



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

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

In Re: 23349447

Date: DEC. 01, 2022

Appeal of National Benefits Center Decision

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 revoked approval of the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition) based on a determination that the Beneficiary did not meet the definition of an orphan under section 101(b)(1)(F)(i) of the Act. The matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A child who meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act is eligible for classification as the immediate relative of a U.S. citizen. 8 C.F.R. § 204.3. An orphan is defined as a child, under the age of 16 at the time a petition is filed on their 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 by a U.S. citizen or is coming to the United States for adoption by a U.S. citizen; 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.

Regarding the revocation of approved visa petitions, section 205 of the Act, 8 U.S.C. § 1155, states the following: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition."

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

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 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.

...

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.

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.

II. ANALYSIS

A. Relevant Factual and Procedural History

The Petitioner filed an orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in 2005, based on her adoption of him as an infant. The orphan petition was approved that same year, but the approval was revoked in 2007 because the Beneficiary's orphan status could not be confirmed. In the notice of revocation, the Director explained that an investigation showed that the location of the Beneficiary's birth mother could not be determined based on the information provided, and that there had been a baby-selling ring at [REDACTED] Clinic (the clinic), where the Beneficiary was born, in which clinic staff paid boys to impregnate girls who then had to relinquish their rights to their children in order to provide a steady supply of babies for sale to American adoptive parents.

Subsequently, the original adoption of the Beneficiary was vacated and the Petitioner re-adopted him in September 2015 in the [REDACTED] Magisterial Court, Nigeria. The Petitioner filed a Form I-130, Petition for Alien Relative, which was denied. She then filed the instant orphan petition in March 2019, claiming that the Beneficiary met the definition of an orphan as a child who “has no parents due to death or disappearance of, abandonment or desertion by, or separation or loss from both parents.”

In adjudicating the instant orphan petition, the Director did not have full information about the history of the case due to a lack of central processing and a discrepancy in the spelling of the Beneficiary’s name. Accordingly, the Director approved the orphan petition in 2019. Once the case was sent to the consular office in Nigeria, the USCIS Adoptions Unit became aware of the information underlying the revocation of the first orphan petition. Accordingly, after considering the Petitioner’s response to a notice of intent to revoke (NOIR), the Director revoked approval of the instant orphan petition. The Director explained that due to the evidence of a baby-selling ring at the clinic where the Beneficiary was born, the Petitioner had not established by a preponderance of the evidence that the Beneficiary’s biological mother willingly and intentionally surrendered her rights to the child, as required to show abandonment under the definition at 8 C.F.R. § 204.3(b). Furthermore, the Director concluded that the Beneficiary did not meet the definition of an orphan under any of the other sub-definitions under section 101(b)(1)(F) of the Act due to the death or disappearance of, desertion by, or separation or loss from, both parents. The Petitioner has timely appealed the revocation.

B. The Petitioner Has Not Established that the Beneficiary Meets the Definition of an Orphan under Section 101(b)(1)(F) of the Act

On appeal, the Petitioner submits a brief and copies of previously submitted evidence. She asserts that she has provided sufficient proof of the Beneficiary’s status as an orphan due to abandonment and desertion by, and the disappearance of, his biological parents under 8 C.F.R. § 204.3(b). She states that at the time she first adopted the Beneficiary in Nigeria in 2005, the Ministry of Gender Affairs and Social Development in [REDACTED] Nigeria (the Ministry), which handles fostering and adoption of children in that locality, informed her that the Beneficiary was “abandoned/deserted” by his biological mother at the clinic, which was registered and approved to partner with the Ministry. The Petitioner alleges that the clinic was a “Social Home,” which is a facility that accommodates “social mothers,” or girls who become pregnant out of wedlock. According to the Petitioner, the Ministry and the clinic staff informed her that the Beneficiary’s biological mother abandoned him at the clinic after his birth and gave false information about her identity and family so that she could remain anonymous and avoid being contacted in the future. The Petitioner states that it was the practice of the clinic to accommodate mothers who wanted to protect their privacy due to the stigma of being pregnant out of wedlock, and that no police report would be filed in such a situation. The Petitioner indicates that the Beneficiary was a ward of the state because he meets the definition of an orphan under section 26(1)(a) of the Children and Young Person’s Law of [REDACTED] as “a juvenile who does not have a known or traceable parent or a relative,” and that she was approved to adopt the Beneficiary after fostering him. She notes that she and her spouse have been parents to the Beneficiary since soon after his birth in 2005.

