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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: **OCT 17 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)

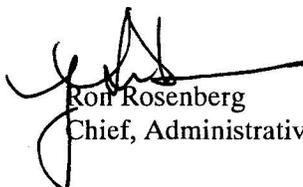
ON BEHALF OF PETITIONER:
[REDACTED]

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 Act, 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in [her] 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.

* * *

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.

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

Supporting documentation for a petition for an identified orphan . . . An orphan petition must be accompanied by full documentation as follows:

* * *

(1)(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 38-year-old U.S. citizen. She and her U.S. citizen spouse obtained legal guardianship over the beneficiary, a six-year-old native of Uganda, on March 17, 2014.¹ The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on February 18, 2014. She seeks to classify the beneficiary as an orphan due to abandonment, desertion, and separation from both parents, and as the child of a sole parent who is incapable of providing proper care to the beneficiary.

On March 7, 2014, the director issued a Notice of Intent to Deny (NOID) stating 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 the Form I-600 should not be denied. After considering the evidence contained in the record and that submitted in response to the NOID, the director denied the Form I-600 on April 16, 2014, on the basis that the petitioner failed to establish that the beneficiary qualified for classification as an *orphan*, as defined in the regulation and section 101(b)(1)(F)(i) of the Act. On appeal the petitioner asserts, through counsel, that the beneficiary qualifies as an orphan due to abandonment and desertion by her parents, and separation

¹ The U.S. Department of State provides at <http://travel.state.gov> that:

Ugandan law requires adoptive parents to have been resident in Uganda for at least three years and to have fostered the child for at least 36 months under the supervision of a probation and social welfare officer. High court judges have the discretion to waive these requirements. . . . [R]ecently High Court judges have made some exceptions to these three-year residency and fostering requirements on a case-by-case basis if it was deemed to be the best interest of the child[.]

The DOS clarifies further that:

Ugandan High Court judges have also exercised discretion in approving legal guardianship decrees (which may permit the child to emigrate for full and final adoption abroad) in certain cases where the prospective adoptive parents were unable to meet the requirements for adoption in Uganda.

Id. The record does not reflect that the petitioner was resident in Uganda, or that she fostered the beneficiary for at least 36 months; however, it appears that the High Court of Uganda at [REDACTED] Division exercised discretion in the petitioner's case, in that the court awarded legal guardianship to the petitioner and her spouse on the basis that the beneficiary is deaf and has special needs; and based on a finding that subsequent adoption by the petitioner in the United States would be in the best interest of the child.

Page 5

from her parents. Alternatively, the petitioner asserts that the beneficiary is the child of a sole parent who is incapable of providing proper care to the beneficiary.

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

Analysis

Abandonment by both parents

To establish that the beneficiary's 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)" as set forth in 8 C.F.R. § 204.3(b), the petitioner asserts that: 1) the beneficiary's father took no active role in the beneficiary's life and refused to carry out his parental rights and responsibilities;² 2) the beneficiary's parents left her permanently at the [REDACTED] in March 2010 and have not provided for, or supported the beneficiary since that time; 3) the beneficiary's mother visits only occasionally, at the insistence of the director of [REDACTED] and neither parent can communicate with the beneficiary because they refuse to learn sign language; and 4) when the beneficiary's parents left the beneficiary at [REDACTED] they did not know the petitioners, or intend for the petitioners to adopt the beneficiary. The petitioner's assertions fail to establish that the beneficiary was abandoned, as defined in the regulations and in the Act. The record reflects that [REDACTED] is a school for deaf children, and court guardianship documents reflect that [REDACTED] offered the beneficiary full financial sponsorship and boarding at their school due to her parents' financial struggles and the beneficiary's need to receive an education. The [REDACTED] Report contained in the record reflects that the beneficiary was admitted into [REDACTED] in March 20, 2010, and that all of her education needs are met by the [REDACTED], and academic transcripts and court documents reflect that the beneficiary continues to be a pupil at the school. Court guardianship documents reflect further that the beneficiary's mother monitors the beneficiary's stay and progress at [REDACTED] and that the beneficiary returns home during short holidays.

