



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 23 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (“Center Director”) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600) and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be denied. The AAO’s prior decision will be affirmed, and the petition will remain denied.

The petitioner is a 39-year-old U.S. citizen. She and her U.S. citizen spouse were awarded legal guardianship over the beneficiary, a seven-year-old native of Uganda, by the Family Division of the High Court of Uganda at [REDACTED] (“High Court”), on March 17, 2014. 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.

The Center 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 Immigration and Nationality Act (the Act). The AAO dismissed a subsequent appeal on October 17, 2014. On motion, the petitioner asserts that the beneficiary qualifies as an orphan due to abandonment and desertion by her parents, and separation 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.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

As explained below, we find that the petitioner’s submission does not meet the requirements for a motion to reconsider. The petitioner does not cite binding precedent decisions or other legal authority establishing that the AAO’s prior decision incorrectly applied the pertinent law or agency policy, nor does she show that the AAO’s prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. See 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be 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[.]

Analysis

Abandonment by both parents

In our October 17, 2014 decision, we determined that the petitioner had not established that the beneficiary met the definition of an orphan as a result of having been abandoned by both of her birth parents. In summary, we found that while the evidence reflects that the beneficiary's parents enrolled the beneficiary in a fully sponsored boarding school program at the [REDACTED] it does not reflect that the beneficiary's parents gave up

parental control over or claim to the beneficiary to [REDACTED] or that they relinquished or released their parental rights or obligations over the beneficiary when she enrolled at [REDACTED]. We further found that, even if the beneficiary's parents had relinquished their parental control and rights over the beneficiary by bringing her to [REDACTED], the record does not 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).

On motion, the petitioner correctly observes that the regulation does not require the relinquishment or release to a third party in anticipation of, or preparation for, adoption. *Petitioner's Brief* at 11. The petitioner, however, must demonstrate that both of the beneficiary's parents intended and actually 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 petitioner asserts that, in regard to these actions, the regulation does not require her to identify an exact moment of abandonment and instead a persistent pattern of conduct may suffice. *Petitioner's Brief* at 10. She states that the beneficiary's father rejected the beneficiary and the beneficiary's mother's actions over the course of years show her determination to abandon the beneficiary. *Id.*

The petitioner offers several examples of actions which she deems demonstrate abandonment. She contends that the beneficiary's biological father did not support the beneficiary after learning that she was deaf and he stated that he never intended to parent her. *Id.* She asserts that the beneficiary's mother stated that after she placed the beneficiary at [REDACTED] she never intended to parent her again and only saw the beneficiary when she was forced to accept her home for a few brief holidays through 2011. *Id.* She further asserts that the beneficiary's parents do not financially support her and the last time the beneficiary returned home was more than three years ago. *Id.* at 14-15. The petitioner concludes that the beneficiary "was not enrolled by her parents, she was remanded at age 2 to [REDACTED] care by her mother's inability or incapacity to care for a deaf child and her father's neglect, abuse or indifference – actions that constitute abandonment as that term is defined by U.S. law – to stay at [REDACTED] indefinitely." *Petitioner's Brief* at 15.

We find the evidence in record insufficient to demonstrate that the beneficiary's parents abandoned her, as that standard is defined in the regulation. The petitioner's claim that the last time the beneficiary returned home was in 2011 is belied by the affidavit the director of [REDACTED] submitted to the High Court for the guardianship proceedings in which he stated that the beneficiary returns to her home during the holidays and her mother often visits her at [REDACTED]. *Affidavit of [REDACTED]*, dated December 1, 2013.¹ Relatedly, the petitioner asserts that the beneficiary was abandoned because her parents failed to financially support her at [REDACTED]. This, too, does not demonstrate abandonment. Publicly available information indicates that the [REDACTED] is a non-profit

¹ Although this affidavit is date stamped November 31, 2013, the month of November has only 30 days. As such, we will assume for the purposes of these proceedings the date of the affidavit is December 1, 2013.

organization which relies upon donations and does not request tuition for its boarding school program.²

