



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

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

MATTER OF M-P-D-

DATE: AUG. 12, 2016

APPEAL OF NATIONAL BENEFITS CENTER 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 Director, National Benefits Center, denied the petition, concluding that the Beneficiary does not meet the definition of an orphan under the Act.

The matter is now before us on appeal. The Petitioner submits additional evidence and states that the Director erred in denying his petition, as the Beneficiary meets the definition of an orphan under the Act.

Upon *de novo* review, we will sustain 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 the definition for an orphan to be classified as an immediate relative child (unmarried person under twenty-one years of age):

[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

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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 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 the Beneficiary meets the definition of an orphan under the Act. In the initial application, response to a request for evidence (RFE), and the appeal, the Petitioner submitted a brief; a copy of relevant Liberian domestic relations laws; letters from two attorneys in Liberia; a copy of a Liberian case; a statement of consent from the Beneficiary's father; a document titled, "Economic Rationale and Cost of Living Analysis," by [REDACTED] the Beneficiary's mother's affidavit; a list of itemized expenses to show her inability to care for the Beneficiary; a summary from the Petitioner regarding the Beneficiary's monthly medical expenses and evidence of humanitarian parole to travel to the United States for medical care; a case summary from the Ministry of Gender, Children, and Social Welfare; a letter from the Ministry of Gender, Children, and Social Welfare and Ministry of Gender, Children, and Social Protection Act of 2013, evidencing the transfer of responsibilities from the Ministry of Health and Social Welfare to the Ministry of Gender, Children, and Social Welfare; the Beneficiary's mother's consent to adoption; the Beneficiary's birth certificate; a Liberian Court Decree of Adoption of the Beneficiary to the Petitioner; and a home study report.

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The Director denied the petition, because the Petitioner did not establish from a competent authority that parental rights to the Beneficiary were terminated due to the disappearance of, abandonment or desertion by, or separation or loss from both parents.

We find that the Beneficiary meets the statutory definition of an orphan under the Act, as the record establishes his father and mother irrevocably released the Beneficiary for adoption, and it establishes that his mother is incapable of providing him with proper care.

A. Eligibility

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

The Petitioner asserts that the Beneficiary should be classified as an orphan under section 101(b)(F)(i) of the Act because he is a child whose mother is his sole parent. The regulation at 8 C.F.R. § 204.3(b) provides:

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 children 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.

The regulation at 8 C.F.R. § 204.301 provides further relevant definitions, including:

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*.

The record reflects that the Beneficiary was born on [REDACTED] and his birth certificate lists his mother and father. The Petitioner contends that the Beneficiary was born out of wedlock and that the Beneficiary's father never fulfilled his parental obligations to the Beneficiary. The Petitioner submitted the pertinent section of the Liberian Domestic Relations Law to indicate that a child born out of wedlock is considered illegitimate, supported by a statement from [REDACTED] a Liberian attorney. The Petitioner further provided a statement from the Beneficiary's mother consenting to the adoption, as well as evidence of her inability to provide proper care to the Beneficiary. Finally, the Petitioner provided a Liberian Court Decree of Adoption of the Beneficiary to the Petitioner.

The Director indicated that the evidence supports that the Beneficiary has two parents, neither of which are deceased, and that no evidence was submitted to show any attempts to locate the biological father.

The Director further indicated that the Beneficiary does not qualify as a child with a sole parent, as the evidence of the Liberian Domestic Relations Law is inconclusive to support a petition on that basis.

On appeal, the Petitioner submits additional evidence, including a brief and a notarized statement from the Beneficiary's father providing irrevocable consent to the adoption of the Beneficiary by indicating that the Beneficiary was born out of wedlock and that the Beneficiary never received support or care from him. Further, the Petitioner provided a letter from a Liberian attorney, who interprets *Alice v. Eugen Hilton*, 22 Liberian Law Reports 503 (1971), which finds that a "putative father has no right to an illegitimate child unless he makes himself the legal father." The Petitioner also submitted an updated cost of living analysis to show that the Beneficiary's mother is unable to provide care due to her lack of consistent work and the Beneficiary's ongoing medical issues. The Petitioner also provided a copy of the Beneficiary's USCIS Humanitarian Affairs Branch approval to receive temporary care in the United States. Finally, the Petitioner provided a Liberian Court adoption decree, declaring that the Petitioner may adopt the Beneficiary in Liberia.

In assessing this case, we find that the additional evidence the Petitioner provides regarding the father's obligations to the Beneficiary establishes that the father has relinquished his duty to the Beneficiary. The Petitioner successfully located the Beneficiary's father and obtained an irrevocable consent to adoption and emigration. While the Petitioner's assertion that a father in Liberia does not have any legal rights to a child born out of wedlock is persuasive, it was not considered in determining the father's obligations. Thus, the Petitioner has established that the Beneficiary qualifies as a sole parent in terms of an orphan under the Act as the Beneficiary is illegitimate, has not acquired another parent, and his father has, in writing, irrevocably released him for emigration and adoption.

The record reflects that the Petitioner submitted the Beneficiary's mother's irrevocable consent to the adoption and emigration of the Beneficiary and evidence of her inability to provide proper care to the Beneficiary. The Beneficiary's mother indicates that she earns approximately \$50.00 a month, with a varying amount but usually an additional \$25.00 a month received from family, either as loans or gifts. The Beneficiary's mother therefore earns approximately \$75.00 a month. The Beneficiary's mother states that she spends approximately \$145.00 a month on housing, food, transportation, health care, personal care, and clothing. Therefore, she spends approximately \$70.00 a month more than she earns.

The Petitioner also submits an "Economic Rationale and Cost of Living Analysis," which finds that the Beneficiary's mother "is unable to adequately care" for the Beneficiary, as they are currently living under the poverty level. In context, the Beneficiary's mother is "among the most vulnerable employed paid workers in Liberia. Long before the middle of any month, she exhausts her US\$50.00 income and has to depend on support from friends and family, which is sporadic and usually comes very late in the month or during the following month." The Economic Rationale indicated that the average monthly wage of paid workers is \$279.20 per month. With the Beneficiary's medical condition of anemia and need for regular medical care, the Beneficiary's mother would need to earn an additional \$135.00 per month. The Economic Rationale concludes

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that if the Beneficiary's mother would continue to take care of the Beneficiary, they would be "amongst the extreme poor" and that their living situation "would deteriorate significantly."

The Petitioner also provided a case summary from the Ministry of Gender, Children, and Social Welfare, as well as evidence of the transfer of responsibilities from the Ministry of Health and Social Welfare to the Ministry of Gender, Children, and Social Welfare. The Ministry report found that the Beneficiary's mother seemed "unable to care for the child in a functioning way." In addition, the report indicated that the Beneficiary's mother "expressed that she does not have the financial means to cater to the needs of her son."

In accordance with *Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg. Comm'r 1980), a social welfare agency study may serve as evidence of a parent's inability to provide proper care. The Petitioner has shown that the sole parent is incapable of providing proper care to the Beneficiary and has irrevocably released the Beneficiary for emigration and adoption.

Accordingly, the Petitioner has established that the Beneficiary meets the definition of orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act.

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 been met. The Petitioner established that the Beneficiary is illegitimate, the Beneficiary's father has provided irrevocable consent to his adoption, and his sole parent has also provided irrevocable consent to his adoption and shown that she is incapable of providing proper care.

ORDER: The appeal is sustained.

Cite as *Matter of M-P-D-*, ID# 16691 (AAO Aug. 12, 2016)