



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

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

MATTER OF M-R-A-

DATE: FEB. 27, 2019

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 under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). 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's evidence is not sufficient to establish eligibility. On appeal, the Petitioner resubmits his prior evidence and asserts that his petition meets the eligibility requirements for an orphan from Yemen. Upon *de novo* review, we will dismiss the appeal.

I. LAW

An orphan is defined as a child, under the age of sixteen 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, who has been adopted abroad or is coming to the United States for 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. Section 101(b)(1)(F)(i) of the Act.

A prospective adoptive parent may file an orphan petition concurrently with an application for advance processing on a Form I-600 for U.S. Citizenship and Immigration Services (USCIS) to determine the individual's suitability as an adoptive parent and the child's status as an orphan. 8 C.F.R. § 204.3(d)(3). The Form I-600 must be completed and signed in accordance with the form instructions, and be accompanied by the supporting documentation identified in the regulations. *Id.*

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 the orphan petition in February 2018, indicating on the petition that the 15-year-old Beneficiary, a citizen of Yemen, is an orphan as the child of a surviving parent who is incapable of providing the Beneficiary with proper care.

The Petitioner submitted with the orphan petition and in response to the Director's request for evidence (RFE) documentation of his U.S. citizenship and his spouse's U.S. lawful permanent residence, their marriage certificate and the Beneficiary's birth certificate, criminal record checks for himself and his spouse, their financial records, evidence of their completion of adoption-related courses, a home study, a death certificate for the Beneficiary's father, medical records for the Beneficiary's mother, and Yemeni court orders.

The Director denied the orphan petition because the Petitioner did not respond to the RFE with all of the required evidence under the orphan regulations, including evidence that he engaged a Hague-accredited primary provider and obtained a Hague-compliant home study, as well as demonstrated that the Beneficiary meets the definition of an orphan as the child of a surviving parent and obtained an irrevocable release of the Beneficiary for emigration and adoption with evidence of a full and final adoption or that he procured custody of the Beneficiary.

On appeal, the Petitioner asserts that he has met his burden of proof in these proceedings "in light of the country conditions in Yemen." A child is eligible for classification as the immediate relative of a U.S. citizen if: (1) The U.S. citizen can document that he or she and his or her spouse are capable of providing, and will provide, proper care to the child; and (2) the child is an orphan as defined under section 101(b)(1)(F) of the Act. 8 C.F.R. § 204.3(a)(1). *De novo* review of the record does not show that the Petitioner has established by a preponderance of the evidence that his orphan petition meets either of these requirements.

### A. The Petitioner Has Not Complied With the Requirements of the Intercountry Adoption Universal Accreditation Act of 2012

The Director determined that the Petitioner has not established that he complied with the primary provider and home study requirements of the Intercountry Adoption Universal Accreditation Act of 2012<sup>1</sup> (UAA). The UAA extends the safeguards provided by accreditation to orphans who are being adopted from countries that are not party to the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Adoption Convention or Convention), to their adoptive parents, and to their birth parents.<sup>2</sup> Thus, although Yemen is not a party to the Hague

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<sup>1</sup> Pub.L. 112-276 (2013).

<sup>2</sup> U.S. Department of State, *Universal Accreditation Act of 2012*, [https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt\\_ref/universal-accreditation-act-of-2012-2.html](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/universal-accreditation-act-of-2012-2.html) (last visited February 19, 2019).

Convention, certain Convention requirements still apply.<sup>3</sup> The UAA became effective on July 14, 2014, and requires, in part, that in every “orphan” intercountry adoption case, an accredited or approved adoption service provider act as a primary provider, that the prospective adoptive parent submit a home study that complies with the requirements at 8 C.F.R. § 204.311, and that the home study is prepared by a person authorized under 22 C.F.R. Part 96 to conduct home studies.<sup>4</sup>

The Department of State regulations on accreditation provide that in each intercountry adoption case, an accredited agency or an approved person will be identified and act as the primary adoption services provider. 22 C.F.R. § 96.14(a). *Primary provider* means the accredited agency or approved person responsible for ensuring that all adoption services, including a home study, are provided and for supervising and being responsible for supervised providers where used.<sup>5</sup> *Id.* at § 96.2. The home study is a process for screening and preparing a prospective adoptive parent.<sup>6</sup> 8 C.F.R. § 204.311(a). A home study must be prepared by a person (whether an individual or an agency) authorized to conduct home studies for Convention adoption cases, either as a public domestic authority, an accredited agency, a temporarily accredited agency, approved person, supervised provider, or exempted provider and who holds any license or other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted. *Id.* at § 204.301.

In this case, the Petitioner listed on his orphan petition [REDACTED] as his primary adoption service provider and submitted a home study from [REDACTED] dated April 2018. However, the Council on Accreditation cancelled [REDACTED] accreditation on March 14, 2018.<sup>7</sup> On appeal, the Petitioner asserts that when he engaged the service of [REDACTED] it was an accredited adoption service provider, but lost accreditation while his orphan petition was pending, five days prior to the Director’s issuance of the RFE. He claims that the RFE did not notify him of this loss of accreditation and even if it had given him notice, the 87 days provided to respond to the RFE would not be sufficient time to locate a new accredited agency and complete a new home study. The Petitioner, however, has now been made aware of those deficiencies, and the record before us on appeal does not reflect that he engaged a new accredited or approved adoption service

<sup>3</sup> U.S. Department of State, *Intercountry Adoption, Yemen*, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Yemen.html> (last visited February 19, 2019).

<sup>4</sup> See USCIS, *The Universal Accreditation Act of 2012*, <https://www.uscis.gov/adoption/universal-accreditation-act-2012> (last visited February 19, 2019).

