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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 05 2014 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) initially approved the Petition to Classify Orphan as an Immediate Relative (Form I-600), but ultimately revoked the approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and approval of the petition will remain revoked.

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 revoked approval of the petition on the basis that the petitioner failed to establish that the beneficiary qualifies for classification as an *orphan* as the term is defined at section 101(b)(1)(F)(i) of the Act.

Applicable Law

Regarding the revocation of approved visa petitions, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by [him] under section 204. Such revocation shall be effective as of the date of approval of any such petition[.]

The regulation at 8 C.F.R. § 205.2 governs the procedures for revoking approved visa petitions on notice, and states, in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

The Act defines the term *orphan* at section 101(b)(1)(F)(i) of the Act, 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 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. 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.

* * *

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 [was born out of wedlock] and has not [been legitimated or] acquired a parent within the meaning of section 101(b)(2) of the Act. A [child born out of wedlock who has not been legitimated or acquired another parent] 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.

Pertinent provisions of 8 C.F.R. § 204.3(d)(1)(iii) provide further that an orphan petition must be accompanied by full documentation as follows:

(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

* * *

(C) If the orphan has only a sole . . . parent . . . evidence of this fact and evidence that the sole . . . parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption

The *preponderance of the evidence* standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

Facts and Procedural History

The petitioner is a 58-year-old U.S. citizen who seeks to classify the beneficiary, a 15-year-old national of Sierra Leone, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on August 7, 2013, and the petition was approved on September 11, 2013; however, the U.S. Consular Section in Sierra Leone returned the Form I-600 to the director in April 2014 on the basis that a visa could not be issued due to material discrepancies relating to the biological mother's marital status and whether she unconditionally released her parental rights over the beneficiary; and because evidence failed to establish that relinquishment of parental rights to The Raining Season care center (TRS) constituted a proper relinquishment to an orphanage authorized under the child welfare laws of Sierra Leone.

The director issued a Notice of Intent to Revoke (NOIR) approval of the Form I-600 on May 16, 2014, notifying the petitioner that the Form I-600 was approved in error, and that the evidence in the record was insufficient to establish that the beneficiary met the definition of an *orphan* as defined in the Act. The petitioner was afforded 30 days to show why approval of the Form I-600 should not be revoked. After considering the evidence in the record, including the response to the NOIR, the director concluded, in a decision dated July 29, 2014, that the beneficiary did not meet the definition of an *orphan* under section 101(b)(1)(F)(i) of the Act. Approval of the Form I-600 was revoked accordingly.

Through counsel, the petitioner asserts on appeal that the record establishes, by a preponderance of the evidence, that the beneficiary was born out of wedlock, his biological mother did not marry the purported stepfather, M-A-, and the beneficiary is therefore the child of a *sole parent*, as the term is defined at 8 C.F.R. § 204.3(b). Alternatively, the petitioner asserts that even if the beneficiary's biological mother married A-M-, the evidence in the record would establish that the beneficiary qualifies as an orphan due to *abandonment* and *desertion by both parents*, as those terms are defined at 8 C.F.R. § 204.3(b).

We conduct appellate review on a *de novo* basis.

Analysis

Sole parent

The term *sole parent* is defined, in pertinent part, as the mother when it is established that the child was born out of wedlock, was not legitimated, and has not acquired a parent within the meaning of section 101(b)(2) of the Act. *See* 8 C.F.R. § 204.3(b). Under section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), the term *parent* includes a stepchild/stepparent relationship “provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.” *See* section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B). Customary marriages are deemed to be valid marriages in Sierra Leone if the marriage is contracted in accordance with the customary law applicable to the spouses. *See Sierra Leone Constitution* (1991), Chapter XII, section 170 (3); and the Sierra Leone *Legitimacy Act No. 7 of 1989*, part 1(2).