The Petitioner also states that she learned in 2010 that the government closed the clinic, revoked its license to partner with the Ministry, and incarcerated the doctor who owned the clinic “due to allegations of improprieties.” She emphasizes that the Ministry found the Petitioner to be an innocent

victim without connections to the allegations against the doctor, and that the adoption of the Beneficiary was revoked so that the Petitioner could re-adopt him and start fresh. She alleges that she has already provided evidence in response to a request for evidence from the Director relating to the allegations against the clinic and doctor and their connection to her adoption of the Beneficiary. Further, she contends that the NOIR was confusing, did not provide full information about the evidence in favor of revocation, and did not specify the types of evidence she should submit to establish the Beneficiary's status as an orphan, but that she nevertheless responded to the NOIR with sufficient evidence to meet her burden.

As an initial matter, the Petitioner correctly notes that the NOIR appears to have omitted a list of evidence she should submit to establish that the Beneficiary met the definition of an orphan. The NOIR indicated that the record did not contain primary evidence of the Beneficiary's orphan status and that the Petitioner must therefore submit secondary evidence and an explanation as to why certain evidence was not available. The NOIR stated, "To overcome the issues explained above, you must submit the following:" but did not then provide a list, instead continuing with, "A review of evidence submitted in support of your orphan petition is insufficient" However, the record demonstrates that the Petitioner also raised this issue in response to the NOIR, when she submitted supporting evidence, and she has had another opportunity to submit evidence in support of her claims on appeal. She has provided documentation relating to her assertion that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act. Nonetheless, the evidence is insufficient to overcome the grounds for the Director's revocation and establish that the Beneficiary is an orphan.

In support of her response to the NOIR, the Petitioner submitted letters from the Ministry explaining the circumstances of the Beneficiary's birth and the Petitioner's role in his life. In a September 2015 letter, the Ministry stated that after USCIS' refusal to grant the Beneficiary a visa, the Ministry decided that it would be in the best interest of the child to revoke the original adoption order and create a new case. The Ministry noted that the Beneficiary and his sibling were "classified as orphans having been deserted/abandoned by their biological mothers" at the clinic, per the Children and Young Person's Law of [REDACTED]. Further, the Ministry reported in relevant part that the consular investigators' inability to locate the Beneficiary's mother "using the information provided by the Doctor owner of the clinic was deliberate false personal particulars of the biological mothers Such fraudulently fabricated information by the doctor/owner of the [REDACTED] clinic was deliberately done to deceive the unsuspecting public." Based on this and other similar cases, the Ministry closed the clinic, cancelled its registration, and took administrative disciplinary action against the social welfare officer involved. The Ministry also noted that the Petitioner and her spouse were found to be unaware and innocent of the activities at the clinic and "not in any way or manner privy to the documents signed by the birth Mothers," but were instead "victims of the ignorable actions of the owner of the [REDACTED] clinic." In another letter dated December 2016, the Ministry noted that the Petitioner and her spouse had been providing care for the Beneficiary and his sibling since soon after their birth in 2005. In a third letter, dated July 2019, the Ministry stated that some mothers provide Social Homes such as the [REDACTED] clinic with false names in order to protect their privacy, and that some later decide and are permitted to keep their babies while others choose to abandon them, after which such babies will be placed for adoption. The Ministry indicated in the 2019 letter that the biological mother of the Beneficiary "did not give any correct information about herself" and therefore could not be located.

The Petitioner also previously submitted a letter from S-M-M-¹ who was the Director/Probation Officer at the Ministry from 2005 to 2015 and was in charge when the Beneficiary was adopted. S-M-M- states that the Beneficiary's biological mother abandoned him without leaving correct information about herself, there was "no trace of a father being present," and no one has returned to claim him. S-M-M- claims that efforts to locate the biological mother were unsuccessful and that no clinic staff are available to provide more information because the doctor died and the clinic was closed. She states the Beneficiary was placed for adoption because it was in his best interest. In a similar letter, J-A-, who worked at the Ministry from 1990 to 2015, stated that the Beneficiary's mother abandoned him and could not be located because she did not leave correct contact information, the clinic was closed down, and he was placed for adoption because he met the definition of an orphan under the law of [REDACTED]

Per the regulation at 8 C.F.R. § 204.3(d)(1)(iii), as pertinent to this case, an orphan petition must be supported by evidence that the child "has been abandoned or deserted by . . . both parents . . . or that both parents have disappeared as those terms are defined" at 8 C.F.R. § 204.3(b). Abandonment as defined by the regulation means that both 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)." 8 C.F.R. § 204.3(b). Furthermore, abandonment must include "the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child" *Id.* Similarly, desertion 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."

