



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

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

MATTER OF S-A-M-

DATE: JUNE 7, 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. The Director concluded that the Petitioner did not establish the Beneficiary meets the definition of 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.

The matter is now before us on appeal. In the appeal, the Petitioner submits additional evidence and claims that the Director erred in not finding that the Beneficiary meets the definition of orphan, because the Beneficiary has no legal parents, his mother disappeared and abandoned him, and his father abandoned him and irrevocably released him for adoption.

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 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

...

(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 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. The Director concluded that the Petitioner did not establish the Beneficiary meets the definition of orphan. On appeal, the Petitioner asserts that the Beneficiary's mother and father abandoned the Beneficiary by willfully forsaking all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, and the Beneficiary's mother has disappeared. The Petitioner asserts that according to U.S. Citizenship and Immigration Services (USCIS) policy, if the Beneficiary has no legal parents, the Beneficiary is not required to have lost each parent in the same way. In the alternative, the Petitioner asserts that since the Beneficiary's father abandoned, neglected and deserted him from the

time of birth, the mother is the sole parent, the Beneficiary was never legitimated, and his mother subsequently disappeared.

The Petitioner also alternatively asserts that because the Beneficiary's mother disappeared and abandoned the Beneficiary nine years before the Petitioner adopted him, the Beneficiary's father is the Beneficiary's sole parent. She asserts that his father never had a *bona fide* relationship with him or sole custody and that he abandoned him. Furthermore, the Petitioner asserts that the Beneficiary's father lives in extreme poverty and is unable to provide for the Beneficiary's basic needs according to local standards. Lastly, the Petitioner asserts that the Beneficiary's father consented to and in writing irrevocably released the Beneficiary for emigration and adoption.

We find that the Petitioner has not overcome the grounds of denial, as the record includes insufficient evidence to establish that the Beneficiary meets the definition of 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.

#### A. Eligibility

As stated above, the Beneficiary has been found ineligible to be classified as an orphan for immediate relative status in accordance with section 101(b)(1)(F)(i) of the Act. On appeal, the Petitioner submits documents, which were previously submitted during the Form I-600 process, including information and letters from the Child Protection Agency of the Ministry of Labour, Human Services and Social Security in Guyana; a USCIS policy memorandum; a birth certificate for the Beneficiary; an adoption order; the Beneficiary's father's statement; the Petitioner's grandmother's affidavit; country-conditions information about Guyana; and copies of newspaper notices published to locate the Beneficiary's mother before the Petitioner adopted him.

##### 1. Classification as an Orphan

###### a. Abandonment

The Petitioner asserts that the Beneficiary should be classified as an orphan under section 101(b)(F)(i) of the Act, because both of the Beneficiary's parents abandoned him. 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 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

(b)(6)

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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. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

The Petitioner asserts that the Beneficiary's mother and father abandoned the Beneficiary by willfully forsaking all parental rights, obligations, and claims to the child, as well as all control over and possession of the child. The Petitioner states that the Beneficiary was left in the care of others since the age of two, there was no intent to transfer the rights to the Beneficiary at the time of abandonment to the prospective adoptive parent, and the relinquishment or release of the Beneficiary by the mother to the grandmother was not in anticipation of or preparation for adoption. The Petitioner states that the Beneficiary's maternal grandmother, rather than an institution, was the most suitable caregiver to provide for him. The Beneficiary's grandmother states that the Beneficiary's mother left home when the Beneficiary was two years old and never returned.

The Director of Children Services of the Guyana Childcare and Protection Agency states, in a 2013 letter, that the Beneficiary's mother abandoned him, and the Beneficiary's father visits periodically but cannot assume responsibility for him due to his unstable lifestyle and work location. The Beneficiary's grandmother states, in a 2015 letter, that the Beneficiary's father would visit approximately once every other year.

The Beneficiary's father states, in a letter dated April 29, 2015, that he has not been gainfully employed for several years, he has been unable to contribute to the Beneficiary's upkeep and maintenance, he "seldom" visits the Beneficiary, he lives with his mother, and he earns money selling vegetables.

The record reflects that the Beneficiary's mother has willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child. However, it is not clear if she intended to transfer her rights to her mother, the Beneficiary's caregiver. As the Beneficiary's father was still involved, although minimally, in the Beneficiary's life before the adoption on [REDACTED], 2011, the record does not reflect that he willfully forsook all parental rights, obligations, and claims to the child, as well as all control over and possession of the child. Therefore, we find that the record does not establish that the both of the Beneficiary's parents abandoned him.

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b. Disappearance of Both Parents

The Petitioner asserts that the Beneficiary's mother disappeared, and according to USCIS policy, if the Beneficiary has no legal parents, the Beneficiary is not required to have lost each parent in the same way.<sup>1</sup> The regulation at 8 C.F.R. § 204.3(b) provides:

*Disappearance of both parents* means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

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

*Competent authority* means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The Petitioner states that the Beneficiary's parents were never married, and they separated shortly after he was born. She states that the Beneficiary's mother disappeared when the Beneficiary was two years old, and the Beneficiary's mother never visited or contacted the Beneficiary. The Petitioner asserts that efforts were made to contact the Beneficiary's mother and locate her whereabouts pursuant to Guyana's adoption procedures, which included the placement of three notices in a local newspaper. The Petitioner states that, as the notices went unanswered, the court dispensed with the Beneficiary's mother's consent for the adoption, and her parental rights and responsibilities were permanently relinquished as part of the adoption process.

