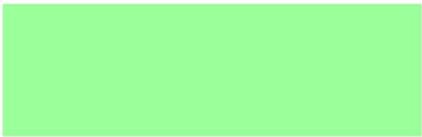
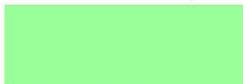




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 25 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:

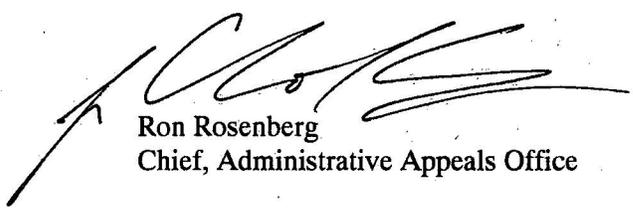
SELF-REPRESENTED

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
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center (the director) denied the Form I-600, 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, 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. 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[.]

* * *

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.

* * *

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.

* * *

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.

Facts and Procedural History

The petitioner is a 54 year old U.S. citizen. He and his wife adopted the beneficiary in Cameroon on May 22, 2012. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) in January 2013, and sought to classify the beneficiary as an orphan due to abandonment and desertion by both parents, or as the child of a sole parent who was incapable of providing proper care to the beneficiary.

On February 12, 2013, the director issued a Notice of Intent to Deny (NOID) because the record indicated that the beneficiary had two living parents and the evidence was insufficient to establish that the beneficiary met the definition of an orphan at section 101(b)(1)(F)(i) of the Act. After considering the petitioner's response to the NOID, the director denied the Form I-600 on March 5, 2013, because the petitioner had failed to establish that the beneficiary qualified for classification as an "orphan," as defined in section 101(b)(1)(F)(i) of the Act.

On appeal, the petitioner asserts that the beneficiary qualifies as an orphan based on abandonment and desertion by his father and mother. Specifically, the petitioner asserts that shortly after the beneficiary's birth, his mother left him in the care of his maternal grandmother; that his mother did not intend for the petitioner and his wife to adopt the beneficiary when she left him in the care of his grandmother; and the beneficiary's grandmother qualified as a ward of the state in Cameroon.

The petitioner asserts further that the beneficiary qualifies as an orphan because his mother is a sole parent incapable of providing him proper care. The petitioner claims that the beneficiary's father does not meet the definition of a parent as set forth in section 101(b)(2) of the Act, because he abandoned the beneficiary shortly after birth, and that the beneficiary's mother was therefore a sole parent who was incapable of providing proper care to the beneficiary in accordance with the standards in Cameroon. In support of these assertions the petitioner submits the beneficiary's birth certificate and passport; the adoption decree and agreement; affidavits and letters from the beneficiary's biological parents, the petitioner, his wife, and family members; and general articles on adoption law, orphans and care of children by family members in Cameroon. The petitioner additionally cites to the Board of Immigration of Appeals (Board) decision, *Matter of Del Conte*, 10 I&N Dec. 761 (BIA 1964), to support the assertion that the AAO has discretion to approve the beneficiary's Form I-600 in the interest of family unity. The petitioner does not contest that the beneficiary was legitimated at birth under the law in Cameroon, or that the beneficiary's parents are both alive and have been located.¹

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

To establish that the beneficiary qualifies as an orphan based on abandonment and desertion, the petitioner submits affidavits from the beneficiary's mother, father, and grandmother. The affidavits reflect that the beneficiary has lived with, and been cared for by his maternal grandmother since 2007, and that his mother and father have little or no contact with the beneficiary. A Cameroon Ministry of Social Affairs report, dated March 25, 2013, states that the beneficiary was "abandoned by [his] mother to [his] grandmother . . . following the separation of the 2 spouses" in 2007, and that the grandmother has cared for the beneficiary since that time. An adoption agreement signed by the beneficiary's mother and father on November 4, 2011, reflects their written agreement for the petitioner and his wife to adopt their child, the beneficiary. The adoption order of the [redacted] in Cameroon, dated May 22, 2012, reflects that the beneficiary's biological parents consented to the adoption of the beneficiary by the petitioner and his wife. The petitioner also submits general articles on the prevalence of kinship-based care for orphans in Africa.

[redacted] signed the Form I-290B, Notice of Appeal as the applicant's attorney; however, the record does not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant and the attorney. In accordance with the USCIS regulation at 8 C.F.R. § 292.4(a) and the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010). The AAO attempted to contact attorney, [redacted] on numerous occasions via facsimile and telephone in order to request a properly executed Form G-28. All attempts were unsuccessful. The petitioner shall therefore be considered self-represented in these proceedings.

Upon review, the AAO finds that the evidence in the record does not establish the beneficiary's eligibility to be classified as an orphan based on abandonment or desertion by his parents. Despite the petitioner's claim on appeal that the beneficiary was deserted by both parents, and that the beneficiary's grandmother qualifies as a ward of the state for immigration purposes, the evidence in the record fails to establish that the beneficiary's grandmother has been recognized as such by the government in Cameroon. Consequently, the beneficiary fails to qualify as an orphan based on desertion.² The record also lacks evidence that the beneficiary's parents relinquished or released their parental rights over the beneficiary to a third party "such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage," authorized under the child welfare laws of Cameroon to act in such a capacity. Rather, the affidavits and adoption-related documents reflect that the beneficiary's biological parents specifically intended to, and did transfer their parental rights over the beneficiary to the petitioner and his wife. Accordingly, the beneficiary does not qualify as an orphan due to abandonment.

In addition, the petitioner has failed to establish that the beneficiary's biological mother qualifies as a "sole parent" as defined in 8 C.F.R. § 204.3(b). The petitioner indicates that the beneficiary's biological father should not be considered a parent under section 101(b)(2) of the Act because he abandoned the beneficiary shortly after birth.

Section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), states, in pertinent part that:

The term 'parent', 'father', or 'mother' means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) . . . in the case of a child born out of wedlock described in paragraph (1)(D) (and not described [as legitimated] in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

As previously discussed, the petitioner failed to establish that the beneficiary's biological father abandoned or deserted him. Even if his father's abandonment or desertion was established, for orphan petitions filed under section 101(b)(1)(F) or (1)(G) of the Act, such a father only ceases to be the child's parent when: (1) the child was born out of wedlock as described at section 101(b)(1)(D) of the Act; *and* (2) the child was not legitimated under section 101(b)(1)(C) of the Act. Section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2). Here, the petitioner does not contest that the beneficiary was legitimated by his father's declaration of paternity on the beneficiary's birth certificate, as set forth in section 44(5) of the Cameroon Civil Status Ordinance of August 1, 1981. The beneficiary was thus legitimated under section 101(b)(1)(C) of the Act. The petitioner therefore cannot demonstrate that the beneficiary's biological father ceased being his parent under

² The petitioner's citation to *Matter of Del Conte*, 10 I& N Dec. 761 (BIA 1964) is not persuasive. In that case, the children were deemed abandoned by both parents because, in part, the parents had released them to the International Social Service.

section 101(b)(2) of the Act. Accordingly the beneficiary cannot be classified as the child of a “sole parent” as that term is defined at 8 C.F.R. § 204.3(b).

Conclusion

The petitioner has therefore failed to establish that the beneficiary meets the definition of an “orphan,” as defined at section 101(b)(1)(F)(i) of the Act, and the appeal will be dismissed.

In visa petition proceedings, the burden of proof rests solely with the petitioner. 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.