



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

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

MATTER OF F-N-

DATE: SEPT. 12, 2017

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 of the National Benefits Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary meets the definition of an orphan. The Director found that the Petitioner did not establish that the Beneficiary was deserted or that the governing authority permanently relinquished custody of the Beneficiary to the Petitioner for emigration and adoption.

On appeal, the Petitioner submits additional evidence and states that the Beneficiary was deserted by both parents and custody was granted to him for the Beneficiary's emigration and 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 the definition for an orphan to be classified as an immediate relative child (unmarried person under 21 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 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 . . . .

*Desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country. 8 C.F.R. § 204.3(b).

*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. *Id.*

When adoption has not taken place abroad, the prospective adoptive parents, or a person or entity working on their behalf, must demonstrate custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country. 8 C.F.R. § 204.3(d)(1)(iv).

## II. ANALYSIS

The issues on appeal are: whether the Beneficiary was deserted by his parents, as that term is defined in the applicable regulations; and whether the Petitioner has been granted custody of the Beneficiary for emigration to and adoption in the United States. The Petitioner asserts that the Beneficiary became a ward of the court in Tanzania, as required for the desertion definition under the regulations. The Petitioner also asserts that he has complied with the Department of State Foreign Affairs Manual (FAM), Tanzanian law, Department of Homeland Security regulations, and a United States Citizenship Immigration Services (USCIS) memo in demonstrating that he acquired full custody of the Beneficiary for emigration and adoption. We find that the Petitioner has not established that the Beneficiary became a ward of a competent authority; and, though the Petitioner was granted custody of the Beneficiary for emigration, he has not established that custody was also granted for adoption purposes.

### A. Desertion

The Director determined that the Petitioner did not establish that the Beneficiary became a ward of a competent authority in accordance with Tanzanian law, as required for desertion by both parents under 8 C.F.R. § 204.3(b). The Director noted that none of the documents submitted by the Petitioner are decrees from a court or other competent authority making the child a ward of the state.

The record reflects that the Beneficiary was born in a hospital to a mentally ill mother in [REDACTED]. The Beneficiary's father is not known. The Beneficiary's mother was brought to the hospital to deliver the Beneficiary by a Good Samaritan and ran away after the Beneficiary's birth. Initially,

a relative of the Beneficiary, and then hospital employees, intended to step in and care for the Beneficiary. A social welfare officer from the Ministry of Health and Social Welfare instructed the Beneficiary to be handed over to the [REDACTED] for care during the processing of the hospital employees' foster request. For years after the Beneficiary's placement in the orphanage, up to the issuance of the [REDACTED] order, none of his relatives or other individuals agreed to care for him. In [REDACTED] 2014, the [REDACTED] of Tanzania granted legal guardianship of the Beneficiary to the Petitioner and his spouse.

The Petitioner asserts that the Beneficiary became a ward of competent authority in Tanzania after his mother left him at the hospital and refused to carry out her parental duties. The Petitioner further asserts that there is no requirement that a document be issued "making the child a ward," but that the Beneficiary became a ward of the state by operation of law upon issuance of the guardianship order.

However, as stated, a competent authority in Tanzania means a court or governmental agency with jurisdiction and authority to make adoption and other child welfare decisions. There is no evidence that the hospital in which the Beneficiary was born, or the orphanage in which he next resided, meets the "competent authority" definition. Under part III, section 18 of Tanzania's 2009 Law of the Child Act, a court may transfer custody of a child to a social welfare officer to determine the most suitable place for the child, including an institution caring for children. However, there is no evidence that custody of the Beneficiary was transferred by a court to a social welfare officer. It is also not clear that the Beneficiary was ever a ward of the court. The Petitioner contends that, under operation of law, the Beneficiary became a ward of the court when a guardianship order was issued to the Petitioner and his spouse. However, the Petitioner does not cite to relevant Tanzanian law in support of this assertion. Accordingly, the Petitioner has not established that the Beneficiary was deserted by his parents, within the meaning of the regulations at 8 C.F.R. § 204.3(b).

#### B. Custody

The Director determined that the Petitioner did not submit evidence that a governing authority in Tanzania permanently relinquished custody of the Beneficiary to the Petitioner or granted custody for emigration or adoption.

As stated, the Petitioner must submit evidence that custody of the orphan has been secured for both emigration and adoption purposes under 8 C.F.R. § 204.3(d)(1)(iv). The Petitioner submitted a legal guardianship order from the [REDACTED] of Tanzania granting both the Petitioner and his spouse full parental rights and responsibilities for the Beneficiary, with permission to travel and reside with the Beneficiary anywhere in the world, including the United States. As such, we find that the Petitioner was granted custody of the Beneficiary for the purposes of emigration.

