



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

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

MATTER OF I-F-

DATE: MAR. 23, 2018

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. 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 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 child'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. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F), 8 U.S.C. § 1101(b)(1)(F) (outlining the eligibility requirements for an orphan petition).

The Director of the National Benefits Center denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), concluding that the Petitioner did not establish that the Beneficiary meets the definition of an orphan and that there was no evidence of the Petitioner's full and final adoption or custody of the Beneficiary.

On appeal, the Petitioner submits an adoption order as additional evidence.

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

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. An orphan is defined as a child, under the age of 16 at the time a petition is filed on his or her behalf, 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; provided, that the Secretary of Homeland Security is satisfied that proper care will be furnished if the child is admitted to the United States. The sibling of such a child who is under the age of 18 is also eligible for classification as an immediate relative provided that he or she meets the orphan definition. Section 101(b)(1)(F) of the Act.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner filed orphan petitions on behalf of the Beneficiary, a citizen of Guyana, in 2017, when the Beneficiary was 17 years old, and on behalf of the Beneficiary's siblings when they were 10 and 14 years of age. The Petitioner indicated on the Beneficiary's orphan petition that the Beneficiary is an orphan because her birth father is deceased and her birth mother is incapable of providing proper care. The Director determined that the Petitioner did not demonstrate that: (1) the Beneficiary's birth mother has irrevocably released the Beneficiary for emigration and adoption; (2) the Beneficiary's birth mother is incapable of providing proper care to the Beneficiary; and (3) the Petitioner and his spouse have a full and final adoption of the Beneficiary or secured custody of the Beneficiary. On appeal, the Petitioner submits an adoption order from the High Court in Guyana showing that he and his spouse adopted the Beneficiary in [REDACTED] 2017.¹ Upon review, the Petitioner has now demonstrated that he and his spouse have a full and final adoption of the Beneficiary. However, the Petitioner has not addressed the Director's remaining grounds for denial and established that the Beneficiary meets the definition of an orphan at section 101(b)(1)(F) of the Act.

The Petitioner claims that the Beneficiary meets the definition of an orphan as the child of a surviving parent incapable of providing for the Beneficiary's care and who has irrevocably released the Beneficiary for emigration and adoption. With the filing of the orphan petition, the Petitioner submitted the Beneficiary's birth father's government-issued death certificate from Guyana as evidence that the Beneficiary is the child of a surviving parent. The term *surviving parent* "means the child's living parent when the child's other parent is dead a surviving parent must be incapable of providing proper care." 8 C.F.R. § 204.3(b). The term *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." *Id.*

The Petitioner has demonstrated that the Beneficiary's birth mother is a surviving parent, but he has not provided evidence to demonstrate that she is incapable of providing proper care to the Beneficiary. The record contains a letter from the Child Protection Agency (CPA) in Guyana, who, under Guyana's adoption authority, the Adoption Board, is tasked with conducting an assessment of the child's availability for adoption and forwarding a report to the Adoption Board.² The CPA's letter states that in April 2015, it received an application for adoption of the Beneficiary and consented to act as his *guardian ad litem*. However, the Petitioner did not provide the CPA's study

¹ The U.S. Department of State's Intercountry Adoption information for Guyana provides that the High Court has jurisdiction over all adoptions in Guyana. U.S. Department of State, *Intercountry Adoption Guyana*, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Guyana.html> (last visited March 1, 2018) (a copy of which has been incorporated into the record).

² U.S. Department of State, *Intercountry Adoption Guyana*, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Guyana.html>.

to demonstrate that the Beneficiary's birth mother is unable to provide proper care to the Beneficiary. See *Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg'l Comm'r 1980) (citing a social welfare agency study as evidence of a sole parent's inability to provide proper care). The Petitioner does not otherwise address the issue or submit further evidence to establish that the Beneficiary's birth mother is a surviving parent who is incapable of providing proper care to the Beneficiary.

In addition, the Petitioner has not provided evidence that the Beneficiary's birth mother has irrevocably released the Beneficiary for both adoption *and* emigration, pursuant to the evidentiary requirements for orphan petitions under 8 C.F.R. § 204.3(d)(1)(iii)(C). The Petitioner submitted with the orphan petition a consent letter from the Beneficiary's birth mother, which provides "I understand the nature and effect of the adoption Order for which application is made (and that in particular I understand that the effect of the order will permanently deprive me of my parental rights) and I hereby consent to the making of an application Order in favour of the Applicants." However, the Beneficiary's birth mother did not explicitly state that she irrevocably released the Beneficiary for emigration from Guyana to the United States.

In sum, the record shows that the Beneficiary's birth mother is a surviving parent. The Guyanese High Court granted the Petitioner's and his spouse's adoption of the Beneficiary. Although this adoption may be valid under Guyanese law, the Petitioner must still demonstrate for U.S. immigration purposes that the Beneficiary meets the definition of an orphan as the child of a surviving parent incapable of providing for the Beneficiary's care and who has irrevocably released the Beneficiary for emigration and adoption. Those requirements have not been met in this case. Consequently, the record does not establish that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of I-F-*, ID# 985762 (AAO Mar. 23, 2018)