



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 16 2015 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)

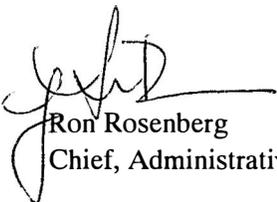
ON BEHALF OF PETITIONER:  
[REDACTED]

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted, the appeal will remain dismissed, and 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, 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; who has been adopted abroad by a U.S. citizen and spouse jointly. . . or who is coming to the United States for adoption by a United States citizen and spouse jointly . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *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.

*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.

\* \* \*

*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.

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)(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. He filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on September 18, 2013, seeking to classify the beneficiary, a citizen of [REDACTED] as an orphan under section 101(b)(1)(F)(i) of the Act, due to abandonment by both parents. The director denied the petition on January 9, 2014 because the evidence failed to establish that the relevant court in [REDACTED] gave permission for the beneficiary to emigrate to the United States, and because the petitioner failed to establish that the beneficiary was abandoned by both parents as that term is defined in the regulations. On appeal, the petitioner overcame the issue relating to the beneficiary's ability to emigrate, but we ultimately dismissed the appeal because the beneficiary had not been abandoned by both of his parents.

On motion, the petitioner states that our reading of the regulation is arbitrary, capricious, and manifestly contrary to the statute. The petitioner states further that under the principle of comity, we should recognize the validity of the guardianship proceeding that was held in [REDACTED] and that the biological parents' relinquishment of the beneficiary directly to him was required in order to obtain legal guardianship under [REDACTED] law.

In support of the motion, the petitioner submits an affidavit, dated September 7, 2014, from [REDACTED] an attorney in [REDACTED] who states that in order to receive legal guardianship, the law requires the biological parents to relinquish their parental rights to the proposal legal guardian, and that the relinquishment in this matter was not made in anticipation of or preparation for an adoption but to comply with the applicable guardianship laws.

The petitioner also submits an affidavit from [REDACTED] dated August 24, 2014, stating that the beneficiary's biological parents came to him and requested that he take their child because they could not provide for him. Mr. [REDACTED] states that from the day he took the beneficiary the biological parents never inquired about him and refused to take parental responsibility. He states that adoption agencies are corrupt, with many instances of child abuse. Mr. [REDACTED] stated further that through inquiries, he learned that the petitioner and wife wanted to adopt a child, and that they chose to keep the beneficiary away from adoption agencies to ensure his welfare. The petitioner submits affidavits from other acquaintances to corroborate Mr. [REDACTED] assertions, as well as his own affidavit, an affidavit from his wife, and affidavits from the beneficiary's biological parents. The petitioner also submits informational materials from the [REDACTED] to demonstrate the poor state of orphans and orphanages in [REDACTED]

We conduct *de novo* review. Based on the evidence in the record, the beneficiary remains ineligible for orphan status.

*Analysis*

As we stated in our prior decision, the term *abandonment by both parents* is specifically defined at 8 C.F.R. § 204.3(b), and the petitioner must demonstrate that both of the beneficiary's biological 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 that 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 affidavit submitted on motion from Mr. [REDACTED] demonstrates that this particular adoption does not satisfy the regulatory definition of *abandonment by both parents*. Mr. [REDACTED] states in his affidavit that he is close friends with the petitioner and when he became aware of the petitioner and his spouse's desire to adopt a child, he told the petitioner's parents to contact him. According to Mr. [REDACTED] the petitioner decided to pay the expenses required for Mr. [REDACTED] to continue caring for the beneficiary rather than have the beneficiary placed in an orphanage. Mr. [REDACTED] has presented no evidence that he was authorized under the child welfare laws of [REDACTED] to act in the capacity of a third party to provide custodial care to the beneficiary in preparation for this adoption. Mr. [REDACTED] assertions regarding the requirements to obtain guardianship under [REDACTED] law are not relevant, given Mr.

assertions of brokering the adoption in a manner prohibited under the regulations. Despite the petitioner's assertions that our decision was arbitrary, capricious and contrary to the statute, the definition of *abandonment by both parents* at 8 C.F.R. § 204.3(b) is clearly defined and prohibits a petitioner from circumventing a country's child welfare laws to arrange for an adoption directly with the biological parents or through a private intermediary, which is what occurred here. Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act, due to abandonment by both parents.

*Conclusion*

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 motion is granted. The AAO's prior decision, dated August 13, 2014, is affirmed. The appeal remains dismissed and the petition remains denied.