



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

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

MATTER OF C-M-J-Y-

DATE: AUG. 26, 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), 8 U.S.C. § 1101(b)(1)(F). An orphan who is under the age of 18 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 if the orphan's sibling who is under 16 years of age has been adopted, or is coming to the United States for adoption, by the U.S. citizen.

The Director, National Benefits Center, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition). The Director concluded the Petitioner did not establish that the Beneficiary qualified for classification as an orphan.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief, previously submitted documentary evidence, and a country conditions report. The Petitioner asserts that she provided evidence to demonstrate that the Beneficiary is an orphan because of the abandonment of her birth parents, or in the alternative, by the loss of her birth parents.

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

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adoption proceedings; or who is coming to the United States for adoption by a United 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 . . . .

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative. . . .

## II. ANALYSIS

The record reflects that the Beneficiary was born in Cote d'Ivoire on [REDACTED] and her brother was born in Cote d'Ivoire on [REDACTED]. The Petitioner adopted the Beneficiary and her brother in the Tribunal De Premiere Instance (Court of First Instance) [REDACTED] on [REDACTED] 2012. The Petitioner filed orphan petitions on behalf of the Beneficiary and her brother on [REDACTED] 2015, when the Beneficiary was [REDACTED] years of age and her brother was [REDACTED] years of age, respectively.

The issue in these proceedings is whether the Petitioner has established that the Beneficiary is an orphan due to 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 Beneficiary for emigration and adoption. On appeal, the Petitioner asserts that she submitted evidence to prove that the Beneficiary, who is her niece, is an orphan by abandonment. The Petitioner states that the Beneficiary and her brother were separated from their parents in 2005 during the civil war in Cote d'Ivoire, and placed in the custody of [REDACTED] and [REDACTED]. She contends that the Beneficiary and her brother have not seen their birth parents since they were abandoned in 2005. The Petitioner alternatively asserts that the Beneficiary meets the classification of an orphan by loss of both parents. The Petitioner contends that in 2005, during the humanitarian crisis that resulted from the civil war, the Beneficiary and her brother were separated from their parents and have never seen them again.

### A. Abandonment

The Petitioner asserts that the Beneficiary should be classified as an orphan because both of the Beneficiary's parents abandoned her. The regulation at 8 C.F.R. § 204.3(b) provides:

*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

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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. . . .

The record reflects that the Beneficiary's birth parents did not abandon the Beneficiary because the Petitioner assisted them with making arrangements for the Beneficiary and her brother to reside with a third party in anticipation of their adoption. This is demonstrated by a statement in the record from the Petitioner in which she recounted that in 2005 she received a letter from the Beneficiary's birth mother, who is the Petitioner's sister, stating that she was considering sending her children to an orphanage. The Petitioner recounted that she then contacted a priest who placed the children in the care of another family. She stated that she has since then remained in contact with the children and supported them financially. The Petitioner recounted that she visited the children in December 2007, and again in December 2010, which is when she began the adoption process.

This series of events is also summarized in the "social inquiry" report from [REDACTED] a social worker with the [REDACTED] the central adoption authority in Cote d'Ivoire.<sup>1</sup> [REDACTED] stated that during the military and political crisis in Cote d'Ivoire, the Beneficiary's birth parents fled their hometown and then found it difficult to provide for their family. He stated that the Petitioner intervened when she learned that the Beneficiary's birth parents were considering sending the Beneficiary and her brother to a shelter for children. [REDACTED] also explained that the Petitioner facilitated the custodial care of the children, first with [REDACTED] and now with [REDACTED]. In his letter, [REDACTED] stated that the Petitioner entrusted him to care for the children and provided financial support for them.

The above-mentioned documents show that the Petitioner assisted her sister by making arrangements for the Beneficiary and her brother to be placed in the temporary custody of [REDACTED] and [REDACTED]. There is no evidence that [REDACTED] and [REDACTED] were authorized under the child welfare laws of Cote d'Ivoire to act in such a capacity. The Petitioner remained in contact with the

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<sup>1</sup> See U.S. Department of State, *Intercountry Adoption Cote d'Ivoire*, <https://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/cote-divoire.html> (last visited August 15, 2016); see also U.S. Department of State, *Intercountry Adoption Cote d'Ivoire Alerts & Notices*, <https://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notices/Cotedvoire15-10-01.html> (last visited August 15, 2016).

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children and provided them financial support during their residence with [REDACTED] and [REDACTED]. The Petitioner adopted the Beneficiary and her brother in Cote d'Ivoire on [REDACTED] 2012, three months after the Petitioner naturalized to become a U.S. Citizen. The adoption order states that the Petitioner "has always helped her younger sister support her children." As the release of a child by the birth parents for a specific adoption or to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment, the record does not establish that the Beneficiary is an orphan due to abandonment by both parents. *See* 8 C.F.R. § 204.3(b).

#### B. Loss from Both Parents

The Petitioner asserts in the alternative that the Beneficiary meets the classification of an orphan by the loss of her parents due to separation by civil war and conflict. The regulation at 8 C.F.R. § 204.3(b) provides:

*Loss from both parents* means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

The Petitioner submits a [REDACTED] country conditions report on Cote d'Ivoire which discusses the civil war in the country, which spanned from 2002 until 2007. The Petitioner asserts that "[i]t was the aftermath of civil war that tore the family apart in 2005." She states that Cote d'Ivoire is a "war torn country" and is "still attempting to rebuild and recover from both a civil war" and "a five-month crisis after the presidential election in 2010." The Petitioner states that the Beneficiary's family was torn apart because of the conflict and for this reason the Beneficiary and her brother have not been reunited with their parents. The Petitioner discusses the civil war in Cote d'Ivoire in general terms and does not specifically explain how the Beneficiary's separation from her birth parents constitutes a *loss from both parents*, as that term is defined in the regulations. The record indicates that the Beneficiary's birth parents voluntarily decided to separate from their children during the civil war. The record contains a letter from the Beneficiary's birth mother in which she explained that she decided to take the Beneficiary and her brother to an orphanage because she did not have the means to provide for them. Although the Petitioner now asserts that the Beneficiary and her brother were placed in the custodial care of [REDACTED] when their father became separated from them during the civil war, the report from the [REDACTED] states that the Beneficiary's birth father was present during that time period and he initiated his family's separation. Therefore, the Petitioner has not established the *involuntary* severance or detachment of the Beneficiary from both of her parents in a permanent manner, as verified by a competent authority. *See* 8 C.F.R. § 204.3(b) (emphasis added). As such, the record does not establish that the Beneficiary is an orphan due to the loss of her parents.

Accordingly, the Petitioner has not established that the Beneficiary meets the definition of orphan, as that term is defined at section 101(b)(1)(F) 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 not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-M-J-Y-*, ID# 17692 (AAO Aug. 26, 2016)