As stated in the NOIR and in the final revocation decision, the beneficiary's biological mother and M-A- stated during independent and separate interviews with U.S. consular officers in Sierra Leone that they were customarily married in a traditional calabash and kola marriage ceremony. The petitioner asserts on appeal, however, that the beneficiary's biological mother and M-A- were not married, and that although M-A- concedes to making such statement that the couple married, evidence in the record demonstrates that he and the beneficiary's mother did not marry.¹ On appeal,

¹ Counsel also asserts that the beneficiary's biological mother stated that she never told U.S. consular officials she and M-A- were married; however, the record contains no evidence of this assertion by the beneficiary's biological mother. The unsupported assertions of counsel do not constitute evidence. *See*

the petitioner submits a new statement from M-A-, dated May 6, 2014, asserting that he and the beneficiary's mother never married and that he told the U.S. consular official that they had married because he was ashamed. The beneficiary's biological mother asserts further in a February 14, 2014 statement that M-A- already has two wives, and that although he stated to a U.S. consular official that they were married, they never had a customary or any other type of marriage.

The law of a foreign country is a question of fact that must be proved by the petitioner if he or she relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Under the laws of Sierra Leone a customary marriage is considered valid and both the biological mother and M-A- separately provided probative and credible testimony demonstrating that they married in a traditional customary ceremony. Furthermore, a *Parent Relinquishment of Child for Adoption and Immigration* document signed by the beneficiary's biological mother and M-A- on October 15, 2009, and a TRS family history document signed by the beneficiary's biological mother and M-A- on August 27, 2013, refer to M-A- as the beneficiary's stepfather. The petitioner has presented no evidence that Sierra Leone does not recognize the marriage ceremony that the biological mother and M-A- described, and their subsequent assertions that a marriage did not take place are insufficient based upon the overall evidence in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).²

Accordingly, the beneficiary is ineligible to be classified as the child of a *sole parent* because he acquired a stepparent through his biological mother and M-A-'s customary marriage. "*Sole parent* means the mother when it is established that the child . . . has not acquired a parent within the meaning of section 101(b)(2) of the Act. . . ." (defining *sole parent* at 8 C.F.R. § 204.3(b)).

Even if the petitioner could establish that his biological mother and M-A- were not married under the laws of Sierra Leone, the record would still not support a finding that his biological mother could be considered a *sole parent* under the pertinent regulatory definition.

Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

² A July 2013 *Status Report of Adoptee Biological Parents and Prospective Adopters* from the Ministry of Social Welfare, Gender and Children's Affairs division in Sierra Leone refers to the beneficiary's biological mother as single and to M-A- as married; however, a review of the report reveals that the information contained therein was self-reported by the biological mother and M-A-, and the Ministry failed to undertake an independent investigation into the parents' claims. The statements from the beneficiary's maternal grandmother, the beneficiary's half-sister, a TRS security guard and two TRS social workers, all of whom indicate their belief that the beneficiary's biological mother and M-A- were not married, are without probative details regarding their knowledge of the event to which they attest. Consequently, the *Status Report* and statements hold little evidentiary weight.

The beneficiary's birth certificate contains his biological father's name, A-L-. In an undated *Social History* report prepared by a [REDACTED] probation officer, the officer provides the names of the beneficiary's biological parents, stating their marital status as "married." The petitioner asserts that the marital status information is incorrect in the *Social History* report "given the fact that [the beneficiary's biological mother] states she was raped by [A-L-] and did not know [A-L-'s] first name." The beneficiary's birth certificate, however, includes A-L-'s first name. Moreover, information contained in the probation officer's *Social History* report states that A-L- left "the mother and the rest of the family alleging the mother was having an outside relationship which later resulted to another pregnancy." In addition, the petitioner indicated in his June 17, 2014 NOIR rebuttal, at page 2, that the beneficiary's biological parents perhaps married "for protection purposes in the Liberia camp where [the biological mother] met [A-L-] and had [the beneficiary]."

