



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

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

MATTER OF L-D-L-W-

DATE: AUG. 10, 2016

APPEAL OF PORT-AU-PRINCE, HAITI FIELD OFFICE DECISION

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

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Field Office Director, Port-au-Prince, Haiti, denied the petition. The Director concluded that the Beneficiary does not meet the definition of orphan, because the Petitioner did not provide reliable evidence to support the assertion that the Beneficiary's birth mother is deceased.

The matter is now before us on appeal. In the appeal, the Petitioner submits additional evidence and claims that the Director erred in finding insufficient evidence of the Beneficiary's birth mother's death and in concluding that the Beneficiary is not an orphan as defined in the Act.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. Section 101(b)(1)(F)(i) of the Act provides, in pertinent part:

[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 United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United

(b)(6)

Matter of L-D-L-W-

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 Attorney General [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

8 C.F.R. § 204.3(d)(1) identifies the supporting documentation required to accompany orphan petition, including:

. . . .

- (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 parents, if applicable;
 - (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[.]

II. ANALYSIS

The issue in the Petitioner's case is whether she has established that the Beneficiary's birth mother is deceased and whether the definition of orphan has been met. On the Form I-600, the Petitioner claimed that the Beneficiary is an orphan because she has no parents. The Petitioner provided a death certificate for the Beneficiary's birth mother that was found to be fraudulent and two other death certificates, which were late-registered and not supported by sufficient evidence of their validity. To support the second death certificate, the Petitioner provided a court decision issued in [REDACTED] 2013 that ordered the issuance of a new death certificate for the birth mother. No evidence was submitted for the Beneficiary's father in relation to the definition of orphan.

On appeal, the Petitioner asserts that the [REDACTED] 2013 court decision was intended to accompany the third death certificate, not the second death certificate, and she submits a brief and a statement.

We find that the Petitioner has not met her burden in establishing the death of the Beneficiary's birth mother and thus has not shown that the Beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents.

Matter of L-D-L-W-

A. Eligibility

As stated above, the Beneficiary was found ineligible to be classified as an orphan for immediate relative status in accordance with section 101(b)(1)(F)(i) of the Act.

When she filed the Form I-600, the Petitioner claimed that the Beneficiary should be classified as an orphan because the birth mother was deceased and the birth father irrevocably consented to the release of the Beneficiary, although she submitted no evidence to support her claims. However on appeal, the Petitioner asserts that the Beneficiary should be classified as an orphan because she is a child whose parents have passed out of her life; her birth mother is deceased and her birth father passed away in [REDACTED]. The Petitioner submits no evidence concerning the Beneficiary's birth father's death.

The Petitioner alleges that the Beneficiary's mother passed away in [REDACTED]. The Petitioner first submitted a death certificate dated [REDACTED] as evidence of the Beneficiary's mother's death. During the Form I-604, Determination on Child for Adoption, investigation, this death certificate was submitted to the National Archives of Haiti for verification. The National Archives was unable to locate the death certificate, and the Director determined it to be fraudulent. The Director issued a notice of intent to deny (NOID) the Form I-600, based on lack of reliable evidence of the biological mother's death, and requested additional evidence to rebut the finding.

In response to the NOID, the Petitioner submitted a second death certificate that was registered with the [REDACTED] civil registrar's office in [REDACTED] after the birth mother's death. The second death certificate was accompanied by a judicial court order from the [REDACTED] dated [REDACTED] 2013, ordering a new death certificate.

The Director found that the [REDACTED] 2013, court order did not match the [REDACTED] registration date of the death certificate. The Director requested further clarification regarding the second death certificate. The Petitioner submitted a third death certificate that was registered with the [REDACTED] civil registrar's office in [REDACTED] after the birth mother's death. The third death certificate was not accompanied by a court order.

The Director found the Beneficiary was not an orphan under the Act based upon the submission of a fraudulent death certificate with two additional death certificates apparently registered by two different civil registrar's offices.

On appeal, the Petitioner contends that third death certificate is the correct evidence that should be considered with the corresponding court order from the [REDACTED]. The Petitioner contends that different registrars' offices may issue death certificates if a corresponding court order exists. The Petitioner states that the court order dated [REDACTED] 2013, should accompany the third death certificate and not the second death certificate. However, the Petitioner has not submitted additional evidence to substantiate her claim that a judicial court order permits issuance of a death certificate. The

Matter of L-D-L-W-

U.S. Department of State Visa Reciprocity Schedule indicates that death certificates are available from the National Archives.¹ The Visa Reciprocity Schedule states that “at the time of registration, a handwritten certificate on official, stamped paper is issued by the registrar of the section in which registration takes place. The record is also entered into an official register, which is transferred to the National Archives in [REDACTED] usually after one year.” In the instant matter, the first death certificate submitted by Petitioner was not located by the National Archives of Haiti and was determined to be fraudulent.

The Petitioner contends that the third birth certificate should be considered with the corresponding court order from the [REDACTED] civil registrar’s office. The Petitioner does not explain why she did not submit, with the second birth certificate, a corresponding court order from the [REDACTED] civil registrar’s office to substantiate her claim that death certificates may be issued by different registrars’ offices if they are accompanied by a corresponding court order. The burden is on the Petitioner to substantiate her claim that a birth certificate may be issued following an accompanying court order. Here, the Petitioner has not met that burden.

Upon review of the record, we find that the Petitioner has not provided sufficient evidence that the Beneficiary’s birth mother is deceased. In regard to the Beneficiary’s birth father, the record does not include supporting documentary evidence of his death. In the alternative, the Petitioner provides no evidence that he has disappeared, abandoned the Beneficiary, deserted her, separated from her, or that she was lost from him.

As such, the Petitioner has not established that the Beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents.

III. CONCLUSION

In visa petition proceedings, the petitioner has the burden of establishing 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. The Petitioner has not established that the Beneficiary’s birth mother is deceased and that the Beneficiary meets the definition of orphan.

ORDER: The appeal is dismissed.

Cite as *Matter of L-D-L-W-*, ID# 18376 (AAO Aug. 10, 2016)

¹ See U.S. Department of State, *Haiti Reciprocity Schedule*, at <https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/HA.html> (last visited July 18, 2016).