



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 10 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:

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) 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 failed to establish that the beneficiary qualifies for classification as an *orphan* as defined at section 101(b)(1)(F)(i) of the Act.

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:

Foreign-sending country means the country of the orphan’s citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan’s habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child’s basic needs, consistent with the local standards of the *foreign-sending country*.

* * *

Sole parent means the mother when it is established that the child 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.

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[.]

Pertinent provisions at 8 C.F.R. § 204.3(d) also provide that the Application for Advance Processing of Orphan Petition (Form I-600A) and Form I-600 may be filed concurrently or separately. If filed separately, the Form I-600 must be filed within 18 months of approval of the advanced processing application.

Facts and Procedural History

The petitioner is a naturalized U.S. citizen. She filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on January 16, 2014, and seeks to classify the beneficiary, a citizen of Jamaica born on [REDACTED], 1997, as an orphan on the basis that the beneficiary's birth mother is a sole or surviving parent. The director determined that the beneficiary was 16 years old when the Form I-600 was filed, and that the petitioner failed to establish that the beneficiary met the definition of an *orphan*, as defined in the Act. On appeal, the petitioner asserts that a USCIS customer service representative informed her that she could file the Form I-600 after Form I-600A processing was complete, and that she detrimentally relied on this information when filing the Form I-600 after the beneficiary's 16th birthday.

We conduct 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

The petitioner submitted no evidence to establish that she received information from USCIS customer service personnel. Section 101(b)(1)(F)(i) of the Act specifically requires the filing of the Form I-600 orphan petition prior to the child's sixteenth birthday. The cutoff age of 16 years to meet the definition of *orphan* is thus a statutory condition for eligibility under section 101(b)(1)(F)(i) of the Act. Here, the beneficiary turned 16 on [REDACTED] 2013, before the petitioner filed the Form I-600. The beneficiary therefore does not meet the definition of an *orphan*, as set forth in section 101(b)(1)(F)(i) of the Act.

Sole parent

The definition of *sole parent* contained in 8 C.F.R. § 204.3(b) reflects, in pertinent part, that the term applies to the birth mother of an illegitimate child whose birth father has severed all parental ties, rights, duties, and obligations to the child. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section. Here, the petitioner states on the Form I-600 that the beneficiary's birth father is unknown; however, the record contains no other information or evidence about the beneficiary's birth father, or his relationship to the beneficiary.¹ Moreover, the petitioner did not respond to Form I-600 question #17(b), which asks if the beneficiary's birth mother is capable of providing for the beneficiary's support, and the record contains no information or evidence to indicate or establish that the beneficiary's birth mother is unable to provide for the beneficiary's basic needs, consistent with the local standards in Jamaica. Accordingly, the petitioner failed to establish that the beneficiary's birth mother meets the definition of a *sole parent* as defined in the regulation, and as set forth in section 101(b)(1)(F)(i) of the Act.

¹ The record contains an amended birth certificate, registered on July 18, 2003 when the beneficiary was five years old, stating that the petitioner's husband ([REDACTED]) is the beneficiary's father; however, DNA testing results in the record reflect a 0% probability of his paternity over the beneficiary. The director requested evidence of the beneficiary's original birth certificate in a Notice of Intent to Deny letter (NOID), dated April 5, 2014; however, the petitioner did not respond to the request.

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. A surviving parent must also be *incapable of providing proper care* as that term is defined at 8 C.F.R. § 204.3(b). The present record contains no indication or evidence that the beneficiary's birth father is deceased. Moreover, as discussed above, the record lacks information or evidence establishing that the beneficiary's birth mother is unable to provide for the beneficiary's basic needs, consistent with the local standards in Jamaica. The beneficiary's birth mother therefore does not qualify as a *surviving parent* under the regulatory definition, and as set forth in the Act.

We note further that the record lacks evidence that the beneficiary's birth mother has irrevocably released the beneficiary for emigration and adoption, as required under 8 C.F.R. § 204.3(d)(iii)(C).

Conclusion

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.