The beneficiary's mother stated in her affidavit submitted on appeal that she agreed to the beneficiary's adoption because the beneficiary was in the care of the [REDACTED] and she never intended to parent her again. *See Affidavit of [REDACTED]* dated June 10, 2014. Other evidence of record, however, demonstrates that the beneficiary's mother maintained her parental rights, obligations and claims to the beneficiary as well as possession and control over the beneficiary. For example, the beneficiary's mother stated in the same affidavit that she was happy to find a school for deaf children because she wanted her daughter to have an education and be safe. *Id.* The High Court in its ruling during the guardianship proceedings determined that the beneficiary's mother had monitored her stay and progress at [REDACTED]. *In the Matter of Nakafuuma Leticia*, No. 005 of 2014, ruling at 3 (High Ct. Mar. 17, 2014). The High Court's ruling reflects that both of the beneficiary's parents desired for her to be educated and successful. *Id.* at 3-4. The probation and social welfare report submitted to the High Court from the Directorate of Gender Community Services in [REDACTED] also describes the beneficiary's mother's efforts to find a school to meet the beneficiary's special needs and stated that the beneficiary's mother visited her when she was at school. *Probation and Social Welfare Report*, dated February 4, 2014. Lastly, the [REDACTED] director requested in 2013 that she relinquish her parental rights for the purpose of adoption, which undercuts the petitioner's assertion that enrollment of the beneficiary at the [REDACTED] constituted an act of abandonment or the beginning of a series of actions that, viewed cumulatively, caused abandonment. *See Affidavit of [REDACTED]* dated July 9, 2014.³

While the record shows the beneficiary's father's lack of involvement in parenting the beneficiary, the record does not show his abandonment as that term is defined in U.S. immigration law. The probation and social welfare report indicates that the beneficiary's father did not show any interest in enrolling the beneficiary in school. *Probation and Social Welfare Report*, dated February 4, 2014. The director of [REDACTED] similarly recounted that the beneficiary's father showed no interest in the beneficiary and never expressed objections to the beneficiary living at the school. *Affidavit of [REDACTED]* dated July 9, 2014. The beneficiary's father briefly recounted, but did not further elaborate, in his affidavit that he never intended to parent the beneficiary after she enrolled at [REDACTED]. *Affidavit of [REDACTED]* dated June 10, 2014. These documents show the

² [REDACTED] (last visited Apr. 7, 2015).

³ The director of [REDACTED] indicated that the beneficiary's mother cannot provide for her and she willingly relinquished her parental rights when presented with the possibility of the beneficiary's adoption. *Affidavit of [REDACTED]* dated July 9, 2014. The petitioner similarly stated that the beneficiary's mother is unable or incapable of caring for a deaf child. *Petitioner's Brief* at 15. However, the standard for *abandonment by both parents* is not "incapable of providing proper care," but showing 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." 8 C.F.R. § 204.3(b).

beneficiary's father's indifference in parenting the beneficiary, but they do not show that the beneficiary's father had "willfully forsaken all parental rights, obligations and claims" to the beneficiary and "control over the possession" of the beneficiary. See 8 C.F.R. § 204.3(b). The director of [REDACTED] stated that when he approached the beneficiary's parents about the beneficiary's adoption, the beneficiary's father was willing to relinquish his rights, indicating the beneficiary's father had, in fact, continued to maintain his parental rights over the beneficiary during her enrollment at [REDACTED]. *Affidavit of*, [REDACTED], dated July 9, 2014.

The petitioner further asserts that we erroneously determined that the beneficiary was relinquished for a specific adoption, because the beneficiary was abandoned by her parents more than four years prior to the guardianship proceedings and the beneficiary's parents did not meet the petitioner until after their relinquishment. *Petitioner's Brief* at 17. However, as discussed, documentation in the record from the guardianship proceedings shows that the beneficiary's parents ultimately relinquished and released the beneficiary for a specific adoption after the director of [REDACTED] discussed the possibility of adoption by the petitioner and her husband with them. The director of [REDACTED] explained in his affidavit submitted to the High Court, "I informed the child's parents about the applicants' intentions and they informed me that it was a very good opportunity for the child given her disability." *Affidavit of*, [REDACTED], dated December 1, 2013. Furthermore, the High Court in its ruling stated that the beneficiary's mother interacted with the petitioner at the beneficiary's school. *In the Matter of Nakafuuma Leticia*, No. 005 of 2014, ruling at 3. The beneficiary's parents issued not only their irrevocable release of their rights and responsibilities over the beneficiary, but also their specific consent to the order of legal guardianship by the petitioner and her husband. See *Beneficiary's Parents' Consent to an Order of Legal Guardianship; Release of the Beneficiary*, dated March 17, 2014. The record therefore establishes that the beneficiary's parents released the beneficiary to the petitioner and her spouse for a specific adoption.