In this case, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary's biological mother has "willfully forsaken" her parental rights and acted with the intention to do so, as required to meet the definition of abandonment and desertion under the regulation. The evidence in the record that the clinic conducted a baby-selling ring in which young mothers were required to give up their babies for adoption weighs against a determination that the Beneficiary's mother willfully surrendered her rights. Although the Petitioner has submitted documentation to support her claim that she was unaware of the clinic's actions and that she legally adopted the Beneficiary, it is insufficient to show by a preponderance of the evidence that the Beneficiary's mother intentionally abandoned or deserted her child.

Regardless of the Ministry's determination that the Petitioner and her spouse were unaware of the practices at the clinic, the evidence does not establish that the Beneficiary was abandoned or deserted by his biological mother. The Petitioner does not assert that baby-selling did not occur at the clinic at the time of the Beneficiary's birth. Similarly, the letters from the Ministry do not indicate that baby-selling did not occur or that the Beneficiary was not one of the babies sold; instead, they state only that the Petitioner was unaware of such activities and was not culpable in the scheme. Neither the Petitioner nor the Ministry explicitly claim that the Beneficiary's biological mother willingly and intentionally gave up her parental rights and was not impacted by the baby-selling scheme. Instead, the Petitioner states that she and her spouse "know nothing else but the information [they] were given by both the orphanage and the Ministry" and "were not aware of any conspiracy behind the

¹ We use initials to protect privacy.

disappearance of the biological parents . . . or the falsity of the contact information given by the doctor at the clinic,” and the Ministry states that the Petitioner and her spouse were not at fault.

Moreover, the record contains discrepancies about the reason why the birth mother’s incorrect information was provided. The 2015 letter from the Ministry states that the doctor who owned the clinic and was accused of improprieties intentionally falsified the birth mother’s information, while the Petitioner indicates in her affidavit in response to the NOIR that the birth mother chose to provide false information in order to protect her own privacy and avoid being contacted in the future. She states later in the same affidavit that she was initially unaware of the “falsity of the contact information given by the doctor” The source of and reason for the incorrect information about the Beneficiary’s mother’s identity and location is therefore unclear from the record. The Ministry’s statement that the doctor falsified the information and that the Petitioner was a “victim” of the scheme implies that the Beneficiary may have been one of the babies impacted by the doctor’s improper actions, which weighs against a determination that his birth mother willingly and intentionally surrendered her parental rights.

Additionally, the record contains inconsistent reports about whether the Beneficiary and his sibling, who is also the beneficiary of an orphan petition filed by the Petitioner, are twins. Details about the Beneficiary’s sibling relationship is relevant to the information officials had about his biological mother’s identity and her intentions to abandon or desert him. The notice of revocation of the Petitioner’s prior orphan petition specifies that the investigation by the U.S. Consulate in Lagos, Nigeria relied on a letter from the clinic, which stated the Beneficiary and his sibling were abandoned “after a necessary document was signed by the girl and her mother” and provided “detailed references to the birth mother’s family and to the birth father,” but that investigators were unable to confirm the identity or location of the “woman stated to have given birth to the babies.” The consular investigation also indicates that one woman was named as the mother of both babies, but that neighbors did not recognize the name. A 2005 letter from the doctor who directed the clinic where the Beneficiary and his sibling were born also states that “baby twins” were delivered “by a young unmarried school girl, who later abandoned on account of poor, social, psychological or financial status.” Similarly, a probation officer’s social investigation report in support of the 2006 adoption of the Beneficiary states that the “children desired” were “Males (twins)” who were abandoned by their biological mother, after which “the twin babies were handed over to” the Petitioner’s spouse. Based on the information in the social investigation report, the probation officer recommended that the Petitioner and her spouse be approved to adopt both children. The chief magistrate of the Magistrates Court of [] Nigeria, subsequently issued a ruling determining that the Petitioner and her spouse were authorized to adopt the children. Relying on notes in the social investigation report that the children were twins who were “abandoned by their natural unmarried mother,” the chief magistrate decided to “dispense with the consent of the said parent.” Relatedly, the Beneficiary and his sibling were the subject of a July 2006 adoption order² listing them as “twin juveniles.”

