



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JUN 05 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:

[Redacted]

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](http://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 (Director) initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600), but revoked the petitioner's approval after proper notice and dismissing the petitioner's subsequent motion to reopen and reconsider. The petitioner, through counsel, appealed the Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on 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 47 year-old U.S. citizen. He and his U.S. citizen spouse were issued an Order for Inter-country Adoption (Order) of the beneficiary, an eight year-old native of Ghana, by the High Court of Justice – [REDACTED], on [REDACTED]. The petitioner filed Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on July 16, 2013, seeking to classify the beneficiary as an orphan and the child of a sole parent who is incapable of providing proper care to the beneficiary. The petitioner's Form I-600 was initially approved on August 28, 2013, but was subsequently revoked on July 25, 2014, because the petitioner failed to establish he and his spouse were not subject to Ghana's suspension concerning adoption processes and 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 November 14, 2014. On motion, the petitioner asserts that in our decision, we committed errors of fact and law by failing to appropriately assess credibility as required under section 11.1(l) of the USCIS Adjudicator's Field Manual (AFM) and by misapplying the preponderance of the evidence standard of proof by giving certain facts excessive weight and "devaluing or ignoring" other credible evidence in the record; and the beneficiary qualifies as an orphan due to abandonment, desertion, and separation from her birth parents, and the disappearance of her birth father. Alternatively, the petitioner asserts the beneficiary is the child of a sole parent who is incapable of providing proper care to the beneficiary.

As a preliminary matter, we note the section of the AFM<sup>1</sup> the petitioner refers to concerns assessing credibility for impeachment purposes, and when adjudicators make a negative credibility finding, directs them to indicate in their written decisions that a negative credibility finding has been made and to include the reasons for their conclusion. The record indicates that although discrepancies have been identified, it does not support a negative credibility finding in the instant case.

---

<sup>1</sup> AFM § 11.1 states, in relevant part:

(l) Impeachment.- ... Questioning with a view to impeachment is often directed toward showing the witness' conviction of a crime affecting the witness' veracity or other matters tending to show insensibility to the obligations to tell the truth when under oath. ... If you decide that the statement or testimony of a petitioner or applicant, or of any other witness, is not credible, your written decision should indicate this conclusion. It generally is not enough simply to say that the witness is not credible. Instead, your decision should give the specific reason or reasons for your conclusion, and refer to the elements of the record that support the conclusion.

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 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 in our prior decision, we incorrectly applied the pertinent law or agency policy, nor does he show that our 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 relevant 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 relevant 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.

*Disappearance of both parents* means that both parents have accountably 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.

\* \* \*

*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.

Relevant 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)(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

\* \* \*

(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; and

(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 ...married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad[.]

*Analysis*

*Abandonment by both parents*

In our November 2014 decision, we determined the petitioner did not establish 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 the beneficiary's birth mother enrolled the beneficiary in the [REDACTED], a non-governmental organization under the Registrar General Department of Ghana, it does not reflect that [REDACTED] is authorized by the Ghanaian child welfare laws to take custody of a child to place for adoption, or that the beneficiary's birth mother declared an intention to forsake her parental rights over the beneficiary before she consented to the beneficiary's international adoption and emigration from Ghana before the High Court of Justice in June 2012. We also found the record does not include evidence that the beneficiary's birth father took any overt or implied actions to willfully forsake his parental rights and control over the beneficiary, as the evidence includes a copy of a birth certificate in the Registrar of Births and Deaths for Ghana

(RBDG), indicating he was the informant of the beneficiary's birth. We further found that while the beneficiary's birth mother asserts the birth father did not contribute to the beneficiary's upbringing and he consented to placing the beneficiary at [REDACTED] the record does not include evidence to support these assertions.

On motion, the petitioner correctly observes the regulation does not require the beneficiary's relinquishment or release to a third party in anticipation of, or preparation for, adoption. However, the petitioner 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 the regulation does not require identifying an exact moment of abandonment, and instead a persistent pattern of conduct may suffice. He states the beneficiary's birth mother's actions over the course of years show an intention to abandon the beneficiary. He also states that relinquishments are signed in every case before the Ghanaian courts as they "identify both sets of parents and are culturally and jurisprudentially common in a myriad of previously approved U.S. adoption proceedings from Ghana." He further states our finding that the beneficiary's birth mother's relinquishment in April 2013 establishes the direct placement of the beneficiary "is an arbitrary and capricious 180 degree about-face in agency policy and would nullify *every* Ghanaian adoption," given how frequently such relinquishments occur in Ghanaian court proceedings.