The petitioner asserts in the alternative that [REDACTED] is an "orphanage-like institution," where the beneficiary's parents relinquished her for custodial care in anticipation of adoption. *Petitioner's Brief* at 13. The High Court, however, required the beneficiary's parents' consent to the petitioner's application for guardianship, indicating that the beneficiary's parents maintained their legal custody and parental rights over the beneficiary even after her enrollment at [REDACTED]. *In the Matter of Nakafuuma Leticia*, No. 005 of 2014, ruling at 6. The record does not show that custodial care was ever relinquished to [REDACTED]. Moreover, the regulation specifically states that, "[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." 8 C.F.R. § 204.3(b). The record reflects that the beneficiary's mother exhibited ongoing interest in the beneficiary as she sought out [REDACTED] to help the beneficiary receive an education and that, after the beneficiary was enrolled at the school, she continued to monitor her progress at the school and have her visit on holidays. Finally, even if the beneficiary's parents relinquished her to [REDACTED] the record does not establish that [REDACTED] is authorized under the child welfare laws of Uganda to act in the capacity of a custodian. See 8 C.F.R. § 204.3(b)(stating that, "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 . . . is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.”).

The petitioner contends that guidance in USCIS’ Adjudicator’s Field Manual (AFM) requires us to conclude that the beneficiary was abandoned based on the guardianship order. *Petitioner’s Brief* at 13. In pertinent part, chapter 21.5 of the AFM states that, “[p]rimary evidence of abandonment is a decree from a court or other competent authority that unconditionally divests the parent(s) of all parental rights over the child.” This guidance, however, does not address the requirement that the petitioner must demonstrate 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).” 8 C.F.R. § 204.3(b). Here, the guardianship proceedings show that the beneficiary’s parents maintained their parental rights over the beneficiary until they consented to the petitioner and her spouse’s custody of the beneficiary. The record does not demonstrate that the beneficiary ever became a ward of the court or that the beneficiary’s parents’ parental rights were terminated prior to the guardianship proceedings. The High Court’s ruling shows that the petitioner was granted guardianship of the beneficiary based on the court’s determination that such guardianship would be in the “best interest of the child.” However, the record does not establish that the guardianship order was granted because of a determination that the beneficiary’s parents abandoned her. Accordingly, the petitioner has not established that we erred in concluding that the beneficiary was *abandoned by both parents*, as the term is defined at 8 C.F.R. § 204.3(b).

Desertion by parents

In our prior decision, we determined that the petitioner failed to establish that the beneficiary is an orphan due to *desertion by both parents*. We explained that the record does not reflect that the beneficiary’s parents relinquished their parental control or rights over the beneficiary and the record contains no court order or other evidence reflecting that the beneficiary became, at any time, a ward of the court in Uganda. On motion, the petitioner asserts that the AAO applied the desertion definition too narrowly and failed to consider that the beneficiary’s parents left the beneficiary at the school unassisted and unattended for nearly three years and that the beneficiary became a ward of the court at the moment the guardianship action was filed. *Petitioner’s Brief* at 19.

We find no error in our determination that the petitioner has not demonstrated that the beneficiary qualifies as an orphan based on desertion. The term *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. 8 C.F.R. § 204.3(b).

First, the petitioner has not demonstrated that the beneficiary’s parents have “willfully forsaken their child and have refused to carry out their parental rights and obligations.” As discussed, the record shows that the beneficiary’s mother searched for a school that could address the special needs of the beneficiary and after the beneficiary moved to  for boarding school her mother



continued to visit her at the school and monitor her stay and progress. *See Probation and Social Welfare Report*, dated February 4, 2014; *In the Matter of Nakafuuma Leticia*, No. 005 of 2014, ruling at 2-3.

