



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

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

In Re: 20930588

Date: MAR. 28, 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 Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), but ultimately revoked the approval after proper notice. The Director concluded that the Beneficiary did not meet the definition of an orphan under section 101(b)(1)(F)(i) of the Act. On appeal, the Petitioner resubmits his response to the notice of intent to revoke (NOIR) and a brief reasserting the Beneficiary's eligibility. 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 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 by a United States citizen, or who is coming to the United States for adoption by a United States 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(k)(1), regarding a consular officer's Form I-604, Determination on Child for Adoption (Form I-604), provides, in pertinent part:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. . . . In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

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 persons.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in September 2019. The Petitioner claimed that the Beneficiary met the definition of an orphan as the child who “has no parents due to . . . abandonment . . . by . . . both parents.” The Director approved the orphan petition in October 2019.

The record indicates that, during a review of the orphan petition, a consular officer in Lagos, Nigeria, reviewed evidence submitted with the initial Form I-600 filing.¹ The consular officer noted that documents from the [redacted] (orphanage) and the [redacted] Ministry of Gender Affairs and Social Development (Ministry) in June 2014 and September 2014 stated that the Beneficiary was placed at the orphanage by the Ministry. However, a letter from the Ministry dated in September 2015 stated that the Beneficiary was abandoned at the orphanage. As a result, a consular officer decided to conduct a site visit to the Ministry and the orphanage to confirm the veracity of the documents submitted in the case. During a visit to the Ministry, the consular officer confirmed that the Ministry had conducted a “standard” investigation into the Beneficiary’s adoption. The consular officer noted that the Ministry had confirmed in prior meetings that the “standard” investigation meant that it relied completely on the orphanage to investigate the Beneficiary’s background. As a result, the consular officer refused to accept the Ministry’s letter alone as evidence of the Beneficiary’s origins. The consular officer then visited the orphanage where he asked to review the record of the Beneficiary’s intake. Upon review, the consular officer discovered that the ledger book contained discrepant information regarding the Beneficiary’s origins and birth mother.² The orphanage was also

¹ The Petitioner submitted an affidavit from R-O-, the Beneficiary’s purported birth mother, a document entitled “Custody of a Baby Boy” from the [redacted] Ministry of Gender Affairs and Social Development, and a Child Intake and Lifting Report from the [redacted] both dated in June 2014.

² As stated in the Director’s decision, the Beneficiary’s entry in the orphanage’s ledger book was altered and R-O-, whose affidavit was submitted as initial evidence, was not listed as his birth mother.

unable to confirm the veracity of their own documents including the Child Intake and Lifting Report or the affidavit from the Beneficiary's purported birth mother.

Upon completion of its Form I-604 investigation, a consular officer returned the petition for revocation, and the Director issued a NOIR in April 2020. In the NOIR, the Director informed the Petitioner that the Form I-604 investigation "revealed information discrediting the submitted documents and claims of orphanhood [he] presented to [U.S. Citizenship and Immigration Services (USCIS)] with the filing of the [orphan petition]." Specifically, the Director noted that the NOIR was based on evidence not previously available to USCIS, including the results of site visits to the Ministry and orphanage, and an altered ledger entry from the orphanage. The Petitioner, through counsel, disputed that determination, and submitted a timely response to the NOIR.³ The Director acknowledged the Petitioner's response, but determined that it did not overcome the deficiencies noted in the NOIR. Accordingly, the Director revoked approval of the orphan petition. The Petitioner 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 disputes the Director's determination. He argues that "[r]ather than acknowledging the information provided in [the NOIR response] which resolved the alleged inconsistencies and demonstrated that that the beneficiary is an orphan, the decision revoke[d] the petition based on speculation, hearsay and any possible negative inference taken against the petitioner." Regarding the deficiencies noted by the Director in her prior decision, the Petitioner asserts that he provided a credible explanation for the absence of the Beneficiary's file during the consular officer's site visit to the orphanage. He further asserts that the Ministry provided a letter confirming its investigation, contrary to the consular officer's assertion that it relied completely on the orphanage to investigate the Beneficiary's background. Lastly, the Petitioner asserts that the director of the orphanage provided a letter confirming statements by the Petitioner's attorney in Nigeria and the former director of the Ministry that the Beneficiary was placed with the orphanage until suitable adoptive parents were found.

The Director acknowledged the Petitioner's arguments and evidence submitted in response to the NOIR. However, she determined that the evidence was insufficient evidence of the Beneficiary's abandonment because "[t]he record d[id] not include credible and consistent evidence of the origin of the [Beneficiary], including when he was born, when and how he was turned over to the Ministry, the identity of the birth father and what attempts were made to locate him." The Director additionally determined that the Petitioner "submitted no new evidence and attempted only to explain discrepancies and errors made throughout the [adoption] process." The Director specifically acknowledged the letter from the former director of the Ministry stating that she mistakenly used the word "abandoned" in her letter dated March 2015 and the updated letter from the director of the orphanage expressing regret for the "mutilations" in the ledger and reiterating that the Beneficiary's documents were not available during the consular officer's visit because they were located at the orphanage's old location. We note, however, that the updated letter from the director of the orphanage does not meaningfully address why the Beneficiary's entry in the ledger was altered in the first place or why R-O-, the Beneficiary's

³ In response to the NOIR, the Petitioner submitted an updated affidavit, a letter from his attorney in Nigeria, letters from the Ministry and the director of the orphanage, and an affidavit from the former director of the Ministry.

purported birth mother, was not listed in the ledger. We further note that, the director of the orphanage indicated in her letter that the complete record for the Beneficiary was subsequently found, and duplicate copies were provided to the Petitioner and his spouse. However, the Petitioner did not include those records in the response to the NOIR or as additional evidence on appeal.

The Director also acknowledged the report from the Ministry dated March 2015, but determined that it did not clearly state when the Petitioner took possession of the Beneficiary or mention the Ministry's attempts to identify and locate the Beneficiary's birth father. We additionally note that the Ministry's letter does not provide any details regarding the specifics of their investigation of the Beneficiary's background. Instead, the letter generally states that the Ministry "investigates every case as required by law and after which the social welfare investigation report is issued" and that the "[a]ctions undertaken in the course of the adoption includ[ed] among others investigations, interview, home visits and so on." Moreover, the letter does not mention the name of the Beneficiary's birth mother or address his birth father or the Ministry's attempts to locate him. Lastly, we acknowledge the letter from the Petitioner's attorney in Nigeria asserting that the deficiencies noted in the NOIR do not preclude a finding that the Beneficiary is an orphan under the Act. However, the letter does not otherwise meaningfully address the concerns outlined above and assertions of counsel are not evidence and must be supported by independent documentation. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence").

We acknowledge the Petitioner's assertions on appeal including his claim that this case should be viewed through a humanitarian lens as he and his spouse adopted the Beneficiary due to their inability to have children of their own. However, we reiterate that a Form I-604 investigation revealed significant, derogatory information—including statements from Ministry officials that they relied on the orphanage to investigate the Beneficiary's background, inconsistent statements from the Ministry and director of the orphanage, and altered or missing information regarding the Beneficiary's arrival at the orphanage—discrediting the Petitioner's evidence of abandonment by the Beneficiary's birth parents. Furthermore, as we noted above, the Petitioner's NOIR response—namely, his updated affidavit, and letters from the Petitioner's attorney in Nigeria, the director of the orphanage, and the former director of the Ministry—do not sufficiently address the discrepancies the Director identified in the NOIR, and the Petitioner has not submitted new evidence explaining or otherwise addressing the same on appeal. 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.