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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 1 6 2015 OFFICE: NATIONAL BENEFITS CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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,

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 us on a motion to reopen. The motion will be granted, the appeal will remain dismissed, and the petition will remain denied.

The petitioner seeks to classify the beneficiary as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F). The director denied the petition because the petitioner: did not establish that she had legal custody of the beneficiary; failed to submit a home study; and failed to provide reliable evidence of the beneficiary's mother's death.

On appeal, we found that the petitioner submitted a compliant home study report, but she failed to submit proof of legal guardianship over the beneficiary and a No Objection Certificate from the Ministry of Home Affairs in We determined further that even if the petitioner had shown her guardianship over the beneficiary, she did not establish that the beneficiary's parents were deceased. We consequently dismissed the appeal because the beneficiary could not be classified as an orphan under the Act.

On motion, the petitioner submits new evidence.

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 in his behalf to accord a classification as an immediate relative under section 201(b) of this title, 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 by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, 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 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:

* * *

(B) The death certificate(s) of the orphan's parent(s), if applicable[.]

* * *

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of

the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

Facts and Procedural History

The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on August 14, 2013, when the beneficiary was 15 years old. The petitioner sought to classify the beneficiary, a citizen of as an orphan under section 101(b)(1)(F)(i) of the Act.

The director found, and we affirmed on appeal, that the beneficiary did not qualify for classification as an orphan. In our decision we noted that the petitioner failed to: submit proof of legal guardianship over the beneficiary; obtain a No Objection Certificate from the Ministry of Home Affairs in and establish with reliable evidence that the beneficiary's parents are deceased.

On motion, the petitioner submits new evidence to establish that the beneficiary qualifies as an orphan, including the following:

- An Order of Appointment from the Family Court, dated June naming the petitioner's spouse as the beneficiary's guardian, and reflecting an alias name of the beneficiary as
- A revised birth certificate of the beneficiary in the name of
- A note dated January from the alleged attending physician at the death of the beneficiary's mother indicating that the cause of her death on August 12, 1998 was severe dehydration resulting from diarrhea; and
- A translation of a certification dated March 9, 2014 by Md. Chairman, No. 1 stating that Md. was the legal guardian of the beneficiary after the death of her father until his death on June and that is her present legal guardian. The petitioner did not submit the original document from which this translation was taken.

Analysis

We conduct appellate review on a *de novo* basis. Upon review, the record continues to lack evidence of the beneficiary's eligibility for orphan status.

Legal Custody of Beneficiary

When the prospective parents seek to bring a child to the United States for adoption in the United States, the parents must first have secured legal custody of the child, as required by the regulation at 8 C.F.R. § 204.3(d). In addition, relevant to this case, the parents must have obtained an irrevocable release and consent to the child's adoption and emigration from her current guardian, and must submit evidence of compliance with all pre-adoption requirements from the state where the child will be adopted. The petitioner has not met any of these requirements in this case. Prospective adoptive parents must also obtain a No Objection Certificate from the Ministry of Home Affairs in *See http://adoption.state.gov.*(accessed October 29, 2014).

The U.S. Department of State (DOS) advises that there is no independent central government adoption authority in that the Family Court has sole jurisdiction over family matters; and that:

> Prospective adoptive parents seeking to gain guardianship of a child must submit an application for legal guardianship to the Family Court having jurisdiction over the child's place of residence[.]

See http://adoption.state.gov.

On motion, the petitioner submits part of a one-page document labeled Family Guardianship Case No. in the Family Court, indicating that Md. the maternal uncle of the minor, is appointed/declared guardian of the person and property.[1] We do not accept this document as proof of the petitioner's legal guardianship. The document is cut off at the attestation; as such, it is not clear whether the document was translated from the official language of There is no document attached. The document is also substantively incomplete. It refers to the terms of a bond furnished by Mr. but leaves blank the date the bond was furnished. The appointment letter does not state who the previous guardian was, or reflect who applied for the guardianship appointment. The document refers to the application for guardianship, but no application is attached. The document does not refer to a name change requested for the beneficiary, but states that the beneficiary is also known as [2] In view of these irregularities, we do not accept the document as proof of Mr. legal guardianship.