Second, the petitioner has not established that the beneficiary became a “ward of competent authority.” The petitioner contends that the beneficiary became a “ward” of the High Court once the guardianship application was filed. She states that, under the AFM, primary evidence of desertion consists of a decree from a court or other competent authority making the child a ward of the state. *Petitioner’s Brief* at 20. However, the High Court’s ruling does not reflect that it determined the beneficiary to be dependent on the court or a ward of the state. Instead, the High Court weighed the consent of the beneficiary’s parents as a factor in granting guardianship to the petitioner and her spouse.

Finally, even if we consider the petitioner’s alternative assertion that [REDACTED] qualifies as a competent authority under Uganda’s laws, we do not find sufficient evidence that the beneficiary was a ward of the [REDACTED]. The petitioner asserts without elaboration that the director was the beneficiary’s “custodian.” [REDACTED] was not a party to the guardianship proceeding, and the record does not show that the director or [REDACTED] considered the beneficiary a ward of the school or that it supplanted the rights of the beneficiary’s parents. We would expect a boarding school such as [REDACTED] to exercise some form of custodial responsibility for the children placed in its charge. But the record does not reflect that the director or [REDACTED] had legal custody of the beneficiary. The record instead shows that the director of [REDACTED] consulted with the beneficiary’s parents to obtain their consent to the adoption as they maintained parental rights over the beneficiary. *See Affidavits of [REDACTED]*, dated December 1, 2013 and July 9, 2014. Accordingly, the petitioner has failed to establish that the beneficiary is an orphan due to *desertion by both parents*.

Separation from parents

In our prior decision, we determined that the petitioner did not establish that the beneficiary is an orphan due to *separation from both parents*. We found that the 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 husband for adoption purposes. We stated that the record does not, however, 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.

On motion, the petitioner asserts that the High Court terminated the parental rights of the beneficiary’s parents when it issued the guardianship order. She states that the beneficiary’s parents appeared in a Ugandan Court and did not contest guardianship. *Petitioner’s Brief* at 22. The term *separation from both parents* requires “*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.*” 8 C.F.R. § 204.3(b) (emphasis added). In this case, the petitioner has not established an “involuntary severance” of the beneficiary from her parents. As discussed, the beneficiary’s parents *voluntarily* issued their irrevocable release of their rights and responsibilities

over the beneficiary and their specific consent to the order of legal guardianship by the petitioner and her spouse. See *Beneficiary's Parents' Consent to an Order of Legal Guardianship; Release of the Beneficiary*, dated March 17, 2014. Accordingly, the petitioner did not establish that the beneficiary is an orphan under this standard.

Sole parent

We determined in our prior decision that the petitioner did not establish, alternatively, that the beneficiary meets the definition of an orphan because she has a *sole parent* incapable of providing proper care. We found that, since the beneficiary's birth certificate contains her father's name, she is a legitimate child under the law in Uganda which 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.

On motion, the petitioner agrees that Uganda does not distinguish between a child born in or out of wedlock. She, however, asserts that our determination -- that the term *sole parent* does not apply to children born in counties which make no distinction between a child born in or out of wedlock -- is a fundamental legal error. *Petitioner's Brief* at 22. The regulation defining the term *sole parent* plainly states that the standard does not apply 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." 8 C.F.R. § 204.3(b). In our prior decision, we cited to the Ugandan Children Act, Chapter 59 §§ 71-72, and determined that Ugandan law 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. However, we conflated requirements for establishing paternity of a child under the Children Act with a requirement to legitimate a child. As there is no distinction under Ugandan law between children born in and out of wedlock, there would therefore also be no legitimation requirements. Consequently, the legal analysis of the *sole parent* issue in our prior decision was not based on the appropriate standards; whether and when the beneficiary's father registered his name on the beneficiary's birth certificate is not relevant to the issue of whether the beneficiary's mother is a *sole parent*. Furthermore, as explained below, the record is not consistent on whether the beneficiary was even born out of wedlock, as there is considerable evidence that her parents are customarily married.

