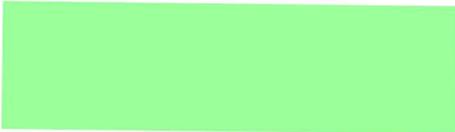


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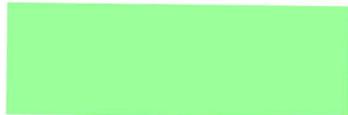
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



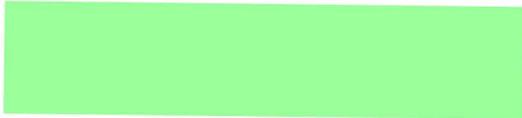
U.S. Citizenship  
and Immigration  
Services



DATE: **MAR 06 2014** OFFICE: NATIONAL BENEFITS CENTER



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:



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

NON-PRECEDENT DECISION

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**DISCUSSION:** The Director, 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.

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 denied the petition on the basis that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan as that term is defined at section 101(b)(1)(F)(i) of the Act. Specifically, the director found that the petitioner failed to establish that the beneficiary's birth father met the definition of a *sole parent* as defined in the regulation. The director found further that the petitioner failed to establish that the beneficiary's birth mother was deceased, or that the birth father was a *surviving parent* as the term is defined in the regulation.

*Applicable law*

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of 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.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

\* \* \*

- (1)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;
- (iii) Evidence that the child is an orphan as appropriate to the case:
- (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
- (B) The death certificate(s) of the orphan's parent(s), if applicable;
- (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. . . .

*Facts and procedural history*

The petitioner and his wife are U.S. citizens who seek to classify the thirteen-year-old beneficiary, a citizen of Ethiopia, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on August 5, 2013. The director first issued a Request for Evidence (RFE) for proof of the beneficiary's identity, and evidence that the beneficiary met the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act. The petitioner, through counsel, timely responded to the RFE with additional evidence. The director reviewed the record and determined that the petitioner adequately established the beneficiary's identity, but that the evidence failed to establish that the beneficiary's birth father met the definitions of a *sole parent* or *surviving parent* as defined by the regulation.

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 does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed.

*Analysis**Sole parent*

The definition of *sole parent* contained in 8 C.F.R. § 204.3(b) reflects, in pertinent part, that the term applies only to the birth mother of an illegitimate child who has not acquired another parent within the meaning of section 101(b)(2) of the Act.

Through counsel, the petitioner indicates on appeal that the *orphan* definition contained in section 101(b)(1)(F) of the Act does not distinguish between a birth mother's and birth father's role as to the child, and that interpreting related regulatory terms in a manner that contains such distinctions is discriminatory and erroneous. The petitioner asserts that the definition of *sole parent* contained in 8 C.F.R. § 204.3(b) is limited to the mother only when the child is illegitimate; however, in cases where the child is legitimate, the sole parent definition applies to both the birth mother and the birth father of the child. The petitioner asserts further that court order and financial evidence in the record establishes that the beneficiary's birth mother disappeared prior to the beneficiary's adoption; that the beneficiary's birth father is incapable of providing for the child's needs in Ethiopia; and that the beneficiary's birth father irrevocably released the child for adoption, thus satisfying the definition of *sole parent* as defined in 8 C.F.R. 204.3(b).

The petitioner provides no legal bases for his assertions regarding the definition of a sole parent, and the assertions are found to be without merit. Birth and marriage certificate evidence contained in the record reflects that the beneficiary was born to married parents, and it is uncontested that the beneficiary was legitimated at birth under the laws of Ethiopia. The beneficiary cannot be considered under the sole parent definition because she is not an illegitimate child. In addition, the beneficiary's birth father remains her *parent* as that term is defined at section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), which states, in pertinent part:

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 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.

Here, the beneficiary was born in wedlock and under section 101(b)(1)(A) of the Act she is the child of her natural parents. There is no evidence that her birth father ceased being her parent. Furthermore, even if the beneficiary were an illegitimate child, the definition of *sole parent* at 8 C.F.R. § 204.3(b) clearly reflects that only the birth mother can be considered a sole parent. The interpretation of statutory language begins with the terms of the statute itself. If the terms, on their face, constitute a plain expression of congressional intent, they must be given effect. *See, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1994). Therefore, the beneficiary’s birth father does not qualify as a *sole parent* under the regulatory definition.

We note further that the AAO, like the Board of Immigration Appeals, lacks jurisdiction to rule on the constitutionality of the Act and regulations that U.S. Citizenship and Immigration Services (USCIS) administers. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997). *See also United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). We therefore decline to address the petitioner’s assertion that the regulatory definition of a sole parent is discriminatory.

#### *Surviving parent*

The definition of *surviving parent* in the regulation means, in pertinent part, 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.

The record contains an August 13, 2012 court order from the [REDACTED], reflecting that the beneficiary’s birth mother disappeared in 2010; however, the record contains no evidence to indicate or establish that the beneficiary’s birth mother is deceased. Furthermore, the petitioner states on appeal, through counsel, that, although the beneficiary’s birth mother has disappeared, “neither of her natural parents is known to be dead.” *See Applicant’s Brief in Support of I-600 Petition*, dated January 24, 2014, page 3. Because the record reflects that the beneficiary has two living parents, the beneficiary’s birth father does not qualify as a *surviving parent* under the regulatory definition.

#### *Abandonment by both parents*

The term *abandonment by both parents* is also defined at 8 C.F.R. § 204.3(b). In order for the beneficiary to meet the definition of an orphan under this standard, the petitioner must demonstrate, in pertinent part, that both of the beneficiary’s birth 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).” 8 C.F.R. § 204.3(b). The regulation emphasizes further that “relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.” *Id.* Moreover, if the child was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made 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. *See id.*

The record contains a May 6, 2010 Adoption Contract signed by the petitioner, his wife, and the beneficiary’s birth mother and father, reflecting the birth parents’ intent to relinquish the beneficiary specifically for adoption by the petitioner and his wife. In addition, October 18, 2012 adoption judgment evidence from the Federal Democratic Republic of Ethiopia, Federal First Instance Court names the beneficiary’s birth parents and the petitioner and his wife as petitioners in the beneficiary’s adoption case; specifically approves the May 2010 Adoption Contract between the parties; and clearly reflects the birth parents’ intent to relinquish the beneficiary to the petitioner and his wife for adoption.<sup>1</sup> The definition for *abandonment by both parents* as that term is defined in the regulation, has therefore not been met.

#### *Beneficiary is not an Orphan under any of the other criteria*

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 disappeared, or that the beneficiary has become a ward of a competent authority as the result of her birth parents’ desertion. The record also does not indicate that the beneficiary was involuntarily severed from her birth parents by action of a competent authority for good cause and in accordance with the laws of Ethiopia. Nor does the record show that the beneficiary was involuntarily and permanently severed or detached from her birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of her birth parents and as verified by a competent authority.

#### *Conclusion*

As set forth in the discussion above, 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.

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<sup>1</sup> The record contains a Judgment from the [REDACTED] dated August 13, 2012, reflecting that the beneficiary’s birth father filed an application with that court on July 12, 2012, stating that his wife disappeared as of June 9, 2010. According to the judgment, the birth father established disappearance on the basis that neither the beneficiary’s birth mother, nor anyone with knowledge of her whereabouts, responded to newspaper publications to appear in court regarding the matter. The October 18, 2012 adoption order from the Federal Democratic Republic of Ethiopia, Federal First Instance Court does not mention or refer to the beneficiary’s birth mother’s disappearance, or the [REDACTED]

(b)(6)

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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.