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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 14 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:

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) initially approved the Petition to Classify Orphan as an Immediate Relative (Form I-600) but ultimately revoked the approval after proper notice, and dismissed a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The 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 the approval of the petition on the basis of his determination that the petitioner had failed to establish that the adoption was valid as it occurred following Ghana's suspension of adoptions. The director also found that the beneficiary did not qualify 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 beneficiary is the legitimate child of her natural parents under Ghanaian law; and that the record did not establish that the beneficiary had been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in the regulation.

Applicable Law

Regarding the revocation of an approved visa petition, 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 the approval of a visa petition 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 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.
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> * * *
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> *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.
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> *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.
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> *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.

* * *

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.

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[.]

Facts and Procedural History

The petitioner is a 47-year-old U.S. citizen. He and his wife adopted the beneficiary in Ghana on May 16, 2013. The petitioner submitted the Form I-600 to United States Citizenship and Immigration Services (USCIS) on July 16, 2013, and sought to classify the beneficiary as an orphan as the child of a sole parent who was incapable of providing proper care to the beneficiary. The petition stated that the whereabouts of the other parent were unknown. On August 28, 2013, USCIS approved the Form I-600. The evidence of record included, among other documents, the following:

- June 6, 2012 declaration by the beneficiary's biological mother, before the Superior Court of Judicature in the High Court of Justice, Accra, Ghana, stating that: she was single, unemployed, and living with her mother; she had five children; she irrevocably relinquished parental control of the beneficiary in favor of the orphanage; and consented to her international adoption and emigration from Ghana.
- August 22, 2012 affidavit of the beneficiary's paternal aunt stating that the last time she saw her brother was in 2009 at their mother's funeral and that he told her he was planning to move to the Ivory Coast.
- Beneficiary's birth certificate registered on February [sic] naming the biological father, as the informant[1];
- Consent to Adoption Order signed by the beneficiary's biological mother on April 29, 2013, consenting to the beneficiary's adoption by the petitioner and his wife.
- Adoption Social Enquiry Report dated May 10, 2013 indicating that: the beneficiary's biological father disappeared when her biological mother became pregnant with the couple's 6th child; and that the mother's earnings and living situation were inadequate to provide for the beneficiary.
- May 16, 2013 Order for Inter-Country Adoption of the beneficiary by the petitioner and his wife.
- July 29, 2013 statement of Regional Director, Department of Social Welfare, confirming that the biological father of the beneficiary could not be found.
- Power of Attorney dated August 22, 2013 by the petitioner and his wife giving to the right to represent their interests "in the court . . . before the guardianship institutions, at other state offices connected with the adoption, and at the US Embassy for all intents and purposes. . . ."
- Affidavit dated August 23, 2013 of director and founder of (orphanage), stating that the beneficiary's biological mother brought the beneficiary to the orphanage on May 6, 2009; that in May, 2012 she contacted the biological mother to determine whether she would allow the beneficiary to be placed for an international adoption; and that the beneficiary received no visitors, and no support, during her stay at the orphanage except for once in June 2012 when the mother came to the orphanage to sign the form agreeing to give up her parental rights.

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[1] Other evidence of record reflects that the registration of the beneficiary's birth was on February not February and, thus, the year of registration (2012) is a typographical error.

On October 25, 2013 the U.S. Consulate in Accra, Ghana returned the approved Form I-600 to the director because it could not issue a visa to the beneficiary. The consular officer determined that the biological father had not abandoned the child or surrendered his parental rights; and that the beneficiary had never been a ward of the state.