The petitioner offers several examples of actions he deems demonstrate abandonment by the beneficiary's birth mother. He contends she has refused to parent the beneficiary for over five years and has not demonstrated an ongoing interest in the beneficiary as she gave the beneficiary unconditionally to [REDACTED] in 2009, the beneficiary has not lived with her since the placement, she declined to have the beneficiary returned to her when [REDACTED] director sought to reunite them after a year, and she has never expressed an intent to retrieve the beneficiary. The petitioner also contends the birth mother has not provided any support for the beneficiary, including the payment of any fees to [REDACTED]

We find the evidence in the record insufficient to demonstrate the beneficiary's birth mother abandoned the beneficiary, as that standard is defined in the regulation. The petitioner's claim the birth mother gave the beneficiary unconditionally to [REDACTED] and that she has not demonstrated an ongoing interest in the beneficiary is belied by inconsistent evidence in the record. In an affidavit dated June 3, 2014, the petitioner indicates he made an "unannounced visit" to [REDACTED] on May 18, 2014, while the beneficiary was living there. He also indicates that during a subsequent conversation with the beneficiary's foster mother, the beneficiary and her sister relayed "seeing their mother a couple of times" while at [REDACTED]. In an unsigned declaration dated June 2014, the beneficiary's sister states their birth mother "has come to visit us several times while we have been living at the orphanage"; and "since we were brought to the orphanage over two Christmases ago, we have never gone back to live with our mother." In a declaration dated January 18, 2014, the [REDACTED] director indicates she met the beneficiary's birth mother upon the beneficiary's placement with [REDACTED], and she met the birth mother again during the adoption proceedings. She also indicates "no other people visited [the beneficiary] since [she] arrived at the orphanage." In a

declaration dated August 23, 2013, the director indicates the beneficiary did not have any visitors while she was at [REDACTED] from May 6, 2009 until March 2013, upon her placement into a foster home, and she did not have any contact or support from any family members at [REDACTED] other than a visit with her birth mother on June 6, 2012. In a declaration dated January 18, 2014, a [REDACTED] teacher indicates she had been working at [REDACTED] for more than 18 months, and “no other individuals have visited the [beneficiary] since [she] has been working at the orphanage[.]” Based on the foregoing, the record indicates the beneficiary’s birth mother maintained a level of continued involvement with the beneficiary. The petitioner does not explain why some documentation indicates the beneficiary’s birth mother had limited interaction with the beneficiary since placing her with [REDACTED] in 2009, while other documentation indicates more frequent interactions. 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). Relatedly, the petitioner asserts the beneficiary was abandoned because her birth mother failed to pay any fees on her behalf while she was at [REDACTED]. In her declaration dated May 20, 2014, the birth mother also states she did not pay any fees to [REDACTED] or provide other support to the beneficiary after placing the beneficiary with [REDACTED]. This, too, does not demonstrate abandonment. Publicly available information indicates [REDACTED] is a non-governmental organization which relies solely upon donations.<sup>2</sup> Moreover, the petitioner indicates in his affidavit that he believes the daily fees only applied to children enrolled in the school and not to those who were living fulltime at [REDACTED] like the beneficiary.

The beneficiary’s birth mother also states in a declaration dated January 18, 2014, that she agreed to the beneficiary’s adoption because she “wanted the [beneficiary] to be well taken care of and [she] could no longer care for [her]”, she “never planned to parent” the beneficiary again, and she understands that she may never see the beneficiary again. Other evidence in the record, however, demonstrates the beneficiary’s birth mother maintained her parental rights, obligations, and claims to the beneficiary as well as possession and control over the beneficiary. In her declarations, the [REDACTED] director indicates the beneficiary’s birth mother told her the birth mother was unable to care for the beneficiary, and accordingly, brought the beneficiary to [REDACTED]. She also indicates that in May 2012, she requested the birth mother to consider relinquishing parental rights for the purpose of adoption, and she placed the beneficiary up for adoption on June 6, 2012 because the birth mother was unable to care for the beneficiary. The standard for *abandonment by both parents* is not “incapable of providing proper care,” but showing 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). The director’s actions indicate the birth mother had, in fact, continued to maintain her parental rights while the beneficiary was at [REDACTED]. Accordingly, evidence in the record undercuts the petitioner’s assertion the beneficiary’s placement at [REDACTED] constituted an act of abandonment or the beginning of a series of actions that, viewed cumulatively, constitute abandonment.

