



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 22 2015 OFFICE: NEW DELHI

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:

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 Field Office Director, New Delhi, denied the Form I-600, 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 petitioner, through counsel, 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 Field Office Director denied Form I-600 on the basis that the petitioner failed to establish that the beneficiary qualifies as an orphan as defined in the regulation at 8 C.F.R. § 204.3.

*Applicable Law*

Section 101(b)(1)(F), 8 U.S.C. § 1101(b)(1)(F), of the Act defines an *orphan*, in relevant part, as:

- (i) [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[.]

The regulation at 8 C.F.R. § 204.3(b) provides, in relevant part:

*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 . . .

*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.

...

*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. . . .

#### *Facts and Procedural History*

The petitioner is a 50-year-old U.S. citizen who seeks to classify the beneficiary, a citizen and national of Pakistan, as an orphan. The petitioner filed a Form I-600A, Application for Advance Processing of Orphan Petition (Form I-600A) with U.S. Citizenship and Immigration Services (USCIS) on September 17, 2013, that was approved on December 2, 2013. The petitioner filed Form I-600 with the U.S. Consulate in [REDACTED], Pakistan on March 21, 2014.

The record reflects that during the immigrant visa interview with a U.S. consular officer on May 19, 2014, the petitioner, who is also the beneficiary's paternal aunt, testified that the beneficiary's biological parents visit the beneficiary regularly, and they last saw the beneficiary about two months prior to the interview. The petitioner also testified that the beneficiary's parents were sending the

beneficiary to the United States “to further her education.” The petitioner further testified that her sister became the beneficiary’s guardian so the beneficiary could enroll in a better school system in Pakistan. Based on the petitioner’s testimony, the consular officer determined the beneficiary was not classifiable as an orphan, as her biological parents transferred custody directly to the petitioner’s sister who then transferred custody to the petitioner. The consular officer also determined that neither a court nor a competent authority made the beneficiary a ward of the state or transferred the beneficiary’s custody to a government-approved third party. The consular officer further determined the petitioner was attempting to circumvent the proper visa process so that the beneficiary could study in the United States. Accordingly, the consular officer referred the petitioner’s Form I-600 to USCIS.

On July 16, 2014, the Field Office Director issued the petitioner a Notice of Intent to Deny (NOID) the Form I-600, as the evidence she submitted with the Form I-600 was not sufficient to establish the beneficiary’s eligibility for immediate-relative classification as an orphan under U.S. immigration law. The petitioner responded to the NOID, asserting that the beneficiary is an orphan because her biological parents deserted her. On August 20, 2014, the Field Office Director denied the Form I-600, finding that the petitioner failed to meet her burden of proof in establishing that the beneficiary is an orphan due to desertion as defined in 8 C.F.R. § 204.3(b). The Field Office Director also determined that the record lacked sufficient evidence to establish that the beneficiary’s first guardian, another paternal aunt, deserted the beneficiary.

On appeal the petitioner asserts: contrary to U.S. immigration law, USCIS has “fused multiple definitions of orphan and is requiring that the [p]etitioner prove elements of multiple separate definitions”; USCIS has introduced new requirements, namely, that the petitioner prove desertion not only by the beneficiary’s biological parents but also by her first guardian; the beneficiary’s biological parents deserted her, and the beneficiary then became the ward of a competent authority – the Pakistani courts; pursuant to Pakistani law, a child becomes a ward upon the filing of a guardianship application; and the beneficiary was deserted because her biological mother does not have any contact with her, and her father does not have “meaningful contact” with her.

### *Analysis*

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

To establish that the beneficiary qualifies as an orphan, the petitioner submits an affidavit dated August 15, 2014, indicating: English is not her “first language” so she struggled to understand the consular officer’s questions and she did not express herself clearly during the visa interview, resulting in a misunderstanding of her responses; she filed Form I-600A as the beneficiary is an orphan who has been deserted by her biological parents, because her father does not intend to raise her or to provide her any support, and her mother “has not seen, spoken or visited [her] in many years and has no intention to do so in the future”; the beneficiary’s father considered leaving the beneficiary at an orphanage in 2009 upon her mother leaving them; the beneficiary lived with her grandmother initially, but due to the grandmother’s poor health, the petitioner’s sister was granted guardianship in April 2009; the beneficiary’s first guardian cannot continue in that capacity, as she

was getting married; and the beneficiary's father visits the beneficiary's grandmother whenever she is sick, but he has not visited the beneficiary, because his girlfriend ensures he does not interact with the beneficiary.

The record does not establish the petitioner's lack of understanding in the English language. The record includes home evaluations, indicating she has participated in various interviews and home visits with [REDACTED] the most recent conducted on December 6, 2013. Moreover, her August 2014 statement is in the English language and is not accompanied by a certification of translation. Accordingly, the record includes inconsistencies between the petitioner's testimony during her consular interview and the statements she submitted in response to the NOID. During the consular interview, the petitioner testified that the beneficiary's parents visited the beneficiary "on a regular basis" and that they intended to send the beneficiary to the United States to further her education. However, in her response to the NOID, the petitioner indicates that the beneficiary's father does not have any intention of raising the beneficiary or providing her with any support, and the beneficiary's mother has not seen or spoken with the beneficiary in many years. Where there are inconsistencies in the record, it is incumbent upon the petitioner to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner's appeal does not include such evidence to explain these material discrepancies.

Also in support of her assertions that the beneficiary qualifies as an orphan, the petitioner submits an excerpted copy of Pakistan's Guardian and Wards Act (the GWA), highlighting the definition of "ward" as "a minor for whose person or property, or both, there is a guardian[.]" The GWA also provides, "'guardian' means a person having the care of the person of a minor or his property, or of both his person and property[.]" The petitioner also asserts the GWA "states clearly that a child is a ward of court upon the filing of guardianship order," and she submits a copy of Guardianship Certificate and Order issued on April 17, 2014. Although the section of the GWA the petitioner provides pertains to definitions, it does not outline the process for establishing a child as a ward of the court or competent authority in Pakistan. Without further information, we cannot conclude that the petitioner has established that the beneficiary is a ward of the court or competent authority in Pakistan.

Based on the material inconsistencies between the petitioner's testimony during her consular interview and the statements she submitted in response to the NOID along with evidence that does not sufficiently demonstrate the process for establishing a ward of the court or competent authority in Pakistan, the petitioner has failed to establish that the beneficiary qualifies as an orphan as defined in 8 C.F.R. § 204.3(b). However, we agree with the petitioner's assertion that to qualify as an orphan based on desertion, the petitioner only must establish that the beneficiary's parents deserted the beneficiary and not the beneficiary's first guardian as well.

### *Conclusion*

In our adjudication of this appeal, we have thoroughly reviewed the administrative record and considered the facts and legal issues presented; however, USCIS does not have discretion to approve an orphan petition where a petitioner fails to establish a child's eligibility under the statutory criteria at section 101(b)(1)(F)(i) of the Act. The facts do not demonstrate the

beneficiary's eligibility for orphan classification, because she is not the child of a sole or surviving parent; in addition, the facts do not demonstrate that she falls within the definition of orphan based on the death or disappearance of, abandonment or desertion by, or separation or loss from, both of her parents. 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) (citation omitted). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.