On November 26, 2013, the director issued a Notice of Intent to Revoke (NOIR), stating that the record indicated that the beneficiary had two living parents, and that the biological mother had abandoned the beneficiary. The evidence was insufficient, however, to establish that the beneficiary met the definition of an orphan at section 101(b)(1)(F)(i) of the Act because the beneficiary's birth certificate was registered on February naming the natural father as the informant, and that he was still involved in his child's life. The director inferred from the placement of the mother's "maiden name" on the birth certificate that the parents were married and that the mother could not be a "sole parent" under the Act. The director noted that a field investigation was conducted and revealed that the natural parents of the beneficiary continued to live together. The director stated that the Ghanaian authorities had not made the beneficiary a ward of the state. The director requested evidence from a competent authority that the biological father abandoned, disappeared, deserted, separated or was lost from the beneficiary as those terms are defined in the regulations.

The petitioner responded to the NOIR on February 24, 2014. The petitioner, through counsel, stated that the beneficiary's natural mother and father were never married, that the beneficiary's birth certificate naming her natural father as the informant was incorrect, and that the witnesses to the continued presence of the beneficiary's natural father with the mother were misconstrued or mistaken. In support of these assertions, the petitioner submitted the following affidavits and other evidence, which we reviewed in their entirety and summarize as follows:

- Declaration of the biological mother, dated January 18, 2014, stating that: the beneficiary's biological father visited on occasion; he disappeared two weeks after she became pregnant with their last child; he was present but did not support the children; he did not object to her placing the beneficiary in the orphanage; he asked no questions about the school or the orphanage; the orphanage asked her in 2010 if she wanted the beneficiary back; she never gave the orphanage any money; a neighbor who spoke to the embassy investigator about her case does not actually live in the area, and he may have mistaken her current boyfriend for her "husband"; and that she was never married to or to anyone else.
- Second declaration of dated January 18, 2014, the director and founder of the orphanage, who stated that: the beneficiary's biological mother dropped her at the orphanage in 2009 because she could not care for her; the beneficiary's mother informed her that the biological father was a mason and traveled to different regions for work and visited her from time to time; that the beneficiary had no visitors and no financial support; and she asked the beneficiary's biological mother if she wanted to get her child about a year after her placement at the orphanage, and the mother declined.
- Declaration of dated January 18, 2014, stating that: she was interviewed by an embassy investigator accompanied by a police official; she told them she did not know

anything about the relationship between the beneficiary's biological parents; at a second interview the embassy official claimed that she stated she attended the wedding of the parents, which she emphatically denied; the beneficiary has not received visitors for the 18 months since she has worked at the orphanage; and she knew nothing about the whereabouts of the father.

- Declaration of dated January 18, 2014, corroborating the conversation between and the embassy official at the second interview, and Ms. testimony that she did not know the beneficiary's parents or attend their wedding, or that she had told this to the embassy official at the first interview.
- Declaration of dated January 19, 2014, stating that: he works as a power of attorney and gathered the information for the beneficiary's adoption; he registered the beneficiary's birth with the Registrar of Births using the weight card of the beneficiary given to him by the biological mother; he met the biological mother several times, who told him that she had not seen the father since she became pregnant with their 6th child.
- The beneficiary's "weight card" naming the beneficiary's parents as and
- Declaration of , dated January 19, 2014, stating that: she is the sister of that he had children with but was not married to the beneficiary's biological mother; and she has not seen or heard from her brother in over two years.
- Declaration of dated January 19, 2014, stating that: he was briefly interviewed by embassy staff looking for the "mason"; he assumed the man he had seen coming and going from the house was the father of the biological mother's children; he did not know the occupant of the house in question very well; he did not live in Accra; and "now understand[s] that the man I saw was the woman's boyfriend and not the father of her children."
- Declaration of dated January 19, 2014, the sister of the beneficiary's biological mother, stating that: she never met the biological father; she knew that he traveled for work and visited her sister; her sister is not married and has a different boyfriend now; and she does not visit her sister regularly. She said that her sister told her that the biological father had disappeared 18 months previously.