<sup>5</sup> An adoption service includes: identifying a child for adoption and arranging an adoption; securing consent to termination of parental rights and to adoption; performing a background study on a child or a home study on a prospective adoptive parent; making non-judicial determinations of the best-interests of a child; monitoring a case after a child has been placed; and assuming custody and providing a social service pending alternative placement for the child. 22 C.F.R. § 96.2.

<sup>6</sup> The information contained in a home study includes details on the physical, mental, and emotional health of the prospective adoptive parents, their criminal history and finances, the living accommodations for the child, and the placement preparation and training for the prospective adoptive parents. 8 C.F.R. § 204.311.

<sup>7</sup> U.S. Department of State, *Cancellation of the Accreditation of Voice for International Development and Adoption*, [https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/cancellation-of-the-accreditation-of-\[REDACTED\].html](https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/cancellation-of-the-accreditation-of-[REDACTED].html) (last visited February 19, 2019).

provider to act as a primary provider in his case and that he obtained a home study prepared by an individual or agency authorized to conduct home studies.

B. The Petitioner Has Not Established the Beneficiary Meets the Definition of an Orphan

The Director also determined that the Petitioner has not established the Beneficiary meets the orphan classification requirements of section 101(b)(1)(F)(i) of the Act.

The Petitioner submitted the Beneficiary's father's death certificate and indicated on the orphan petition that the Beneficiary is an orphan as the child of a surviving parent. In order to meet the orphan definition as the child of a surviving parent, the 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 term "foreign-sending country" means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. *Id.*

On appeal, the Petitioner asserts that he submitted medical records and court orders which establish that the Beneficiary's surviving parent is incapable of providing proper care. The medical documentation consists of diagnostic testing reports and includes a letter from the Beneficiary's mother's cardiologist, dated May 2016, which states that the Beneficiary's mother "suffer[s] from ailment of myocardium (heart-muscle), with impairment of the hear[t] efficiency . . . and that she need to have a heart beat regulator at a specialized heart center abroad." The court orders contain judgments based on information gathered from witness testimony. A court order from the [REDACTED] in Yemen, dated [REDACTED] 2017, states that the court heard testimony from two witnesses who testified that that the Beneficiary's mother "is poor and she only has what she eats her fill, and that she has nor [sic] source of income and lives on aid." After hearing this testimony, the court declared that "it has been proven to the Court that [the Beneficiary's mother] is poor." The Petitioner himself previously appeared before another court in Yemen, the [REDACTED] in [REDACTED] 2015, where two witnesses testified that the Petitioner has provided for the Beneficiary since she was two years old. The court declared that the Petitioner "is the only provider and sponsor for [the Beneficiary] . . . and that he sponsored since she was two years old."

While these documents indicate that the Petitioner's mother suffers from a health condition and has limited financial means to care for the Beneficiary in Yemen, the record contains gaps in information on the Beneficiary's actual living conditions and her mother's ability to provide her with proper care. The April 2018 home study from [REDACTED] states that "[w]hen the war broke out in Yemen in 2015 [the Beneficiary] and her mother . . . went to live with relatives in [REDACTED] for safety. [The Beneficiary] is in her first year of high school in Egypt." The Petitioner does not discuss whether the Beneficiary's mother is receiving medical treatment in Egypt, her ability to financially support the Beneficiary in that country, and their long-term plans for settlement there. The court decree stating that the Petitioner is supporting the Beneficiary was issued over two years prior to the filing of the orphan petition and the Petitioner does not provide any recent information on the Beneficiary's current

living conditions and the Beneficiary's mother's health condition. Without a detailed, probative description of the Beneficiary's actual living conditions and her birth mother's ability to care for her given their relocation, we cannot conclude that the record establishes by a preponderance of the evidence that the Beneficiary's birth mother, as a surviving parent, is incapable of providing proper care.

Additionally, the Director correctly determined that the Petitioner had not submitted other required evidence for an orphan petition based on a surviving parent claim. The record does not contain an irrevocable release from the Beneficiary's mother for emigration and adoption of the Beneficiary in the United States and evidence that the Petitioner secured custody of the Beneficiary in accordance with the laws of Yemen, as required by section 101(b)(1)(F)(i) of the Act and 8 C.F.R. 204.3(d)(1)(iv)(B). As the Petitioner correctly notes, Yemeni law does not permit the adoption of children and prospective adoptive parents must obtain guardianship for emigration and adoption in the United States from a Yemeni court with jurisdiction over the child's place of residence.<sup>8</sup> Although the Petitioner asserts that he submitted this evidence in the form of a court order stating that he is a "provider and sponsor" for the Beneficiary, the court order does not grant guardianship of the Beneficiary to the Petitioner. As importantly, there is also no record of the Beneficiary's mother's irrevocable release of the Beneficiary for emigration and adoption in the United States, as 8 C.F.R. § 204.3(d)(1)(iv)(B) requires.

### III. CONCLUSION

We recognize the Petitioner's claim that country conditions in Yemen limit his ability to meet his burden of proof. However, the Petitioner has not met any of the requirements for the approval of an orphan petition concurrently filed with an application for advance processing. He has not demonstrated that he complied with the primary provider and home study requirements of the UAA. Nor has he established by a preponderance of the evidence that the Beneficiary meets the definition of an orphan as the child of a surviving parent who is incapable of providing proper care and has irrevocably released the Beneficiary for emigration and adoption in the United States. Moreover, although we acknowledge the court decrees obtained from Yemen, neither of them grant him guardianship of the Beneficiary. Accordingly, the Petitioner has not met his burden of proof in these proceedings.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-R-A-*, ID# 02405896 (AAO Feb. 27, 2019)

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<sup>8</sup> U.S. Department of State, *Intercountry Adoption, Yemen*, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Yemen.html> (last visited February 19, 2019).