[1] Mr. is the spouse of the petitioner in this case. The Family Guardianship Case Number differs from the one identified in the record by attorney-at-law, in his statement dated May 13, 2013. In that statement, Mr. refers to a petition for official guardianship filed by Mr. for the beneficiary, "which is currently pending in Family Guardianship Appeal Case # The record does not explain the inconsistencies in the two case numbers for Mr. o obtain guardianship of the beneficiary.

[2] The petitioner states that the Family Court approved her request for a new name.

Further, the document does not name both the petitioner and her husband as the beneficiary's legal guardians, as required by 8 C.F.R. § 204.3(d). The document names only the petitioner's husband, who is a lawful permanent resident and not a U.S. citizen like the petitioner. The child must be coming to the United States for adoption by a U.S. citizen and his/her spouse. *See* Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). As the appointment does not name the United States citizen petitioner, and does not name both the petitioner and her husband, it does not meet the requirement of the regulations that the adoptive parents must have been granted legal guardianship.

Finally, the petitioner has not established that all pre-adoption requirements of the State of New York have been met. New York has special provisions relating to children to be brought into the state for private-placement adoptions. The record does not establish that these provisions have been complied with. *See* McKinney's Consolidated Laws of New York Annotated, Chapter 14, Article VII, Title III. Section 115-a.

On motion, the petitioner failed to submit a No Objection Certificate from the ministry of Home Affairs in Thus, the petitioner does not qualify as an orphan under the laws of . *See http://adoption.state.gov* (accessed October 29, 2014).

Death of Parents

On appeal, we found that petitioner failed to establish, by a preponderance of the evidence, that the beneficiary's biological parents were deceased, because she submitted delayed death certificates for each parent. The death certificate for the beneficiary's biological father was registered a year after the date of death. The death certificate for the beneficiary's biological mother was registered 14 years after the date of death. We noted that neither death certificate reflected the basis upon which it was issued or the circumstances of death, and the record contained no contemporaneous corroborative evidence of the deaths.[3]

On motion, the petitioner submits a note dated January 26, 2014 claiming to be from the attending physician at the death of the beneficiary's mother. The note indicates that the cause of the beneficiary's mother's death on August was severe dehydration resulting from diarrhea. This 2014 note is not contemporaneous corroborating evidence of the death. We do not have any document from reflecting that the beneficiary's mother died in that year. The same evidentiary weight does not attach to a delayed death certificate, as would attach to one contemporaneous with the actual death. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte,* 21 I&N Dec. 1029, 1033 (BIA 1997). The petitioner did not address our concerns about the biological father's delayed death certificate. Given the lack of objective contemporaneous documentation of the beneficiary's biological parents' lives or deaths in the record, we cannot conclude that her parents are deceased.

[3] We note further that neither of the translated death certificates reveals the birth date of either deceased person; nor is the certifying physician named on either certificate. We also note that neither of the translations is accompanied by the language document from which the translation is taken. As such, neither translation may be considered. Because the petitioner failed to submit the document from which the translation was taken, we cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

The beneficiary's birth certificate also has diminished evidentiary weight. *See Matter of Bueno-Almonte, supra. See also, Matter of Serna,* 16 I&N Dec. 643 (BIA 1978) (the evidentiary weight of a delayed birth certificate is evaluated in light of other evidence in the record and in light of the circumstances of the case). We noted in our previous decision that the beneficiary's birth certificate was registered after the claimed deaths of her biological parents, and 14 years after the beneficiary's birth. We noted that the certificate did not reflect the basis upon which it was issued; and the record contained no contemporaneous or documentary evidence corroborating the beneficiary's birth to On motion, the petitioner did not address our concerns about the unreliability of the beneficiary's birth certificate.

On motion, the petitioner submits a revised birth certificate changing the name of the beneficiary to The new certificate, however, keeps the same date of issue as the original birth certificate, June 4, 2012. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). There is no objective evidence of record explaining how two different birth certificates for the beneficiary, under two different names, were registered and issued on the same date.

The petitioner has therefore 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, due to the death of 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 July 31, 2014, is affirmed. The appeal remains dismissed and the petition remains denied.