² In support of her first orphan petition filed in 2005, the Petitioner submitted a copy of an adoption order from the Magistrate’s Court of [] Magisterial District in Nigeria, dated July 20, 2005. However, in support of her response to the Director’s NOIR relating to the instant orphan petition, she submitted a copy of a different adoption order from the Magistrate’s Court of [] Magisterial District, dated July 20, 2006. She further submitted a *Ruling*, also issued by the Magistrate’s Court of [] Magisterial District on July 20, 2006, authorizing the Petitioner and her spouse to adopt the Beneficiary and stating that they had notified the social welfare officer on April 7, 2006, that the Beneficiary had been in

By contrast, the Ministry's September 2015 letter states that the children were "deserted/abandoned by their biological mothers" and that "no correct information about the names and addresses of the biological mothers" was provided. When the children were re-adopted in 2015, separate adoption orders were issued without any indication that they were twins. The Petitioner states in her affidavit in response to the Director's NOIR that the clinic informed her that the "babies were abandoned by their biological mothers soon after they were born" and that the biological mothers "upon abandoning their children, left incorrect information regarding their identity and that of their families" and "they never came back" to claim their children. The lack of consistent information regarding whether the Beneficiary and his sibling have the same or different biological mothers raises questions about the circumstances of the Beneficiary's birth and adoption, including whether the Petitioner, Ministry, probation officer, chief magistrate, clinic, and other officials involved in the approval of the adoption had or provided full, accurate information about the mother's identity and her willingness to surrender her rights to her child(ren).

Additionally, the record does not support a determination that the Beneficiary is an orphan due to the disappearance of both parents as defined at 8 C.F.R. § 204.3(b). Disappearance means that the 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." *Id.* The Petitioner argues on appeal that the Ministry made reasonable efforts to locate the Beneficiary's mother but was unable to do so "because of the incorrect information the mothers left behind obviously intending not to be found." She notes that the Beneficiary's mother has not reappeared to claim him since his birth in 2005. However, the record does not show that the Ministry or any other competent authority made reasonable efforts to find the biological mother aside from concluding that the doctor or the mother listed false contact information at the time of the Beneficiary's birth.

The Ministry's 2015 letter states that since no correct information was provided, the Ministry accorded him orphan status. The Ministry also refers to the "inability of the US consulate Lagos" to locate the Beneficiary's mother but does not indicate that the Ministry itself attempted to locate her. In its 2019 letter, the Ministry states that in situations where a mother abandons her baby soon after birth and does not provide accurate contact information, "there is nowhere to trace the biological mother and if after the period given for the mother to come back and pick her child lapses, the child will be given up for fostering and adoption" The Ministry does not describe any process for trying to locate mothers in cases where the contact information is missing or incorrect. S-M-M- and J-A- state in their letters that "there was no way to trace" the biological mother and "efforts made to find [her] have proved abortive," but they do not explain what those efforts were. Furthermore, the Petitioner states in her brief on appeal that she began fostering the Beneficiary "on or about [redacted] 2005," which was only two days after his birth. This is consistent with the report of the consular investigation, which states that a witness recalled the Petitioner and her spouse brought the Beneficiary and his sibling to their apartment when the babies were two days old. There is no information in the record about

their custody for at least three months. Other evidence in the record, including letters from the Ministry, indicates that the Petitioner adopted the Beneficiary in 2006. The timeline of the Petitioner's original adoption of the Beneficiary, and the reason for two separate adoption orders issued in different localities one year apart, is not clear from the record.

whether this two-day period complied with the time the Ministry references in which a biological mother may return and claim her child before their placement for fostering and adoption. Also, as discussed, the record contains unresolved inconsistencies about whether the Beneficiary's mother or the clinic doctor was the source of the incorrect contact information, and the mother's intentions cannot be determined due to the evidence of a baby-selling ring at the clinic. A preponderance of the evidence does not show that the Beneficiary's biological mother "unaccountably or inexplicably" disappeared from his life, as 8 C.F.R. § 204.3(b) requires to meet the definition of disappearance, rather than due to the fact that she gave birth at a clinic conducting a baby-selling scheme.

We acknowledge that the Petitioner adopted the Beneficiary in Nigeria pursuant to the laws of that country. Also, we recognize the hardship the revocation of the approved orphan petition may cause for the Petitioner, the Beneficiary, and their family, as the Petitioner and her spouse have been providing care and support for the Beneficiary and his sibling since 2005. However, the record contains unresolved discrepancies regarding whether the Beneficiary's biological mother willingly and intentionally surrendered all parental rights, forsook her child, or unaccountably and inexplicably went out of his life, as required to support the Petitioner's claim that his parents abandoned him, deserted him, and disappeared, respectively. The record also does not show that a competent authority made reasonable efforts to locate the Beneficiary's biological mother, as required to meet the definition of disappearance. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act, and the orphan petition will remain revoked.

ORDER: The appeal is dismissed.