



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

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

In Re: 29221145

Date: DEC. 21, 2023

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 (Director) denied the orphan petition, concluding that the Petitioner did not establish her financial suitability to adopt the Beneficiary, or that Beneficiary met the definition of an “orphan” under section 101(b)(1)(F)(i) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits additional evidence and a brief reasserting the Beneficiary’s eligibility for the benefit sought.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 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.

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

Surviving parent means the child’s living parent when the child’s other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

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.

II. ANALYSIS

A. Relevant Factual and Procedural History

The Petitioner filed the orphan petition on behalf of the Beneficiary, her grandson and a citizen of Nigeria, in May 2022, when the Beneficiary was one year old. The Petitioner marked the box on the orphan petition indicating that the Beneficiary is an orphan because he “has only one sole or surviving parent who is incapable of providing proper care and who has irrevocably released the child for emigration and adoption in writing.” With the filing of the orphan petition, the Petitioner submitted civil and medical documents from Nigeria for the Beneficiary, a copy of the death certificate for the Beneficiary's birth mother, affidavits from herself and J-J-E-, Beneficiary's birth father, documents from [REDACTED] (Magistrate Court), multiple documents from the Ministry of Gender Affairs and Social Development (Ministry), a copy of her travel itinerary and Nigerian passport, and miscellaneous photographs of the Beneficiary.

The Director issued a request for evidence (RFE) for additional evidence of the Petitioner's financial suitability for adoption, her spouse's death, and the Beneficiary's orphanhood status under the Act. In response to the RFE, the Petitioner submitted a letter and updated report from two adoption services providers, 2019-2021 federal income tax returns, 2021 Indiana individual income tax return, bank statements and rent receipts, letters from [REDACTED] and the [REDACTED] [REDACTED] regarding her spouse's death, and letters from J-J-E- and the Ministry addressing chain of custody of the Beneficiary. The Director subsequently denied the orphan petition, noting that the Petitioner had not provided sufficient evidence of her financial suitability, or that the Beneficiary met the definition of an orphan under the Act.

On appeal, the Petitioner contends that her newly and previously submitted evidence is sufficient to establish that she is financially suitable to adopt the Beneficiary. She submits evidence including an updated affidavit and letter from the Ministry, a Form I-864A, Affidavit of Support under Section 213 of the INA from her son, wire transfer receipts and bank statements from [REDACTED] and [REDACTED] [REDACTED], a property valuation report for her home in Nigeria. The Petitioner also contends that she submitted sufficient evidence that J-J-E- is incapable of providing proper care as required by 8 C.F.R. § 204.3(b) and has established the Beneficiary meets the definition of an orphan under Section 101(b)(1)(F) of the Act. She references several reports from the Ministry indicating that J-J-E- “has no defined means of income,” and “is unemployed and cannot afford to give [the Beneficiary] care, attention, and proper upbringing.” She further references her supplemental affidavit in which she states that she supported her daughter and J-J-E- with money and free housing from 2017 until the Beneficiary's birth in [REDACTED] 2021.

The Director acknowledged the Petitioner's previously submitted evidence of J-J-E-'s inability to provide proper care to the Beneficiary. She highlighted that the Petitioner's contention that J-J-E- is unemployed was not corroborated by anyone including J-J-E- himself and noted that there was no

indication in the record that J-J-E- was physically or mentally incapable of working. She also emphasized that the Petitioner's and J-J-E-'s statements regarding his financial circumstances did not indicate he is incapable of providing care to the Beneficiary consistent with the local standards in Nigeria. The Director also noted that the Petitioner's statement in her affidavit that J-J-E- "immediately took the new born juvenile to a motherless babies home in [redacted] as he was unable to provide any intervention then for the new born" was contradicted by the adoption order and Ministry letter stating that J-J-E- took the Beneficiary to his aunt's house after his spouse's death.

Furthermore, as previously noted by the Director, J-J-E- only stated generally that he cannot take care of the Beneficiary and that, "as a young man hoping to get married in the future [,] it would be in the best interest of [the Beneficiary] that his grandmother being a good mother-in-law to me with [a] heart of gold is the best person to nurture and train [the Beneficiary] effectively." However, the Petitioner has not submitted a statement from J-J-E- on appeal explaining *why* he is unable to work or provide proper care to the Beneficiary. Instead, the only statements regarding J-J-E-'s inability to provide proper care come from the Ministry and the Petitioner herself and do not indicate that he is incapable of providing proper care to the Beneficiary. Further, although the Petitioner states that J-J-E- "has no defined business, skill, and no form of office or trade from where he earns money reasonably to sustain his family," she had initially stated in her affidavit that J-J-E-'s business folded up, indicating that he had a business, or at minimum skills and the ability to work. As a result, we agree with the Director that the Petitioner's and J-J-E-'s descriptions of his circumstances do not establish that J-J-E- is incapable of providing proper care to the Beneficiary. ¹

III. CONCLUSION

The Petitioner has not overcome the bases for denial of her orphan petition. Specifically, she 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 denied.

ORDER: The appeal is dismissed.

¹ The Director's decision additionally determined that the Petitioner had not established her financial suitability to adopt the Beneficiary. As our decision regarding the Beneficiary's orphanhood is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding this additional ground for denial. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).