On March 14, 2014 the director issued a second NOIR. The director stated that a suspension of adoptions in Ghana went into effect on April 20, 2013, prior to the adoption order in the case, citing the United States Department of State's (DOS) Intercountry Adoption Website:

> On April 30, 2013, the Government of Ghana suspended processing of all adoption cases, including intercountry adoptions, pending Ghana's review of its current adoption procedures. . . .
>
> All adoption cases that received final approval by the Ghanaian Department of Social Welfare (DSW) or were filed with a court prior to April 30, 2013, are not subject to this suspension.

The director indicated that the record did not reflect that the adoption had received final approval from the Ghanaian DSW or was filed with a court prior to April 30, 2013.

In the March, 2014 NOIR the director also indicated that he had received a police investigation report conducted by the Ghana Police Service of Kasoa, dated December 5, 2013, that was inconsistent with the petitioner's evidence submitted in response to the first NOIR. The director cited the following language verbatim from the police report:

> On the same day of 20/11/2013, Police visited in a down floor room of an uncompleted two storey building located along a portion of the main road of a suburb of Kasoa and saw twenty one (21) children in one class. They are between the ages of two and nine years including age seven years and her sister also age six years. The two children were also identified by their photographs. The facilitator of the class, when contacted said, she has been at her employment for the past one year and seven months. According to her, the two siblings are being catered for by their mother who stays in the area. She claimed to have seen their biological father once on a visit to the orphanage about a year and over ago.
>
> Enquiries were extended to a two storey compound house used as During interrogations, the proprietor claimed the two children stayed in the orphanage for about one year but currently putting up with their biological mother According to her, children coming from their various houses are taken care of free of charge, except paying for feeing [sic] fee daily at school. She further stated that the biological father of was not seen for a long period.
>
> Follow up to the residential area of the children and their parents near located in a portion of where some close neighbors identified the two by their photograhs and pointed their parents single room accommodation nearby. During interactions, the neighbours stated that the father of a professional mason, was seen the previous day 19/11/2013. When their mother was contacted she claimed her husband popularly called has traveled for a long time and cannot [sic] determine when he will return. Their mother very evasive, was seen nursing about eight months old baby girl. Inspections at the compound led to discovering of fresh cement and some constructional working tools and male working apparel were seen indicating the presence of a mason probably the father of the children.

The director withdrew his previous finding that the biological mother had abandoned the beneficiary. He stated that if the mother is a sole parent, there was insufficient proof that she is incapable of providing proper care. He stated that if she is not a sole parent, she did not unconditionally abandon the beneficiary to a third party authorized under the child welfare laws to

assume custodial care of the beneficiary. The director again stated that the biological father had not disappeared, and that the beneficiary had not been made a ward of the state.

The petitioner responded to the second NOIR on June 6, 2014. In addition to a brief and previously submitted evidence, the petitioner submitted the following:

- Second declaration of the biological mother, dated May 20, 2014, reiterating her previous testimony and further stating that: the tools and clothes seen by the police were the biological father's but are now old and unused; the tools are rusty; her current boyfriend occasionally spends the night; the police were not uniformed and she did not share her whole story with them.
- Declaration of the petitioner, dated June 3, 2014, stating that: he made an unannounced visit to the orphanage, and the beneficiary was clearly residing there; the director of the orphanage was concerned about the orphanage's license status after the visit from the police; he understood from her that the daily feeding fees were required for those enrolled in school only, but not for those who lived at the orphanage; he has heard through the foster mother that the beneficiary's sister recalled being at the orphanage for at least two Christmases; she had not returned home since arriving at the orphanage; and she saw her mother a couple of times but does not remember seeing her father for a long time. The petitioner also made an unannounced visit to the biological mother, and did not note any sign of a man living at the home.
- Declaration of dated June 6, 2014, corroborating the fact that the petitioner visited the orphanage unannounced, and that the beneficiary and her sister were there; that he and the petitioner visited the home of the biological mother; and that the conditions of the orphanage and the home were deplorable.
- Declaration of the beneficiary's sister, stating that she has been living at the orphanage for at least two Christmases; that she has not returned home; that her mother has visited a couple of times but never the father; and that she last saw her father a long time ago.
- Photographs of the beneficiary and her sister at the orphanage and at the foster home, with identifying documentation; and
- Email correspondence dated April, 2013 between the petitioner and his wife and the adoption agency, indicating that the adoption would be scheduled in April or May.