<sup>2</sup> See [REDACTED]

The petitioner further asserts we erroneously determined the beneficiary was relinquished for a specific adoption because relinquishments are commonplace in Ghanaian court proceedings, and the beneficiary's birth mother's relinquishment in 2012 did not identify who would ultimately adopt the beneficiary but instead was made to rescind her parental rights "permanently, irrevocably, and forever." In the alternative, the petitioner asserts [REDACTED] is an "orphanage-like institution," where the beneficiary's birth mother relinquished the beneficiary for custodial care in anticipation of adoption. In a relinquishment before the High Court of Justice in [REDACTED] Ghana, on June 6, 2012, the beneficiary's birth mother authorizes [REDACTED] to take custody of the beneficiary for the purpose of placement for an international adoption. While we agree with the petitioner that the June 2012 relinquishment does not specify an individual to adopt the beneficiary, the record does not establish that [REDACTED] is authorized under the child welfare laws of Ghana to act in the capacity of a custodian. 8 C.F.R. § 204.3(b) (stating, "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."). Accordingly, the record establishes the beneficiary's birth mother maintained legal custody over the beneficiary despite her relinquishment in June 2012.

Moreover, the record includes a Consent to Adoption Order (Consent) dated April 29, 2013, in which the beneficiary's birth mother identifies the petitioner and his spouse as individuals to whom she consents to adopt the beneficiary. The regulation specifically states, "[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). As the record indicates that [REDACTED] is not authorized to act in the capacity of custodian, the beneficiary's birth mother maintained legal custody and parental rights over the beneficiary when she issued the Consent in 2013. We therefore conclude the record sufficiently establishes the beneficiary's birth mother released the beneficiary for a specific adoption by the petitioner and his spouse.

The petitioner also asserts credible evidence in the record corroborates the beneficiary's birth mother's assertions that the beneficiary's birth father did not contribute to the beneficiary's upbringing, and that he consented to her placement with [REDACTED] thereby, demonstrating his abandonment of the beneficiary. The petitioner states the birth father's whereabouts are unknown after diligent efforts were made to find him; [REDACTED] staff has never seen the birth father; the birth father has never visited the beneficiary while she was at [REDACTED] and the individual called "power of attorney" has not seen the birth father since he began working with the beneficiary's birth mother regarding the adoption.

We find the evidence in the record insufficient to demonstrate the beneficiary's birth father abandoned the beneficiary, as that standard is defined in the regulation. In her January 2014 declaration, the beneficiary's birth mother indicates she informed the birth father that she was going to place the beneficiary at [REDACTED] and he did not raise any objections or make inquiries about its school and orphanage; the birth father did not have any involvement with the beneficiary upon her placement, and the last time the beneficiary saw him was about four years ago; and he did not take care of her children, including the beneficiary, when he was present in their lives. In a declaration

dated January 19, 2014, the birth father's sister indicates their family has not heard from the birth father in over two years, and she does not know his whereabouts or how to contact him. She also indicates her boyfriend gives money to the beneficiary's birth mother, because the birth father does not provide for her and her children. The declarations show the beneficiary's birth father's indifference in parenting the beneficiary, but they do not show that the beneficiary's birth 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). However, assuming *arguendo* that the birth father has willfully forsaken his rights and control to [REDACTED] by not contesting the placement of the beneficiary there, as stated previously, the record does not establish that [REDACTED] is authorized under the child welfare laws of Ghana to act in the capacity of a custodian. 8 C.F.R. § 204.3(b). Accordingly, the record reflects the birth father maintained legal custody of the beneficiary, despite any agreement to have her placed with [REDACTED] in 2009.

