



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

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

MATTER OF T-B-O-

DATE: OCT. 1, 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

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

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

*Supporting documentation for a petition for an identified orphan.* Any document not in the English language must be accompanied by a certified English translation. If an orphan has been identified for adoption and the advanced processing application is pending, the prospective adoptive parents may file the orphan petition at the Service office where the application is pending. The prospective adoptive parents who have an approved advanced processing application must file an orphan petition and all supporting documents within eighteen months of the date of the approval of the advanced processing application... An orphan petition must be accompanied by full documentation as follows:

(1) *Filing an orphan petition after the advanced processing application has been approved.* The following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

....

(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation 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

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

(iv) Evidence of adoption abroad...

....

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence.

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

*Home study requirements.* For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children. If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section. A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. The home study, or the most recent update to the home study, must not be more than six months old at the time the home study is submitted to the Service. Only one copy of the home study must be submitted to the Service.

The regulation at 8 C.F.R. § 204.3(e)(2)(i) states, in pertinent part:

*Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(b)(6)

*Matter of T-B-O-*

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a [REDACTED] 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 (USCIS) on March 3, 2014, and it was denied on August 22, 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 April 18, 2014, asking, in part, for an original and complete home study with original signatures; a surrogate court approval, as required by the state of New York if a home study is performed by a private social worker; a copy of the Beneficiary's birth certificate; proof of a full and final adoption in accordance with the laws of Nigeria; and evidence showing that the Beneficiary's surviving parent is unable to provide for his basic needs consistent with local standards in Nigeria and has irrevocably, in writing, released the orphan for emigration and adoption.

In response to the RFE, the Petitioner provided a new home study; letters from the N.Y. State [REDACTED] financial documents; a consent to adoption from his adult son; an adoption order from the Chief Magistrate Court, [REDACTED]; an adoption approval from the [REDACTED] a probation officer's report to the magistrate of the family court, [REDACTED] and related custody order approving the adoption; a letter of consent from the Beneficiary; a certificate of birth for the Beneficiary; a death certificate for the Beneficiary's father; an identification certificate for the Beneficiary's mother; a letter of good character for the Petitioner; and medical reports.

The Director denied the Form I-600 on August 22, 2014, concluding that the home study lacked an assessment of the Petitioner's additional household member, his son; the Petitioner did not provide the Beneficiary's birth certificate that was registered at the time of his birth; the Petitioner did not provide a surrogate court approval as required in New York; the Petitioner's evidence was insufficient to establish that the Beneficiary's biological mother is incapable of providing proper care to the Beneficiary according to the standards in Nigeria; the Beneficiary's mother has not irrevocably and in writing released the orphan for emigration and adoption; and most of the documents provided reflect that the Beneficiary was [REDACTED] years old when the Form I-600 was filed. Therefore, the Director found that 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 an order from the Surrogate's Court of the State of New York, an updated home study, an explanation for the lack of a birth certificate for the Beneficiary and the variations in his age at the time of filing, and evidence related to the Beneficiary's mother's inability to provide proper care to the Beneficiary in Nigeria.

(b)(6)

*Matter of T-B-O-*

### 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.

Concerning the surrogate court order the Director requested, the Petitioner provides a court order from the Surrogate's Court of the State of New York, [REDACTED] dated [REDACTED] 2014, in which the Petitioner and his spouse are certified as qualified adoptive parents of the Beneficiary and may accept physical custody of him for the purposes of adoption. Because the Petitioner has provided a surrogate court approval as required in New York due to a private social worker preparing the home study, he has met the preadoption requirements of the state of the proposed residence.

In regard to the home study issues raised by the Director, the Petitioner submits an updated home study, dated October 24, 2014, which provides an assessment of the Petitioner and his spouse's [REDACTED] year-old son. However, the home study does not include an initial assessment of how the physical, mental, and emotional health of the Petitioner's son would affect his ability to properly care for the Beneficiary, as required by 8 C.F.R. § 204.3(e)(2)(i). As such, the Petitioner has not provided an assessment of the Petitioner's additional household member which meets the regulatory requirements.

In regard to the Director's concerns about the Beneficiary's birth certificate and age, the Petitioner states that the Beneficiary's birth was recorded "in the family book" but no birth certificate was registered at the time of his birth. The Petitioner also states that the Beneficiary was born on [REDACTED] he was [REDACTED] years old when the petition was filed; age is calculated as of January 1 in Nigeria, so on [REDACTED] the Beneficiary would have been listed as one year old on documents even though he was only four months old; and all of his documents from 2014 show his age as [REDACTED] even though he did not become [REDACTED] until [REDACTED]. The custody approval document, dated June 17, 2014, states that the Beneficiary is [REDACTED] years old. The Petitioner has provided a certificate of birth, registered on April 25, 2014, which states that the Beneficiary was born on [REDACTED]. The Beneficiary's mother states that the Beneficiary was born on [REDACTED]. The record also includes a statutory declaration of age from the Beneficiary's father, dated March 25, 2014, and sworn to at [REDACTED] in which he states the Beneficiary was born on [REDACTED]. However, according to the Beneficiary's father's death certificate, he passed away on [REDACTED] over five years before making this declaration. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner provides no other proof of the Beneficiary's identity and age other than the aforementioned documents. The Form I-600 instructions, available at <http://www.uscis.gov/sites/default/files/files/form/i-600instr.pdf>, state:

(b)(6)

*Matter of T-B-O-*

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.

The record does not establish that the Beneficiary was under the age of [REDACTED] at the time of filing the Form I-600. Moreover, the birth certificate was not registered at the time of his birth, and the Petitioner provides insufficient evidence to explain inconsistencies in his age in the documents provided. Finally, the Petitioner has not provided sufficient secondary evidence of the Beneficiary's date of birth.

In regard to the requests for evidence concerning the Beneficiary's mother's inability to provide care and her irrevocable release, the Petitioner provides an April 29, 2014, letter from the Beneficiary's mother, who states that her spouse left four children for her to care for after he passed away on [REDACTED] and she wholeheartedly released the Beneficiary to the Petitioner to be the father of the child. The Petitioner states that the Beneficiary's mother has been struggling to raise the children, and to assist her with her children, he has been supporting her financially for a long time. The record, however, lacks evidence of the expenses involved with caring for the Beneficiary, income the Beneficiary's mother may earn, and the financial support she receives. The record also lacks documentary evidence of the specific conditions where the Beneficiary's mother resides and of local standards. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

We find that the Petitioner has not provided sufficient evidence to show 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). We also find that the record does not include sufficient evidence to establish that she has in writing irrevocably released the Beneficiary for emigration and adoption. Although the record includes a statement from the Beneficiary's mother in which she "wholeheartedly" releases the Beneficiary to the Petitioner, this statement lacks the requisite specificity mentioned in section 101(b)(1)(F)(i) of the Act, which requires irrevocably releasing the Beneficiary in writing for emigration and adoption.

#### IV. CONCLUSION

The Petitioner has not met her 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 T-B-O-*, ID# 13848 (AAO Oct. 1, 2015)