(b)(6)

**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: JUL 17 2013 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, National Benefits Center (the director) revoked approval of the Form I-600, 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)(i) of the Immigration and Nationality Act (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[.]

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]

The regulation at 8 C.F.R. § 204.3(b) provides, in pertinent part, that:

> *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.
>
> * * *
>
> *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.

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

> (d) *Supporting documentation for a petition for an identified orphan.*

(1) (iii)(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; and

(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 . . . .

Section 205 of the Act, 8 U.S.C. § 1155, which relates to the revocation of petitions approved under section 204 of the Act, states:

> 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.

*Facts and Procedural History*

The petitioner is a 58-year-old married, U.S. citizen. He and his U.S. lawful permanent resident wife adopted the beneficiary, a native of Zambia, in May 2011. The petitioner seeks to classify the beneficiary as an orphan due to the surviving parent's inability to provide proper care, as set forth in 8 C.F.R. § 204.3(b). The Form I-600 was initially approved on October 21, 2011. On July 16, 2012, the director issued a Notice of Intent to Revoke (NOIR) the Form I-600 approval because an overseas field investigation conducted in Zambia revealed, in pertinent part, that the beneficiary's biological mother did not irrevocably release the beneficiary, and that she is capable of providing proper care to the beneficiary consistent with local standards in Zambia. In a decision dated November 6, 2012, the director determined that the petitioner failed to overcome the reasons for revocation, and approval of the Form I-600 was revoked.

On appeal the petitioner contends that the consular field investigation was flawed; that evidence establishes that the biological mother is unable to provide for the beneficiary's basic needs, consistent with the local standards in Zambia; and that evidence establishes that the beneficiary's biological mother irrevocably released the beneficiary in writing for emigration and adoption. In support of the assertions, the petitioner submits letters and affidavits from the petitioner and family members, financial documents and country conditions evidence, and photographs. The record also contains documents relating to the beneficiary's adoption, and birth certificate information for the beneficiary.

The petitioner also requests that he be allowed to testify orally in the beneficiary's case. The request will be denied. Under the regulation at 8 C.F.R. § 103.3(b), the Service has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The record in this case is voluminous and adequately addresses the pertinent facts and legal issues.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

*Analysis*

Upon review, the AAO finds that the evidence in the record does not demonstrate that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

To establish that the beneficiary's biological mother irrevocably released the beneficiary, in writing, for emigration and adoption, the record contains two letters from the beneficiary's biological mother. Both letters were written after the beneficiary's May 12, 2011 adoption order was issued. The biological mother states in a May 20, 2011 letter that since her husband's death in 2006, it has been difficult to find "money for food and medicines" for her five children.[1] She states that she knows she "will always be their natural mother but [she is] no longer able to provide for them" and she wishes for the petitioners "to be their new parents. They will take good care of [her] children." The beneficiary's biological mother states in a second, undated letter, submitted in response to the director's Notice of Intent to Revoke, that her husband died on January 9, 2007, and that since then she has been unable to "provide enough food, medical care, school, or the basic things [her] children need." She states that the beneficiary was adopted by the petitioners "with [her] blessings," that she understands that adoption means she has given up all parental rights over the beneficiary, that she understands the beneficiary will be leaving Zambia, and that she understands that the adoption is irrevocable.

Although the evidence reflects that the beneficiary's biological mother irrevocably released her parental rights over the beneficiary, in writing, in her second letter, the biological mother's written release did not occur until after the beneficiary's adoption was finalized. The beneficiary's adoption order does not reflect that the beneficiary's adoption is irrevocable, and the record contains no other evidence indicating that the biological mother irrevocably released the beneficiary for adoption, in writing, prior to the beneficiary's adoption. In addition, the record reflects that it is undisputed that the beneficiary continues to live in the same household as her biological mother. It thus also appears that the biological mother has not released control and custody over the beneficiary since the beneficiary's adoption occurred. Moreover, U.S. Department of States information reflects that:

> Prospective adoptive parents considering adoption of a Zambian family member are advised to carefully consider whether that child will meet the definition of orphan under U.S. law, which differs significantly from the criteria for adoption under Zambian law. Zambian authorities may issue an adoption decree based on customary practice of adopting a family member to afford that child better educational opportunities, for instance.