In our prior decision, we determined the record includes inconsistent documentation concerning the beneficiary's birth because two birth certificates with the same entry number and registration date exist, both indicating they are true copies of the beneficiary's birth certificate, with one identifying the birth father and the other the birth mother as the informant with the RBDG. We also noted the record includes a statement from the power of attorney who explains he initially registered the beneficiary's birth, and not the birth father. Based on the inconsistencies, we concluded the record does not demonstrate the birth father took any overt or implied actions to willfully forsake his parental rights and control over the beneficiary. On motion, the petitioner contends that upon realizing the power of attorney was mistakenly identified as the beneficiary's birth father when he initially registered the beneficiary's birth, efforts were made to correct the birth certificate. He also contends except for the section identifying the informant, the birth certificates contain the same information and the one that was procured on August 21, 2014, is a "corrected" birth certificate. Based on the foregoing, we find the record does not sufficiently establish the beneficiary's birth father served as the informant of the beneficiary's birth. Accordingly, we withdraw this as a determinative factor that he has not abandoned the beneficiary.

The petitioner also contends that guidance in the AFM requires us to conclude the beneficiary was abandoned based on the Order. Chapter 21.5 of the AFM states, in relevant part, "Primary 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 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). For the aforementioned reasons, the record establishes the beneficiary's birth mother released the beneficiary for a specific adoption by the petitioner and his spouse, and it establishes the birth father's indifference to parent the beneficiary, but it does not establish the beneficiary's birth 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)." Accordingly, we find the petitioner has not established that we erred in concluding 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 the petitioner failed to establish the beneficiary is an orphan due to *desertion by both parents*. We explained the record does not reflect the beneficiary's birth parents refused to carry out their parental obligations, resulting in the beneficiary becoming a ward of a competent authority in Ghana. On motion, the petitioner asserts we applied the desertion definition too narrowly and failed to consider the beneficiary's birth parents left the beneficiary at [REDACTED] unassisted and unattended for nearly three years. He also asserts that acts of desertion do not have to be contemporaneous with the birth parents' willful forsaking of the child or refusal to parent for the child to become a ward of the court. Upon review of the record, we do not find an error in our determination that the petitioner has not demonstrated the beneficiary qualifies as an orphan based on desertion. The term *desertion by both parents* means the birth parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and, 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 the beneficiary's parents have "willfully forsaken their child and have refused to carry out their parental rights and obligations." The petitioner contends [REDACTED] had to "step in" and inquire about a possible long-term placement for the beneficiary because she was left there. As previously discussed, the record shows the beneficiary's mother continued to visit the beneficiary at [REDACTED] and that she and the beneficiary's birth father maintained legal custody over the beneficiary.

Second, the petitioner has not established the beneficiary became a "ward of a competent authority." The petitioner contends that under the AFM, primary evidence of desertion consists of a decree from a court. As previously noted, on May 16, 2013, the High Court issued the Order, indicating the beneficiary's adoption by the petitioner and his spouse. 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.

Finally, even if we were to consider the petitioner's aforementioned alternative assertion that [REDACTED] qualifies as a competent authority under Ghana's laws, we do not find sufficient evidence the beneficiary was a ward of [REDACTED]. [REDACTED] was not a party to the adoption proceedings, and as discussed, the record does not reflect [REDACTED] had legal custody of the beneficiary. The record instead shows that the [REDACTED] director consulted with the beneficiary's birth mother to obtain her consent to an adoption as she maintained parental rights over the beneficiary. Accordingly, the petitioner has failed to establish the beneficiary is an orphan due to *desertion by both parents*.

*Separation from parents*

In our prior decision, we determined the petitioner did not establish the beneficiary is an orphan due to *separation from both parents*. We found the record does not indicate the beneficiary was involuntarily severed from either of her birth parents after proper notice by action of a competent authority for good cause and in accordance with Ghana's laws. On motion, the petitioner asserts we applied the

separation definition too narrowly, because a child does not have to be removed from the home “in the legal sense,” and parental opposition is not required. He also contends the beneficiary’s birth mother was notified of and appeared before the High Court regarding the beneficiary’s adoption proceedings, and she did not contest the adoption. He further contends the High Court reviewed and found the absence of the beneficiary’s birth father to be a compelling factor, and accordingly, terminated his parental rights and granted the adoption to the petitioner and his spouse. He also indicates the Order is primary evidence of separation as it “is a court decree that ‘unconditionally divests the parent(s) of all parental rights over the child.’” [Citation omitted].

