The petitioner and her husband are U.S. citizens who seek to classify the three-year-old beneficiary, a citizen of Morocco, as an orphan. The petitioner initially filed a Form I-600 on behalf of the beneficiary on November 22, 2010. The approval of that petition was revoked on August 18, 2011 after the director determined that the petitioner failed to establish that the beneficiary had been abandoned by both birth parents as that term is defined in the regulation.

The petitioner filed the instant Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on June 13, 2012. The director first issued a Request for Evidence (RFE) on the abandonment of the beneficiary. The director then issued a Notice of Intent to Deny (NOID) the petition because he found that the record contained conflicting court documentation regarding the birth parents' relinquishment of the beneficiary. The petitioner, through counsel, timely responded to the NOID with a brief and additional evidence. The director reviewed the record and determined that the petitioner adequately explained the conflicting court documentation, but failed to establish that the beneficiary was abandoned as that term is defined in the regulation.

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 does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed for the following reasons.

Analysis

Abandonment by both parents

The term "abandonment by both parents" is specifically defined at 8 C.F.R. § 204.3(b). 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). 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.* Moreover, 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. *See id.*

The record contains the following evidence related to the guardianship proceedings over the beneficiary in Morocco: the birth parents' sworn testimony, dated May 27, 2010; affidavits from the birth mother, respectively dated November 23, 2010 and February 24, 2011; a July 28, 2011 police report regarding the birth parents' relinquishment; a January 9, 2012 court decree of abandonment; a March 14, 2012 court order for guardianship; a March 15, 2012 court report on the guardianship order; a March 21, 2012 court authorization to travel abroad; and a September 26, 2012 affidavit from two court notaries.

The beneficiary's birth mother stated in her first affidavit that her husband, who is the beneficiary's father, abandoned the beneficiary because he is impoverished and homeless, unemployed and his whereabouts are unknown. She stated in her second affidavit that she cannot care for the beneficiary because she is indigent, and does not have a home and income. *Affidavits of the beneficiary's birth mother*, dated November 23, 2010 and February 24, 2011. However, a police inquiry issued a few months later provided that the beneficiary's birth parents went to a police department together to discuss their relinquishment of the beneficiary to the petitioner and her husband. *Police Department of Settati Report*, dated July 28, 2011. The beneficiary's birth parents also previously appeared together before two court notaries to testify that they directly relinquished the beneficiary to the petitioner for custody and legal guardianship. *See Court of First Instance of Berrechid, Notary Division, Guardianship Testimonial (Kafala)*, dated May 27, 2010. The petitioner obtained a court decree finding that the beneficiary was abandoned because her birth parents "are needy and no member of her family could raise her or financially support her." *Court of the First Instance of Settati*, decree dated January 9, 2012. The court subsequently granted the petitioner guardianship over the beneficiary and authorization for the petitioner to travel with the beneficiary to the United States. *Order Granting Guardianship (Kafala) of a Child Without Custodian*, dated March 14, 2012; *Authorization to Take a Ward Abroad*, dated March 21, 2012. The director correctly determined that the birth parents' relinquishment of the beneficiary to the petitioner and her husband for a specific adoption does not constitute "abandonment" as that term is defined in the regulation.

On appeal, counsel asserts that the beneficiary's birth father abandoned her and her birth mother is unable to provide for her. Counsel contends that the Moroccan court's abandonment order is controlling in these proceedings. The decree of abandonment from the Court of First Instance of Settati references a police report, which was entered into the record by counsel in response to the RFE. The police report, discussed above, reflects that both the beneficiary's birth mother and birth father appeared at a police department and consented to the petitioner's legal guardianship over the beneficiary because they are indigent and the petitioner and her husband have a "life of ease" in the United States. The decree concludes that the beneficiary "comes within the framework of Section 1 of Dahir relating to the guardianship of abandoned children" because her birth parents are "needy and no member of her family could raise her or financially support her." Although those circumstances deemed the beneficiary "abandoned" under Moroccan law for purposes of guardianship proceedings in that country, the petitioner must still demonstrate that the beneficiary has been "abandoned" as that term is defined at 8 C.F.R. § 204.3(b), which states that a relinquishment or release by the birth parents to the prospective adoptive parents for a specific adoption does not constitute abandonment. As the record shows that the beneficiary's birth parents 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 she was "abandoned by both parents," as that term is defined at 8 C.F.R. § 204.3(b).

Beneficiary Is Not An Orphan Under Any Of The Other Criteria

NON-PRECEDENT DECISION

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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 birth 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 birth parents by action of a competent authority for good cause and in accordance with the laws of Morocco. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from her birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of her birth parents and as verified by a competent authority. The record establishes that both of the beneficiary's birth parents are living. As such, neither the beneficiary's birth mother nor birth 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 birth parents.

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.