*See http://adoption.state.gov/country_information/country_specific_info.php?country-select=zambia.* Upon review of the evidence, the AAO is not satisfied that the surviving parent, in writing, irrevocably released the beneficiary for emigration and adoption.

---

[1] The biological mother states in her second letter that her husband died in 2007.

In order to establish that the beneficiary's biological mother is incapable of providing proper care to the beneficiary in accordance with local standards in Zambia, the record contains Western Union money transfer evidence reflecting that every few months from 2008 to 2012, the petitioners sent between $100.00 to $500.00 to the beneficiary's biological mother, grandmother and other individuals in Zambia. General country conditions information discusses census, consumer price index, and availability of medical staff in Zambia.

The petitioner states in pertinent part, in an affidavit witnessed by a U.S. Embassy official on February 24, 2011, that the beneficiary and her family live in "a small basic house with two rooms," and although he and his wife have paid to have a guest house built, the biological mother has "never rented it out and it is now taken over by other family members who pay no rent and take advantage of the meager resources there at the house." The petitioner states that the beneficiary's biological mother is the family's only source of income; that she sells any items she can find on the street; that she is "away from her home and her children 2 to 3 weeks at a time" finding items in other villages to sell; and that, although the beneficiary's grandparents help watch the beneficiary and her siblings, the grandparents "live in a fishing village 2 days away 3 to 6 months a year." The petitioner states further that the beneficiary is thin and malnourished; that the beneficiary had laid "sick in bed for two days undiscovered" with a "near fatal case of malaria" when he and his wife arrived in Zambia in 2011; that the beneficiary lives in a dangerous area with many bars and drunken individuals; and that "taking into consideration the large gaps in adult supervision, this situation is the most frightening."

A priest states, in pertinent part, in a December 10, 2012 letter that the biological mother "is not capable of providing even for the most basic needs of her children."

The beneficiary's biological mother's aunt, [redacted] states in an undated letter that the beneficiary's grandmother, [redacted] watches over the beneficiary; however, the grandmother goes "into the bush for several weeks at a time to grow corn and smoke fish" to sell. She states that the family has no plumbing or kitchen in their house, that the beneficiary has "very little adult supervision," and that, in her opinion, the beneficiary lives in unhealthy and unsafe conditions.

[redacted] states in an undated letter that she suffers from arthritis, and that she experiences leg and back pain and bitterness in her mouth. The beneficiary's step-grandfather states in a letter dated August 17, 2012 that he has been diagnosed with cardiac problems and that he suffers from leg pain and swollen feet, and finds it difficult to work and travel for long distances.

The beneficiary's biological mother and grandparents state in an August 2012 affirmed affidavit that eleven family members live at their home, including the beneficiary, her biological mother and grandparents, five other individuals between the ages of 12 and 23, and the wife and child of the 23-year-old. They state that the "family income comes from selling fish in the local market"; the grandparents travel "into the bush to fish" four to six months a year; the biological mother sells this fish at the local market and must buy fish to resell for the other months of the year; and that the family income in 2011 was about $1456.00. An August 11, 2012 affirmed affidavit by the petitioner's wife's uncle, [redacted] attests to the accuracy of the biological mother and grandparent's affidavit.

in Lusaka, Zambia, and guardian-ad-litem to the beneficiary during her adoption proceedings, states in a May 2011, Zambia Department of Social Welfare Report that the beneficiary is "in need of care according to the provision of Cap 54 of the Laws of Zambia," and that the biological mother is unable to provide for the beneficiary's needs. She states in a September 14, 2011 letter, that she studied the beneficiary's family situation and approved the beneficiary's adoption because she felt the petitioners "would make good parents;" she "understood the living conditions for the [beneficiary were] below the living conditions we hope for our children in Zambia;" and she knew the beneficiary's life "would improve" living with the petitioners in the United States.