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). In this case, the petitioner has not established an “involuntary severance” of the beneficiary from her birth mother. The issuance of the Consent and the subsequent Order demonstrate the beneficiary’s birth mother *voluntarily* issued her irrevocable release of her rights and responsibilities over the beneficiary and her specific consent to the adoption by the petitioner and his spouse. However, the petitioner has established an “involuntary severance” of the beneficiary from her birth father. In the Social Enquiry Report (SER) dated May 10, 2013, submitted to the High Court by the Director of Social Welfare (DSW), the beneficiary’s *guardian ad litem* during the adoption proceedings, the author of the report indicates the beneficiary’s birth father’s whereabouts are unknown and, “All efforts made (including enquiring from relatives about his whereabouts) to find the child’s father proved futile.” The SER further concludes an inter-country adoption would be in the best interests of the beneficiary, and the High Court subsequently issued the Order. Based on the foregoing, the record indicates the absence of the birth father was considered by the High Court upon issuance of the Order. Accordingly, the petitioner has established the beneficiary’s involuntary severance from the birth father, and we withdraw our previous finding otherwise. However, as the petitioner must establish separation from both parents under the regulation, we find the record does not establish the beneficiary is an orphan under this standard.

#### *Sole parent*

We determined in our prior decision the petitioner did not establish 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 father legitimated the beneficiary’s birth, she is a legitimate child under Ghana’s laws, which make no distinction between children born in and out of wedlock where the father acknowledges paternity by being named on the child’s birth certificate. *See* § 101(b)(1)(C) of the Act. On motion, the petitioner asserts our determination – that the term *sole parent* does not apply to children born in countries which make no distinction between a child born in or out of wedlock – is a fundamental legal error. The petitioner also asserts legitimacy in Ghana has been the subject of federal litigation in the United States, citing *Bonsu v. Holder*, 646 F.Supp.2d 273 (D. Conn. 2009).

The regulation defining the term *sole parent* plainly states 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

Ghana Children's Act of 1998 (Children's Act), and determined that Ghana's laws make no distinction between children born in and out of wedlock, where the father acknowledges paternity by his name being registered on the child's birth certificate. However, we conflated requirements for establishing paternity of a child under the Children's Act with a requirement to legitimate a child. As there is no distinction under Ghana's laws 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 the beneficiary's birth father's name was registered on the beneficiary's birth certificate is not relevant to the issue of whether the beneficiary's birth mother is a *sole parent*.

The petitioner asserts that, while the beneficiary's birth father may be the presumed legitimate father under Ghana's laws, this fact does not prevent the beneficiary's birth 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 the beneficiary's birth mother is a *sole parent*. 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, "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 birth 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 the beneficiary's birth father maintained legal custody over the beneficiary until the adoption proceedings before the High Court and its issuance of the Order.<sup>3</sup> The High Court's ruling shows that the beneficiary's legitimacy was not at issue during such proceedings. Based on the foregoing, we find 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).<sup>4</sup>

### *Disappearance*

In our previous decision, we determined that although the DSW found in its investigation that the beneficiary's birth father has disappeared, the record reflects the beneficiary's birth mother has not.

---

<sup>3</sup> 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).

<sup>4</sup> The petitioner also asserts we must consider the beneficiary's birth father's abandonment, desertion, disappearance, and separation from the beneficiary, the birth mother's irrevocable release of the beneficiary for emigration and adoption, and the birth mother's incapacity to provide proper care to the beneficiary. 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).

Contrary to our determination, on motion, the petitioner asserts our previous decision overlooks or ignores evidence concerning the birth father's disappearance.

The regulation defining *disappearance of both parents* plainly states "both parents have accountably 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." 8 C.F.R. § 204.3(b). Based on our review of the record, we affirm our prior finding that although the beneficiary's birth father meets the definition of disappearance as defined in the regulation, the record does not reflect that the beneficiary's birth mother does as well. As the petitioner must establish *disappearance of both* parents under the regulation, we find the record does not establish the beneficiary is an orphan under this standard.

### *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 as the adopted child of the petitioner and his spouse. 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 by a preponderance of the evidence 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 November 14, 2014 decision of the Administrative Appeals Office is affirmed.