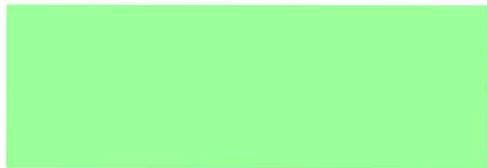


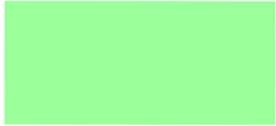
(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: FEB 06 2014 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 of the National Benefits Center (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), 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.

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.

Facts and Procedural History

The petitioner is a 39-year-old married U.S. citizen. The petitioner adopted the beneficiary, who is his nephew, in Cameroon on [REDACTED]. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on April 12, 2013, and sought to classify the beneficiary as the child of a sole parent who is incapable of providing for his support. On June 18, 2013, the director issued a Notice of Intent to Deny (NOID) because the record did not contain: evidence that the beneficiary has a sole or surviving parent; evidence that the sole or surviving parent is incapable of providing for the beneficiary's care; an irrevocable release from the sole or surviving parent for the beneficiary's emigration and adoption; or evidence of abandonment by both parents. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on August 29, 2013 and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Analysis

The petitioner submitted below the following relevant evidence: the beneficiary's birth certificate; an irrevocable release from the beneficiary's birth mother; an affidavit from the beneficiary's birth mother regarding her inability to care for the beneficiary; an affidavit from the beneficiary's birth mother regarding the beneficiary's birth father's abandonment; a "medical certificate" for the beneficiary's birth mother; and a decree for the beneficiary's adoption from the High Court of [REDACTED] Judicial Division. On appeal, the petitioner submits: a home study report; and a copy of a social inquiry report from the Cameroon Ministry of Social Affairs Divisional Delegation for [REDACTED]. The Ministry of Social Affairs and the High Court having jurisdiction over the place of residence of the child to be adopted are Cameroon's adoption authorities.¹

¹ *Intercountry Adoption, Cameroon, U.S. Department of State*, http://adoption.state.gov/country_information/country_specific_info.php?country-select=cameroon (last viewed January 17, 2014).

The record does not establish that the beneficiary meets the definition of an orphan because he has a sole parent incapable of providing proper care. The regulation at 8 C.F.R. § 204.3(b) states that the term “sole parent” means the mother of an illegitimate child who has not acquired another parent within the meaning of section 101(b)(2) of the Act. For orphan petitions filed under section 101(b)(1)(F) of the Act, a birth 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). The social inquiry report states that the beneficiary’s birth was the result of his father’s extramarital relationship with his mother, who was unmarried. The report states that the beneficiary’s birth father “deserted” and “abandoned” the beneficiary after his birth. The report explains that the beneficiary’s birth father did not have a “desire to legitimate the child” and had “expressed his readiness to give an irrevocable consent for adoption.” However, the beneficiary’s birth certificate provides both his mother’s and father’s names. The beneficiary was therefore legitimated by his birth father’s declaration of paternity on his birth certificate, as set forth in section 44 of the Cameroon Civil Status Ordinance of August 1, 1981, which provides that recognition of children born out of wedlock may be done by declaration made before a civil status registrar during the birth registration. *See Matter of Atembe*, 19 I&N Dec. 427 at 2 (BIA 1986).

Even if it had been established that the beneficiary's birth mother is his sole parent, the beneficiary would still not meet the definition of an orphan under this standard, as the record does not demonstrate that his birth mother is incapable of providing him with the proper care, consistent with local standards in Cameroon. As noted previously, the phrase “incapable of providing proper care” is specifically defined at 8 C.F.R. § 204.3(b) as “mean[ing] 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.” The petitioner has submitted no evidence regarding local standards in Cameroon. Nor does the record demonstrate that the beneficiary’s birth mother is incapable of providing proper care to the beneficiary consistent with such standards. The adoption decree states that the petitioner indicated that the beneficiary’s birth mother “does not have the means to take care of him,” but it does not further discuss the birth mother’s limitations. The “medical certificate” for the beneficiary’s birth mother lists her medical conditions, but offers no other information on her treatment and prognosis. The social inquiry report similarly only briefly provides that the beneficiary’s birth mother is in a “poor health situation,” but does not offer any probative details of her medical condition(s). The beneficiary’s birth mother briefly stated in her affidavit, dated May 30, 2013, that she has diabetes, hypertension, and is unable to care for the beneficiary as a result of her poor health and “meager” salary. However, the record does not contain any information on her standard of living and how it compares to the local conditions in Cameroon. The record provides no detailed, probative information of the birth mother’s economic or medical difficulties to establish that she is unable to provide for the beneficiary’s basic needs.

The record also does not establish that the beneficiary has been “abandoned by both parents,” as the term is defined at 8 C.F.R. § 204.3(b). The social inquiry report recommended the adoption based on the finding of abandonment by the beneficiary’s birth father. Similarly, the adoption decree provided that the beneficiary’s birth father “practically abandoned him.” Although the circumstances described in the adoption-related documents may have deemed the beneficiary

abandoned and eligible for adoption under Cameroonian law, the petitioner must still demonstrate eligibility for classification as an orphan under United States immigration law. "Abandonment by both parents" means that *both* of the parents must have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child. 8 C.F.R. § 204.3(b). Here, the social inquiry report states that the beneficiary's birth mother "single handedly" provided for him and did not abandon him. Moreover, a relinquishment or release by the birth parents to the prospective adoptive parents for a specific adoption does not constitute abandonment. *Id.* The adoption-related documents in the record show the beneficiary's birth mother's consent to and desire for the petitioner's adoption of the beneficiary. In her irrevocable release, the beneficiary's birth mother specifically transferred her parental rights over the beneficiary to the petitioner.

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, or that they have disappeared as determined by a competent authority. The record also does not indicate that the beneficiary was involuntarily severed from his birth parents by action of a competent authority for good cause and in accordance with the laws of Cameroon. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from his birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of his 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."

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.