The Director of Children Services of the Guyana Childcare and Protection Agency states that the Beneficiary was abandoned, and the Beneficiary's father visits periodically but cannot assume responsibility. The Director of Children Services states that publications were placed in local newspapers to aid in gaining contact with the Beneficiary's mother, but no response was received. The Director of Children Services states that neither the mother nor any other individual contacted the agency with information regarding her whereabouts. The record includes copies of the newspaper notices requesting the Beneficiary's mother to contact the Adoption Board in [REDACTED] Guyana. The record reflects that the Beneficiary's mother unaccountably or inexplicably passed out of the Beneficiary's life, her whereabouts are unknown, there is no reasonable hope of her reappearance, and there has been a reasonable effort to locate her as determined by a competent authority in accordance with the laws of the foreign-sending country. The home study, dated February 12, 2015, includes a statement that the Beneficiary's father's

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<sup>1</sup> USCIS Policy Memorandum PM 602-0116, *Guidance on Conducting Form I-604, Determination on Child for Adoption, Orphan Determinations* 11 (June 17, 2015), <http://www.uscis.gov/laws/policy-memoranda>.

whereabouts are unknown. However, the Beneficiary's father states in his April 2015 affidavit that he is living with his mother, and other statements indicate that he has some involvement with the Beneficiary, although minimal. As such, the Beneficiary's father has not disappeared, as he has not unaccountably or inexplicably passed out of the Beneficiary's life, and his whereabouts are known.

c. Sole Parent

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 of a 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 a child 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 Petitioner asserts that the Beneficiary's father is not a legal parent, as he never had a *bona fide* parent-child relationship, he neglected the Beneficiary, and he failed to provide for him. The Administrative Manager of the Childcare and Protection Agency makes similar claims.

The Petitioner cites to section 101(b)(2) of the Act, which states:

The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

The Petitioner states that the Beneficiary's parents were never married, and they separated shortly after he was born. The Petitioner states that since the Beneficiary's father abandoned, neglected and

deserted him from birth, the mother was the sole parent. The Petitioner states that the Beneficiary never acquired another parent.

According to 8 C.F.R. § 204.3(b), the definition of sole parent is not applicable to children born in countries that make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In Guyana, the Children Born Out of Wedlock (Removal of Discrimination) Act has eliminated all legal distinctions between legitimate and illegitimate children, and children born out of wedlock in Guyana after May 18, 1983, and those under the age of 18 prior to that date, are deemed legitimate. *Matter of Cross*, 26 I&N Dec. 485, 489 (BIA 2015). Therefore, the Beneficiary's mother cannot be considered a sole parent.

In the alternative, the Petitioner asserts that as the Beneficiary's mother disappeared from the Beneficiary's life when he was two years old, the Beneficiary's father became his sole parent, incapable of providing care under local Guyana standards. The Petitioner claims that evidence shows the Beneficiary's father is incapable of providing care, specifically comparing his wages with local wages. In addition, the social welfare report discusses the Beneficiary's background and living conditions, and other evidence addresses the cost of living in Guyana. The Petitioner states that the Beneficiary's father has had sporadic employment since contracting malaria in 2012, his average income from selling vegetables is about one dollar per day, food costs in Guyana are \$28 per month, he does not make enough to feed himself and the Beneficiary, he could not provide for the Beneficiary's other expenses, and the Beneficiary would suffer from malnutrition, poverty, and poor medical care. Lastly, the Petitioner states that the Beneficiary's father has consented to and in writing irrevocably released the Beneficiary for emigration and adoption. Although the Beneficiary's father has, in his 2012 and 2015 statements, irrevocably released him for emigration and adoption, his contact with the Beneficiary shows that he has not severed all parental ties, rights, duties, and obligations to him.

We find, moreover, that the definition of sole parent at 8 C.F.R. § 204.3(b) clearly reflects that only the birth mother can be considered a sole parent. The interpretation of statutory language begins with the terms of the statute itself. If the terms, on their face, constitute a plain expression of congressional intent, they must be given effect. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1994). Therefore, the Beneficiary's birth father does not qualify as a sole parent under the regulatory definition.

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)(i) of the Act.

### III. ADDITIONAL GROUND FOR DISMISSAL

8 C.F.R. § 204.3(e)(2)(iv) states:

(iv) *Previous rejection for adoption or prior unfavorable home study.* The home study preparer must ask each prospective adoptive parent whether he or she previously has been rejected as a prospective adoptive parent or has been the subject

of an unfavorable home study, and must include each prospective adoptive parent's response to this question in the home study report. If a prospective adoptive parent previously has been rejected or found to be unsuitable, the reasons for such a finding must be set forth as well as the reason(s) why he or she is not being favorably considered as a prospective adoptive parent. A copy of each previous rejection and/or unfavorable home study must be attached to the favorable home study. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

The record includes a home study and home study update. Neither includes the requirements listed in 8 C.F.R. § 204.3(e)(2)(iv). As such, we also find that the Form I-600 is not approvable based on the home study lacking the requirements listed in 8 C.F.R. § 204.3(e)(2)(iv).

#### IV. 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-A-M-*, ID# 16601 (AAO June 7, 2016)