Upon review, the evidence reflects that the beneficiary's parents enrolled the beneficiary in a fully sponsored boarding school program at [REDACTED]. The evidence does not reflect that the beneficiary's parents gave up parental control or possession over the beneficiary to [REDACTED] or that they relinquished or released their parental rights or obligations over the beneficiary when she enrolled at [REDACTED]. Furthermore, even if the beneficiary's parents had relinquished their parental control and

² The petitioner also asserts that the beneficiary's father abused and neglected her. Although the record contains a letter from a village Chair Person stating that the beneficiary's father "is not a good man," the letter does not indicate or establish that the beneficiary's father abused the beneficiary. Affidavits from the director of [REDACTED] and from the beneficiary's maternal aunt indicating that it is not safe for the beneficiary to return home, or that the beneficiary's father does not treat her well; and a social welfare report finding that the beneficiary's father does not show interest in the beneficiary's well-being, also do not state or establish that the beneficiary's father abused her.

rights over the beneficiary by bringing her to [REDACTED] the evidence fails to demonstrate that [REDACTED] is a third party such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage authorized under Ugandan child welfare laws to act in such a capacity as set forth in 8 C.F.R. § 204.3(b). Moreover, although the beneficiary's parents and the director of [REDACTED] state in affidavits that the director approached the beneficiary's parents with the idea of adoption in 2013; the parents had no objection to the idea; and the parents did not meet the petitioner and her spouse, or know who would adopt the beneficiary prior to October 2013; the record clearly demonstrates that the beneficiary's parents intended to relinquish their parental rights specifically to the petitioner and her spouse. Legal guardianship evidence reflects that the beneficiary's parents agreed that the petitioner and her spouse should be appointed as the beneficiary's legal guardians; moreover, the beneficiary's parents state in letters and consent documents that they consent to an Order of Legal Guardianship in favor of the petitioner and her spouse, and that they irrevocably release their parental rights and obligations over the beneficiary to the petitioner and her spouse for adoption purposes.

Because the evidence reflects that the beneficiary's parents relinquished their parental rights over the beneficiary directly to the petitioner and her spouse, the petitioner failed to establish that the beneficiary was abandoned by both parents.

Desertion by parents

The petitioner asserts that the beneficiary is an orphan due to *desertion by her parents*, as defined at 8 C.F.R. § 204.3(b), because her parents left her at [REDACTED] in March 2010 and they have not provided care or support to her at [REDACTED] thereby willfully forsaking and refusing to carry out their parental obligations. The petitioner asserts further that when the High Court of Uganda took jurisdiction over the beneficiary's legal guardianship case, the beneficiary became a ward of the court.

As discussed above, the petitioner failed to establish that the beneficiary's parents relinquished their parental control or rights over the beneficiary when they placed her in a sponsored boarding school program at [REDACTED]. Furthermore, the petitioner provided no legal evidence to establish that being under the jurisdiction of a court in a legal guardianship case makes the child a ward of the court; and the record contains no court order evidence reflecting that the beneficiary became, at any time, a ward of the court in Uganda. Accordingly, the petitioner failed to establish that the beneficiary is an orphan due to desertion by both parents.

Separation from parents

The petitioner also failed to establish that the beneficiary was separated from both of her parents, as defined at 8 C.F.R. § 204.3(b). The term *separation from both parents* requires permanent, unconditional and "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." In the present case, legal guardianship documentation and affidavits and letters from the beneficiary's parents clearly reflect that the parents voluntarily relinquished parental control and rights over the beneficiary to the petitioner and her spouse for adoption purposes. The record contains no evidence to indicate or establish that a Ugandan court or governmental agency with jurisdiction and authority to make

decisions in matters of child welfare, initiated and caused the beneficiary to be involuntarily removed from her parents. The petitioner therefore failed to establish that the beneficiary is an orphan due to separation from her parents.

Sole parent

In addition, the petitioner failed to establish that the beneficiary's mother qualifies as a *sole parent* as defined at 8 C.F.R. § 204.3(b). The term *sole parent* does not apply to "children born in countries which make no distinction between a child born in or out of wedlock." The law in Uganda makes no distinction between children born in and out of wedlock, where the father acknowledges paternity by registering his name on the child's birth certificate. See Ugandan 1997 *Children Act*, Chapter 59, §§ 71-72. In the present matter, the beneficiary's registered birth certificate contains her father's name. The beneficiary is therefore a legitimate child under the law in Uganda. The beneficiary's father also remains her *parent* as that term is defined in section 101(b)(2) of the Act. Section 101(b)(2) of the Act provides, in pertinent part, that for orphan petitions filed under section 101(b)(1)(F) of the Act, a father only ceases to be the child's parent when the child was born out of wedlock as described at section 101(b)(1)(D) of the Act; and the child was not legitimated under section 101(b)(1)(C) of the Act. Here, the beneficiary was legitimated by her father as described in section 101(b)(1)(C) of the Act. The petitioner therefore cannot demonstrate that the beneficiary's father ceased being her parent under section 101(b)(2) of the Act. Accordingly, the beneficiary cannot be classified as the child of a *sole parent* as that term is defined at 8 C.F.R. § 204.3(b).

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner has failed to establish that the beneficiary meets the definition of an *orphan*, as defined at section 101(b)(1)(F)(i) of the Act.

Conclusion

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.