After considering the petitioner's responses to the NOIRs, the director revoked the approval of the Form I-600 on July 25, 2014, finding that the adoption was invalid because it was not approved by the Ghanaian DSW or filed with the court prior to the suspension of adoptions on April 30, 2013, and because neither parent abandoned, deserted, disappeared, or were separated or lost from the beneficiary. The director cited to inconsistencies in the record concerning whether the biological father was still in the area and whether the mother provided care for the children. The director found that the beneficiary did not qualify for classification as an "orphan," as defined in section 101(b)(1)(F)(i) of the Act.

On appeal, the petitioner submits a brief and additional evidence. Upon review, the record does not demonstrate the beneficiary's eligibility for classification as an orphan.

Analysis

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

Validity of the Adoption

The director revoked the approval of the petition, in part, because it took place after a suspension of adoptions in Ghana went into effect on April 30, 2013. As a threshold matter, we will review whether the petitioner's adoption of the beneficiary may proceed despite its having been finalized after Ghana suspended all inter-country adoptions.

On appeal, the petitioner submits a "Clearance" from the Ghanaian DSW dated August 14, 2014. The Clearance states that "the placement took place before the moratorium (29th April, 2013), and those were exempted, from obtaining clearance."

DOS has published the following guidance on inter-country adoptions from Ghana following its suspension of such adoptions:

> For all Form I-600 petitions filed on behalf of a child from Ghana USCIS and the Consular Section at the U.S. Embassy in Accra require evidence that the Minister or Acting Director of DSW has approved the adoption case filed with the court after April 30 to ensure it was completed in accordance with the regulated exceptions to the suspension. In an effort to efficiently process these cases, USCIS Accra will continue to contact the DSW directly for petitions filed in Accra, when necessary, to confirm whether the case was approved by DSW. Prospective adoptive parents may also choose to obtain this evidence directly from DSW and submit it with their Form I-600 petition. The address for the Acting Director of the Department of Social Welfare is P.O. Box MB 230, Accra, Ghana.

The clearance submitted on appeal indicates that the Ghanaian DSW considered the beneficiary's adoption to have been completed on April 29, 2013 and that the adoption is exempt from the moratorium. We find that the adoption is valid under Ghanaian law, and withdraw the director's contrary determination.

Nevertheless, the beneficiary does not meet the definition of orphan under United States immigration law. As such, the revocation of the petition's approval was correct.

Child of a Sole Parent

The petitioner maintains that the beneficiary qualifies for classification as an orphan because she is the child of a *sole parent* as that term is defined at 8 C.F.R. § 204.3(b) and that the biological mother is *incapable of providing proper care* to the beneficiary. Under the *sole parent* definition the child must be born out of wedlock and not legitimated. The petitioner states that the beneficiary

was born out of wedlock, and that the record does not establish that the beneficiary was legitimated under the laws of Ghana because she never was in legal custody of her father. Alternatively, the petitioner contends that the beneficiary's biological father does not meet the definition of "parent" under section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), because he has disappeared, and/or abandoned or deserted the beneficiary.

Ghana does not make any distinctions between children born within or outside of marriage. *See* The Ghana Children's Act of 1998. In *Matter of Rivers,* 17 I & N Dec. 419 (BIA 1980) the Board of Immigration Appeals held that the natural father of a child will be presumed to have had legal custody of that child at the time of legitimation, in the absence of affirmative evidence indicating otherwise. The petitioner has presented no evidence that at the time of the beneficiary's birth the biological father did not have legal custody of the beneficiary. The beneficiary's biological father in this case is not only named on the beneficiary's birth certificate but also listed as the informant of the beneficiary's birth before the Registrar of Births. No evidence of record establishes that he has been deprived of his natural right to legal custody. Legal custody for immigration purposes is not equivalent to physical custody or joint residence. *See,* e.g. 8 C.F.R. § 204.2(d)(2)(vii); *see also, Matter of Rivers,* 17 I & N at 423.