As disclosed in the NOIR, a consular officer interviewed the guardian-ad-litem and social welfare officer for the beneficiary's adoption, and that stated that she determined the beneficiary was "better off" with the petitioners because the biological mother was sick and unable to care for the beneficiary. did not personally investigate the beneficiary's adoption circumstances, and she did not meet the beneficiary or her family. Rather, her conclusions were based on a local district officer's evaluation of the case. The consular report reflects that the consular officer spoke with the local district social welfare officer on February 24, 2012. According to the local district officer, she visited the beneficiary's residence once in early 2010. She never met the biological mother, and she did not know if the biological mother was sick or healthy.

The NOIR also reflects that the consular officer also visited the beneficiary's home and interviewed the beneficiary's biological mother and grandparents. During her interview with the consular officer on February 29, 2012, the biological mother stated that she was healthy. The biological mother also stated that she owned a market stand at a local market; she generally went to a town, Kitwe, about 20-30 minutes away, to buy goods to sell at her local market; and she generally sold her goods in the morning when her children were at school, returning home to make the children lunch, and then returning to the market for a few more hours. The beneficiary's biological mother also stated that she currently rents out two rooms in their guesthouse, and that she receives about $16.00 a month per room.

According to the NOIR, the field investigation reflects that the biological mother's stepfather stated to the consular officer that he fishes for several weeks at a time throughout the year, and that he sells his catch to earn income. The biological mother and her stepfather, as well as several neighbors stated to the consular officer that their neighborhood was relatively safe and that they had not been affected by crime. The consular officer report noted further that the beneficiary lives with her family in a four bedroom home, one of the larger homes in the neighborhood.

In response to the consular report, an affirmed affidavit by the beneficiary's biological mother and grandparents, signed in August 2012 states, in pertinent part, that the consular officer never asked them "about the safety or security of the area," and that many thefts and public drinking incidents occur near their home. They state further that their house is owned by and that the biological mother possesses mainly clothing for herself and her children, valued at about $25.00.

Upon review of the entire record, the AAO finds that the petitioner has failed to establish that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Zambia, as set forth in 8 C.F.R. § 204.3(b). In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the affidavits have diminished evidentiary weight. There are material inconsistencies between the consular report and statements made in the petitioner, the biological mother and the grandparents with regard to the biological mother's sources of income, her care and supervision of the beneficiary, and the beneficiary's home and conditions. It is also noted that the December 2012 letter from a priest contains unexplained written corrections. The stated year of the beneficiary's biological father's death was changed from "2006" to "2007," and the word "vegetables" is crossed out and replaced with the word "fish" regarding the type of items sold by the biological mother.

The beneficiary's adoption order provides no information about the circumstances of the beneficiary's adoption, and the guardian-ad-litem report recommendations are general and do no not reflect a determination that the beneficiary's biological mother is unable to provide proper care to the beneficiary consistent with local standards in Zambia. Moreover, U.S. consular report evidence reflects that the social welfare officers involved in the beneficiary's adoption proceedings did not meet the beneficiary's biological mother, and did not investigate or review the biological mother's health conditions, or income and earning capacity in Zambia. The country conditions evidence contained in the record is also general and fails to demonstrate that the beneficiary's biological mother is unable to provide proper care to the beneficiary consistent with local standards in Zambia, and the record lacks other credible documentary evidence of the biological mother's income, salary or expenses, or to establish that the biological mother is incapable of providing proper care to the beneficiary, consistent with local standards in Zambia.

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. Here, that burden has not been met.

*Conclusion*

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act, and the director had good and sufficient cause to revoke approval of the Form I-600. The appeal will therefore be dismissed. Approval of the Form I-600 remains revoked.

**ORDER:** The appeal is dismissed. Approval of the petition remains revoked.