The probation officer's report provides that the beneficiary was born in wedlock, as does the petitioner's NOIR rebuttal statement. The beneficiary's birth certificate, listing his biological father's name, also shows that he was legitimated under the *Legitimacy Act No.7 of 1989*. The beneficiary is, therefore, the legitimate child of his biological parents. For this reason the beneficiary could not be considered the child of a *sole parent* even if the biological mother and M-A- had not wed. "*Sole parent* means the mother when it is established that the child [was born of out wedlock and not legitimated] . . ." (defining *sole parent* at 8 C.F.R. § 204.3(b)).

Based on the evidence in the record, the director had good and sufficient cause to revoke approval of the petition based on the failure of the petitioner to establish that the beneficiary could be considered the child of a *sole parent*.

Abandonment by Both Parents

The petitioner asserts that even if U.S. Citizenship and Immigration Services (USCIS) determines that M-A- is the beneficiary's stepfather, the beneficiary may still be considered an orphan due to *abandonment by both parents*, as that term is defined at 8 C.F.R. § 204.3(b).

According to the petitioner, the biological mother and M-A- willfully and permanently released their parental rights to TRS in October 2009; TRS is a third party organization authorized under the child welfare laws in Sierra Leone to act as a registered orphanage; and at the time they released parental control over the beneficiary to TRS, the beneficiary's biological mother and stepfather did not intend to transfer these rights to any specific person.

The record contains a February 28, 2014 statement by the beneficiary's maternal grandmother who states that the beneficiary's biological mother and stepfather did not raise or support the beneficiary; an undated [REDACTED] *Social History Report*, reflecting that the beneficiary's biological mother brought him to the TRS center; a TRS *Parent Relinquishment of Child for Adoption and Immigration* signed by the beneficiary's biological mother and M-A- on October 15, 2009, irrevocably relinquishing all parental rights over the beneficiary to TRS for adoption and emigration purposes; and an undated [REDACTED] *Status Report of Adoptee*

Biological Parents and Prospective Adopters, reflecting that the beneficiary enrolled into TRS in 2009.

The record also contains a TRS *Guardian Agreement* signed by the beneficiary's biological mother on October 15, 2009, giving custody and responsibility over the beneficiary to TRS. The *Guardian Agreement* reflects, in pertinent part, that TRS will maintain contact between the beneficiary and his relatives; the beneficiary's biological mother has the right to visit the beneficiary the last Sunday of each month; TRS "will make every attempt to provide the child with the opportunity to visit" his village at least once a year; the "[biological mother] will be responsible for the child's food and lodging;" and the beneficiary retains any property and inheritance right passed down from his parents. An undated [REDACTED] Gender and Children's Affairs, *Parental Consent* signed by the beneficiary's biological mother and M-A- reflects their irrevocable release of parental rights over the beneficiary and their consent to his adoption by the petitioner and his wife.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has not explained the circumstances surrounding TRS's obtainment of the *Guardianship Agreement* and *Parental Relinquishment* on the same day, particularly as the documents are contradictory. The *Guardianship Agreement* provides for the biological mother's retention of parental interests and rights over the beneficiary, whereas the *Parental Relinquishment* provides for the severance of parental rights. Furthermore, even if the beneficiary's parents had relinquished their parental control and rights over the beneficiary to TRS in October 2009, the record does not demonstrate that TRS is a third party authorized under the child welfare laws of Sierra Leone to act in a capacity to provide custodial care in anticipation of an adoption. As the definition of *abandonment by both parents* provides, "[t]he 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 . . . is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. . . ." See *Abandonment by both parents* at 8 C.F.R. § 204.3(b).