The petitioner's alternative argument is that the biological father cannot be considered the beneficiary's parent under section 101(b)(2) of the Act because he abandoned her shortly after her birth. Section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), 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.

Although the petitioner states that the beneficiary's biological father abandoned her, he remains her *parent* as that term is defined at section 101(b)(2) of the Act. For orphan petitions filed under section 101(b)(1)(F) of the Act, when a biological father has disappeared, abandoned or deserted a child, or has irrevocably in writing released a child for adoption, that father 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. As stated earlier, the evidence demonstrates that the beneficiary was legitimated under section 101(b)(1)(C) of the Act, and she therefore cannot demonstrate that her biological father ceased being her parent because he abandoned her. Accordingly, the record demonstrates that the beneficiary is the legitimate child of her biological father and, therefore, cannot be classified as the child of a *sole parent* as that term is defined at 8 C.F.R. § 204.3(b).

Abandonment by both parents

The term *abandonment by both parents* is specifically defined at 8 C.F.R. § 204.3(b). To establish the beneficiary's abandonment, the petitioner must demonstrate that 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 reflects that the beneficiary's birth mother brought the beneficiary to the orphanage because she could not care for her.[2] No evidence of record reflects that orphanage is authorized by Ghanaian child welfare laws to take custody of a child to place for adoption.[3] Furthermore, while there are inconsistencies in the record about the number of visits that the biological mother made to the beneficiary at the orphanage, and whether she provided financial support for the child's food at the school, the record is clear that the beneficiary's natural mother did not declare an intention to forsake her parental rights over the beneficiary until the June 6, 2012 declaration before the Superior Court of Judicature in the High Court of Justice, Accra, Ghana, in which she irrevocably relinquished parental control of the beneficiary to the orphanage and consented to her international adoption and emigration from Ghana. At that time, she relinquished her parental rights in anticipation of and in preparation for the international adoption. As stated above, this does not constitute abandonment under the regulation, as the evidence fails to demonstrate that the third party in this case, the orphanage, was authorized under the child welfare laws of Ghana to act in such a capacity. *See* 8 C.F.R. § 204.3(b). Nor does the natural mother's written consent on April 29, 2013 for her child to be adopted by the petitioner and his wife constitute abandonment under the regulation, which states that abandonment does not include a relinquishing of rights to the adoptive parents. Thus, the biological mother cannot be found to have abandoned the beneficiary.

Nor did the beneficiary's biological father abandon her. The record contains no evidence that the biological father took any action to willfully forsake all parental rights, obligations and claims to the beneficiary, and possession and control over her. To the contrary, the record contains a copy of the beneficiary's birth certificate that was submitted with the Form I-600, providing that on February 5,

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[2] The birth mother stated in her declaration, dated January 18, 2014, that she "did not really have a plan in mind when I first put the girls in the orphanage other than I could not care for them anymore."

[3] The website of the orphanage indicates that it is registered as a non-governmental organization under the Registrar General Department of Ghana. *See,* (accessed October 18, 2014). Neither the website nor the record indicates that the orphanage is authorized under the child welfare laws of Ghana to exercise parental rights over the children in its care in preparation for an adoption.

2012, the biological father was the informant of the beneficiary's birth with the Registrar of Births.[4] The Registrar certified on February 6, 2013 "that the [Entry in Register of Births] is a true copy of entry No 347 in the Register of Births . . . ."

To support the claim of the biological father's abandonment of the beneficiary, the petitioner's power of attorney stated in a declaration that he, not the biological father, registered the beneficiary's birth in February On appeal, the petitioner submits a second birth certificate with the same registration date of February indicating that the biological mother was the informant, not the biological father or the power of attorney. The Registrar certified on August 21, 2014 that this second birth certificate was a true copy of entry No 347 in the Register of Births.

