



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF O-K-O-

DATE: NOV. 24, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE  
RELATIVE

The Petitioner, a citizen of the United States, seeks to classify an orphan as an immediate relative. See Immigration and Nationality Act (INA, or the Act) § 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director, National Benefits Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

The Petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), 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 . . . who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

*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.

....

*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*.

....

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of

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the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a 39 year-old naturalized U.S. citizen, submitted Form I-600, Petition to Classify Orphan as an Immediate Relative, to U.S. Citizenship and Immigration Services on October 8, 2014, and it was denied on December 23, 2014. The Petitioner seeks to classify the Beneficiary as the child of a surviving parent, the biological mother, who is incapable of providing proper care to the Beneficiary in Nigeria.

The Director sent a Request for Evidence (RFE) to the Petitioner on November 3, 2014, asking, in part, for an updated home study, secondary evidence to substantiate the date of birth of the Beneficiary, a complete and legible copy of the Beneficiary's father's death certificate, evidence that the Beneficiary's mother is unable to provide for the Beneficiary consistent with local standards in Nigeria, evidence that the Petitioner has been financially providing for the Beneficiary, evidence that the Petitioner has fulfilled the three-month fostering requirement, a medical certificate of fitness for the Petitioner's spouse and the Beneficiary, a full and final adoption decree, evidence that the Petitioner was present at the time of adoption, divorce decrees for the Petitioner and his spouse, and evidence of the Petitioner's spouse's legal status.

In response to the RFE on December 5, 2014, the Petitioner provided an updated home study; a copy of the Beneficiary's birth certificate; school certificates for the Beneficiary; the Beneficiary's father's death certificate; articles describing local standards in Nigeria; a list of his remittances sent between January 1, 2009, and November 11, 2014; an application to adopt the Beneficiary; certificates of completion for online Hague Parent Education Courses taken in August 2014; photographs; medical records for the Petitioner and his spouse; a medical certificate for the Beneficiary; an Internet itinerary for the Petitioner's travel to Nigeria; divorce certificates for the Petitioner and his spouse; and a copy of a U.S. naturalization certificate for the Petitioner's spouse.

The Director denied the Form I-600 on December 23, 2014, concluding that the birth certificate for the Beneficiary was registered many years after her claimed date of birth; the untimely registered birth certificate was not accompanied by required secondary evidence; the list of remittances does not indicate who received the money or where the money was sent; the Petitioner's evidence did not establish that the Beneficiary's biological mother is incapable of providing proper care to the Beneficiary according to the local standards in Nigeria; the Petitioner did not provide evidence that the Beneficiary was in his physical care and legal custody immediately preceding the adoption order; and the Petitioner did not establish that either he or his spouse was present in court on the day the adoption was finalized. Therefore, the Director found that the Petitioner did not establish that the Beneficiary qualified for classification as an orphan under section 101(b)(1)(F)(i) of the Act.

On appeal, the Petitioner provides a January 2015 letter from a barrister in Nigeria who heads the legal unit of the Ministry of Women Affairs and Social Development; school records for the Beneficiary; an adoption order for the Beneficiary from the Magistrate's Court, [REDACTED] in the [REDACTED] Magisterial

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District [REDACTED] the Beneficiary's birth certificate; the Beneficiary's father's death certificate; an affidavit in support of adoption; a barrister's letter from 2014; an affidavit from the Beneficiary's uncle; an affidavit from the Beneficiary's mother; a change of name affidavit for the Beneficiary; a travel itinerary; and remittance records with additional information indicating recipients. We note that several of these documents were previously submitted, including the adoption order, the barrister's letter from 2014, the school records, the Beneficiary's birth certificate, the affidavit in support of adoption, and the travel itinerary.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate that the Beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F)(i) of the Act.

The Petitioner has presented a birth certificate for the Beneficiary that was registered on March 12, 2014, and lists her date of birth as [REDACTED]. The Form I-600 instructions, available at <http://www.uscis.gov/sites/default/files/files/form/i-600instr.pdf>, state:

You should submit a copy of the orphan's birth certificate, or if such certificate is not available, an explanation together with other proof of age and identity. Such secondary evidence could include medical records, school records, church records, entry in a family Bible, orphanage intake sheets, or affidavits from individuals with first-hand knowledge of the event(s) to which they are testifying.

To respond to concerns about the Beneficiary's birth certificate, the Petitioner also submits school records for the Beneficiary. Some of these records, however, do not list the Beneficiary's date of birth. The others list her year of birth as [REDACTED] but do not list the exact date of birth. No other secondary evidence is submitted to establish the beneficiary's date of birth. The record does not include the Beneficiary's birth certificate registered at the time of her birth or sufficient secondary evidence. Based on the evidence presented, the Petitioner has not satisfied the requirement in 8 C.F.R. § 204.3(d)(1)(ii).

To address the Director's concern that the Petitioner's evidence did not show the Beneficiary's biological mother was incapable of providing proper care, he submits a letter from the head of the legal unit, Ministry of Women Affairs and Social Development, dated January 8, 2015, who states that their investigation shows that the Beneficiary's mother does not have sufficient means of livelihood to provide for the Beneficiary's immediate needs. The Petitioner states in his June 9, 2014, affidavit that the Beneficiary's mother has no reasonable means of livelihood. The Beneficiary's mother states in her September 4, 2014, affidavit that the Petitioner has been taking care of the Beneficiary financially and materially. The remittance transaction history records reflect that the Petitioner sent money from 2009 through 2014 to several individuals, but neither the Beneficiary nor her mother is listed as a recipient. The record includes numerous photographs of the Beneficiary's mother and her difficult living conditions in Nigeria. The record includes several articles on the high poverty level in Nigeria. We find that the evidence sufficiently addresses the

Director's concern related to the Beneficiary's mother's financial state. In particular, the January 8, 2015, letter involved an investigation of the Beneficiary's mother that corroborates previous statements. When considering the totality of the evidence presented, including several statements, photographs, and country-conditions information, we find that the Petitioner has established that the Beneficiary's mother is incapable of providing for the Beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b).

In regard to the other issues, the barrister states that the Petitioner was present on June 27, 2014, when the adoption court date was scheduled; the Petitioner was called in and sighted by the chief magistrate; the conclusion of the adoption was moved to July 4, 2014; the Petitioner informed the court that he could not be present due to "an urgent call to return"; all of the necessary information and investigation via questioning was carried out by the court and he was given leave to travel; and the adoption was not done by proxy. The record includes a travel itinerary that indicates he was to travel to Nigeria on June 25, 2014, and return on July 1, 2014. The record is not clear as to the nature of the "necessary information and investigation via questioning" that the barrister claims was carried out by the court. The record also is not clear as to whether the chief magistrate confirmed the suitability of the Petitioner in court, as required according to the U.S. Department of State, Intercountry Adoption Information on Nigeria, dated June 1, 2013. In addition, the Petitioner was not present on the date of the adoption order. As such, we find that the Petitioner has not established that the adoption was not done by proxy.

In addition, the Petitioner does not address on appeal, or provide evidence to show, that the Beneficiary was in his physical care and legal custody for three months immediately preceding the adoption order.

#### IV. CONCLUSION

The Petitioner has not met his burden of establishing that the Beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-K-O-*, ID# 13399 (AAO Nov. 24, 2015)