The petitioner submits a letter from TRS stating that the organization is authorized to accept children for adoption and emigration purposes. The petitioner also submits a copy of the TRS Constitution and evidence that TRS is certified by the [REDACTED] Gender and Children's Affairs as a non-government organization (NGO) in the social welfare sector and as a local volunteer organization. Guidance provided by the Department of State at <http://travel.state.gov> reflects, however, that although "[t]here are organizations registered as non-Governmental organizations (NGOs) or private voluntary organizations (PVOs) that provide assistance to children and facilitate international adoptions":

In Sierra Leone it appears that the only way a sole or surviving parent can irrevocably relinquish his or her parental rights to his or her child is at the Ministry

of Social Welfare in the presence of either the Minister and/or the Chief Social Development Officer. . . . [T]here does not appear to be any adoption agency or orphanage in Sierra Leone that is authorized under the child welfare laws of Sierra Leone to take the relinquishment or release of a child who has been abandoned by his or her birth parents.

The submitted evidence fails to establish that TRS is a third party authorized under the child welfare laws of Sierra Leone to provide custodial care in anticipation of an adoption. Furthermore, although the record contains an undated [REDACTED], Gender and Children's Affairs, *Parental Consent* signed by the beneficiary's biological mother and M-A-, reflecting their irrevocable release of parental rights over the beneficiary and their consent to his adoption, the parental release is a relinquishment directly to the petitioner and his wife, which the applicable regulation prohibits. Again, as provided for in the definition of *abandonment by both parents*, "[t]he relinquishment or release of the child by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment" See *Abandonment by both parents* at 8 C.F.R. § 204.3(b).

Based on the evidence in the record, the director had good and sufficient cause to revoke approval of the petition based on the failure of the petitioner to establish the beneficiary's *abandonment by both parents*.

Desertion by Both Parents

The petitioner asserts that even if USCIS determines that M-A- is the beneficiary's stepfather, the beneficiary may still be considered an orphan due to *desertion by both parents*, as defined at 8 C.F.R. § 204.3(b).

The petitioner asserts that the beneficiary was deserted by his parents because they did not support or care for him, and a court order made him a ward of the [REDACTED] Gender and Children's Affairs. The record contains a document, dated February 4, 2004, entitled *Supervision Order-Care or Protection in the Freetown Police District*, reflecting that on February 4, 2004, the beneficiary, who is identified as having an April 12, 1990 date of birth, was brought before the Magistrate Court as being in need for care and protection, and he was ordered to be placed under the supervision of a Ministry probation officer until he attained the age of 18. This *Supervision Order*, however, has diminished probative value, as the information contained therein is inconsistent with other information in the record.

First, the beneficiary's date of birth is incorrect and off by nine years; he was born on April 12, 1999, not April 12, 1990. Second and more importantly, as previously discussed in this decision, the evidence reflects, and the petitioner asserts, that the beneficiary was relinquished to TRS in October 2009 after having lived with his grandmother from the time he was two years old in 2001 until 2009 when his biological mother brought him to TRS. In contrast, the *Supervision Order* found the beneficiary in need of care and protection as early as 2004, more than five years before the biological mother brought him to TRS. The petitioner does not explain this inconsistency with independent, objective evidence. *Matter of Ho, supra*. Other than this *Supervision Order*, which

has little evidentiary value, the petitioner has presented no evidence that the beneficiary became a ward of a competent authority in accordance with the laws of Sierra Leone because he was willfully forsaken by his parents or they refused to carry out their parental rights. Furthermore, the petitioner has not established that under Sierra Leone law, the *Supervision Order* unconditionally divested the beneficiary's parents of their parental rights over him. See *Matter of Annang, supra* (providing that the law of a foreign country is a question of fact that must be proved by the petitioner if he or she relies on it to establish eligibility for an immigration benefit).

Based on the evidence in the record, the director had good and sufficient cause to revoke approval of the petition based on the failure of the petitioner to establish the beneficiary's *desertion by both parents*.

Conclusion

The director had good and sufficient cause to revoke approval of the instant orphan petition pursuant to section 205 of the Act. The petitioner failed to establish, by a preponderance of the evidence, that the beneficiary is the child of a *sole parent* or that he is an orphan due to *abandonment* or *desertion by his parents*, as these terms are defined in the regulation at 8 C.F.R. § 204.3(b).

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. Approval of the petition remains revoked.