However, the [REDACTED] legal guardianship order does not confer custody to the Petitioner for the purposes of adoption, as required by the regulations. The [REDACTED] ruling contains four orders: 1) the appointment of the Petitioner and his spouse as legal guardians for the Beneficiary with full parental rights and responsibilities, 2) permission for the Beneficiary to travel and live with the

Petitioner anywhere in the world, including the United States, 3) production of the Beneficiary to the [REDACTED] after every five years unless the Beneficiary attains the age of majority of another court of competent jurisdiction provides to the contrary, and 4) submission of progress reports concerning the state and welfare of the Beneficiary every 12 months. The [REDACTED] orders do not explicitly state that the Petitioner was granted custody of the Beneficiary for purposes of adoption. Further, the [REDACTED] orders the submission of progress reports about the Beneficiary every 12 months, with no contemplated cutoff date. If the [REDACTED] intended to confer custody to the Petitioner for adoption purposes, it is not clear why it would require progress reports of the Beneficiary in perpetuity. As such, it is not apparent that the [REDACTED] granted custody of the Beneficiary to the Petitioner for anything other than legal guardianship purposes.

The Petitioner asserts that his [REDACTED] legal guardianship order complied with all relevant sections of Tanzania's 2009 The Law of the Child Act. He also states that this order should be accepted at face value, as there is no reason to question its validity and it need not include the term "adoption" as long as the adoption requirements are met. The Petitioner also asserts that, in accordance with 9 FAM 502.3-3(B)(3), he has provided evidence of custody of the Beneficiary for purposes of emigration and adoption.

However, a custody grant is not equivalent to an adoption, and there is no evidence that the Petitioner has been granted an adoption order by the [REDACTED]. We note that to adopt a child in Tanzania by a non-citizen of that country, a prospective adoptive parent must be a resident of Tanzania for at least three years, unless the [REDACTED] waives the residency requirement and determines that the adoption is in the best interest of the child.<sup>1</sup> While the [REDACTED] considered the Petitioner's legal guardianship petition, there is no evidence that the Petitioner sought an adoption before the [REDACTED] or that any determination was made that the Beneficiary's adoption would be in his best interest. As there is no evidence that the Beneficiary has been adopted abroad, we need not address the requirements for such an adoption, and instead look to whether the Petitioner has satisfied the requirements under 8 C.F.R. § 204.3(d)(1)(iv). Regarding the Petitioner's reliance on the FAM, we note it is guidance for officers of the U.S. Department of State, not USCIS. Although the FAM provides some general guidance for U.S. Department of State officers we conduct our own *de novo* review of the evidence to determine whether it demonstrates eligibility under the applicable law and USCIS policy guidance. As we discussed, the language of the guardianship order provides for the Petitioner's custody over the Beneficiary for emigration, but not for adoption and is therefore deficient for this reason.

The Petitioner further asserts that the Director did not comply with USCIS's own policy, as the Petitioner met the requirements for a valid adoption order under a USCIS policy memorandum.<sup>2</sup> Specifically, the Petitioner refers to the memorandum's three-prong test for a valid adoption in

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<sup>1</sup> Article 74, Section 2, of The Law of the Child, as discussed on the Department of State's Intercountry Adoption webpage for Tanzania at <https://travel.state.gov/content/adoptionsabroad/en.html>.

<sup>2</sup> USCIS Policy Memorandum PM-602-0070, *Guidance for Determining if an Adoption is Valid for Immigration and Nationality Act (INA) Purposes* (November 6, 2012), <https://www.uscis.gov/laws/policy-memoranda>.

asserting that he has demonstrated an “adopted child” relationship between himself and the Beneficiary. However, the memorandum explicitly states that the three-prong test applies to children who have already been adopted abroad, unlike the Beneficiary. The Petitioner has not demonstrated the relevance of this test to the Beneficiary’s eligibility for orphan classification, as he has not been adopted in Tanzania. Accordingly, the Petitioner has not demonstrated the sufficiency of his legal guardianship order to demonstrate he was granted custody of the Beneficiary for adoption purposes.

### III. CONCLUSION

The Petitioner has not overcome the basis of the Director’s decision and established that the Beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-N-*, ID# 553288 (AAO Sept. 12, 2017)