This second birth certificate submitted on appeal is inconsistent with both the original birth certificate submitted by the petitioner in support of the Form I-600 as well as the statement of the power of attorney. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the record does not contain any statement from the Registrar of Births regarding the change in the identity of the informant of the beneficiary's birth. Such a statement is critical, as the Registrar certified that each birth certificate is a true copy of entry No 346 in the Register of Births; yet, the certificates do not contain the same information.

While the biological mother stated that the father did not contribute to the beneficiary's upbringing, did not ask questions about the orphanage and the school, and that he consented to the placement of the beneficiary at the orphanage, her claims are not supported by any evidence. Overall, the evidence does not establish that the biological father took any overt or implied actions to willfully forsake his parental rights and control over the beneficiary.

Accordingly, the record does not establish that the beneficiary was "abandoned by both parents" as that phrase is defined at 8 C.F.R. § 204.3(b). This deficiency provided the director with good and sufficient cause to revoke approval of the orphan petition.

Desertion by both parents

The petitioner also contends that the beneficiary is an orphan because her biological parents deserted her because they have refused to carry out their parental rights and obligations, and that during the adoption proceedings, the beneficiary became a ward of the court. *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.

On appeal, the petitioner states that the record clearly establishes that both parents deserted the beneficiary by their actions. We disagree. When the birth mother placed the beneficiary at the she indicated that she did not have a clear intent other than that she could not

[4] As noted earlier, the year of registration is a typographical error and should have been

provide care to the beneficiary. While the record contains disputed facts about the level of the biological mother's involvement in the beneficiary's life while living at the orphanage, the mother's solicitation of the orphanage's assistance during a time of crisis does not constitute desertion under the terms of the regulation, which requires a refusal to carry out parental rights and obligations such that the child becomes a ward of a competent authority. As discussed earlier in this decision, there is no evidence that is authorized under the child welfare laws of Ghana to provide custodial care in preparation for or anticipation of an adoption or deemed a competent authority under Ghanaian law. The record does not reflect that the biological parents refused to carry out their parental obligations resulting in the beneficiary becoming a ward of a competent authority in Ghana. Accordingly, The record does not reflect that the beneficiary was "deserted by both parents," as that phrase is defined at 8 C.F.R. § 204.3(b). This deficiency provided the director with good and sufficient cause to revoke approval of the orphan petition.

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 one or both of the beneficiary's birth parents have died (definitions of *surviving parent* or *loss from both parents*). While the Ghanaian DSW found in its investigation that the biological father of the beneficiary has disappeared, the biological mother has not disappeared, and she did not become lost to the beneficiary through abandonment, desertion, loss or separation as those terms are defined in the regulation and discussed in this decision The record also does not indicate that the beneficiary was involuntarily severed from either of her birth parents after proper notice by action of a competent authority for good cause and in accordance with the laws of Ghana (definition of *separation from both parents*). 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 (definition of *loss from both parents*).

Conclusion

We acknowledge the sympathetic facts in this matter and the petitioner and his spouse's unwavering support and care for the beneficiary as they pursue her immigration to the United States. In our adjudication of this appeal, we have thoroughly reviewed the administrative record and considered the facts and legal issues presented; however, USCIS has no discretion to approve an orphan petition where a petitioner fails establish a child's eligibility under the statutory criteria at section 101(b)(1)(F)(i) of the Act. Here, the facts of the beneficiary's young life, while compelling, do not demonstrate her eligibility for orphan classification under any of the definitions found under the pertinent regulations. She is not the child of a sole or surviving parent, and she is not an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both of her parents.

Although we withdraw the director's finding that the adoption of the beneficiary is invalid under Ghanaian law, 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 director had good and sufficient cause to revoke the approval of the petition.

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.