The petitioner asserts that, while the beneficiary's father may be the presumed legitimate father under Ugandan law, this fact does not prevent the beneficiary's mother from being considered a *sole parent* under United States law. The petitioner contends that guidance from chapter 21.5 of the AFM, read consistently with section 101(b)(2) of the Act and relevant legislative history, demonstrates that the beneficiary's mother is a *sole parent*. *Petitioner's Brief* at 23-24. However, the petitioner erroneously cited to the regulation at 8 C.F.R. § 204.3 when quoting the AFM language, "the child was in the legal custody of the legitimating parent." The AFM language must be read together with, rather than separate from, the regulation, which clearly states that "this definition is not applicable to children born in countries which make no distinction between a child born in our out of wedlock, since all such children are considered to be legitimate." 8 C.F.R. § 204.3. Even were we to look beyond the plain language of 8 C.F.R. § 204.3(b) and accept that the beneficiary's mother could meet the definition of

sole parent if the beneficiary was not in the legal custody of her father when “legitimated,” the outcome would be the same. The record reflects that the beneficiary’s father maintained legal custody over the beneficiary until he relinquished it before the High Court.⁴ The High Court’s ruling shows that the beneficiary’s legitimacy was not at issue during the guardianship proceedings and the court recognized the beneficiary’s father as having parental rights over the beneficiary.

Furthermore, as stated above, we find significant evidence in the record showing that the beneficiary was, in fact, born in wedlock, which, if true, would preclude a *sole parent* finding. The BIA has long held that “the validity of a marriage generally is determined according to the law of the place of celebration.” *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983)(citations omitted). The DOS visa reciprocity schedule for Uganda provides that the majority of marriages between Ugandans are performed according to customary tribal law and certificates are obtainable from the village chief.⁵ On the one hand, the beneficiary’s mother and father stated in their respective affidavits that they are not married to each other, and the chairperson of their village also confirmed in his affidavit that there is no legally valid marriage between the beneficiary’s parents, *See Affidavit of* [REDACTED] dated June 10, 2014; *Affidavit of* [REDACTED] dated June 10, 2014; and *Affidavit of Mutebi Sulaiman*, dated June 10, 2014. On the other hand, however, in an affidavit issued for the guardianship proceedings, the beneficiary’s mother, stated that she is customarily married to the beneficiary’s father. *See Affidavit of* [REDACTED] dated October 22, 2013. The beneficiary’s father similarly named the beneficiary’s mother as his wife in the affidavit he issued for the guardianship proceedings. *Affidavit of* [REDACTED], dated October 22, 2013. Moreover, the High Court in its ruling reviewed the relevant evidence and testimony from the beneficiary’s parents and determined that they are “customarily married.” *In the Matter of Nakafiuma Leticia*, No. 005 of 2014, ruling at 3.

Based on the foregoing, we find that 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).⁶

⁴ Absent evidence that the father of a legitimated child has been deprived of his natural right to custody, the father will be presumed to have an equal right to custody with the child’s mother, and to satisfy the legal custody requirement of section 101(b)(1)(C) of the Act. *Matter of Rivers*, 17 I&N Dec. 419, 421 (BIA 1980).

⁵ U.S. Department of State, *Uganda Reciprocity Schedule*, <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/UG.html> (last visited Apr. 7, 2015).

⁶ The petitioner also asserts that we must consider the beneficiary’s father’s abandonment of the beneficiary, his irrevocable release of the beneficiary for emigration and adoption, and the beneficiary’s mother’s incapacity to provide proper care to the beneficiary. *Petitioner’s Brief* at 24. However, these factors are only relevant in a *sole parent* determination when it is established that the child is illegitimate and has not acquired a parent. *See* 8 C.F.R. § 204.3(b).



Conclusion

We acknowledge the petitioner's sincerity and good intentions, as well as the High Court's determination that it is in the best interest of the beneficiary to emigrate to the United States and be adopted by the petitioner and her husband. USCIS has no discretion, however, to approve an orphan petition when a petitioner has not established a child's eligibility under the statutory criteria at section 101(b)(1)(F)(i) of the Act. We have thoroughly reviewed the administrative record and considered the facts and legal issues presented. The record does not demonstrate that the beneficiary is eligible for orphan classification under any of the definitions found under the pertinent regulations. The beneficiary is not the child of a sole or surviving parent. Nor is she an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, as those terms are defined under applicable immigration law.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion to reconsider is denied. The October 17, 2014 decision of the Administrative Appeals Office is affirmed.