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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: OFFICE: NEW YORK, NEW YORK

FILE: [REDACTED]

DEC 12 2013

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:

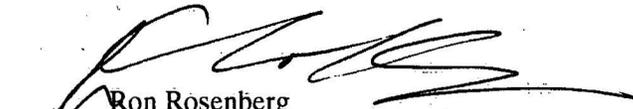
[REDACTED]

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 New York, New York District Office (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 Immigration and Nationality Act (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 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:

*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. . . .

\* \* \*

*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.

\* \* \*

*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. . . .

\* \* \*

*Facts and Procedural History*

The petitioner is a 57-year-old U.S. citizen who adopted her niece, the beneficiary, in November 2002 in Haiti. The petitioner initially submitted an alien relative petition (Form I-130) in December 2000, seeking to classify the beneficiary as her child based upon a declaration made by the beneficiary's biological parents in August 1996, in which they consented to the petitioner adopting the beneficiary. The Form I-130 was subsequently denied due to the petitioner's failure to respond to a Request for Evidence (RFE). In July 2003, subsequent to the petitioner's adoption of the beneficiary in Haiti, the petitioner submitted a second Form I-130 to U.S. Citizenship and Immigration Services (USCIS) that was denied for failure to establish that the petitioner had resided with and had legal custody over the beneficiary for at least two years.

The petitioner submitted the instant Form I-600 in July 2007, stating therein that the beneficiary was the child of a sole parent who was incapable of providing for the beneficiary's needs. The director denied the petition because the evidence of record indicated that the beneficiary was born in wedlock to two living parents who directly relinquished their parental rights to the petitioner and, thus, did not abandon the beneficiary as that term is defined at 8 C.F.R. § 204.3(b). On appeal, counsel contends that the beneficiary is an orphan because she was abandoned by or separated and lost from her biological father, and her mother, who is incapacitated, is incapable of providing for the beneficiary's needs, as two of the biological mother's other children passed away due to parental neglect.

*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, the record, as supplemented on appeal, does not demonstrate the beneficiary's eligibility to be classified as an orphan.

The regulation at 8 C.F.R § 204.3(b) defines the terms found at section 101(b)(1)(F)(i) of the Act, which include, but are not limited to, *abandonment by both parents* and *sole parent*. A petitioner need only establish that one of the terms applies to the child seeking to be classified as an orphan. In this case, none of the terms apply to the beneficiary.

The beneficiary cannot be classified as the child of a sole parent because her birth certificate shows she was born in wedlock as a legitimate child of her biological father under Haitian law. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). There is no evidence that the beneficiary was deserted by her parents and thereafter became a ward of a competent authority in Haiti because her parents refused to carry out their parental rights. Similarly, because the whereabouts of the biological parents are known, they have not disappeared or become lost to the beneficiary due to a calamitous event such as a natural disaster. The petitioner has also presented no evidence that the beneficiary was involuntary separated from her biological parents by a competent authority for good cause. Accordingly, the record does not establish that the beneficiary is an orphan as the child of a sole parent or due to desertion by, disappearance of, loss from or separation from both parents.

The petitioner also has not established that the beneficiary is an orphan due to both parents' abandonment. The director determined that the biological parents did not abandon her because each parent executed a declaration of *Unconditional Abandonment of Parental Rights* in 2003, wherein they transferred their parental rights to the petitioner. However, because these declarations were executed after the beneficiary's adoption by the petitioner in 2002, they are not relevant to determining whether the beneficiary was abandoned by both parents prior to the adoption. Nonetheless, as noted earlier, the record contains a joint declaration made by the biological parents in August 1996. In this joint declaration, both biological parents provide their consent for the petitioner to adopt the beneficiary. Consequently, the joint declaration is evidence of the biological parents' intent to transfer their parental rights directly to the petitioner, which is prohibited by the regulatory definition of *abandonment by both parents* at 8 C.F.R. § 204.3(b), which provides, in pertinent part: "A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. . . ." The petitioner has failed to demonstrate that the beneficiary meets the orphan definition at section 101(b)(1)(F)(i) of the Act.

### *Conclusion*

In these 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.