



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

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

In Re: 23063482

Date: JAN. 4, 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 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 petition, concluding that the record did not establish that the 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. 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 remand the matter to the Director.

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. The regulation at 8 C.F.R. § 204.3(k)(1) provides that a consular officer's I-604, Determination on Child for Adoption (I-604 investigation) "must be completed in every orphan case."

The Petitioner filed an orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in June 2020, based on her adoption of him in 2007. The Director issued two requests for evidence (RFEs) informing the Petitioner, in relevant part, that the evidence was insufficient to establish the Beneficiary's status as an orphan. In response to the first RFE, the Petitioner provided the Beneficiary's [redacted] 2007 birth certificate; an adoption order issued in [redacted] 2007; a 2007 letter certifying that a "Baby Boy" was abandoned by an unnamed individual and placed in the foster care of the Petitioner and her spouse; a 2007 letter stating that the Petitioner and her spouse fostered and later adopted the Beneficiary after his mother abandoned him; an undated letter regarding an application to foster a baby, without naming the foster parents or baby; a 2007 *Undertaking of Foster Parents* declaration in which the Petitioner

and her spouse agreed to provide foster care for an unnamed child; and documents regarding the identity and address of the Petitioner and Beneficiary.

In the second RFE, issued in June 2021, the Director explained that the foster placement records were undated and did not name the child or the biological parents, and the I-604 investigation determined the foster placement records were not credible evidence of the Beneficiary's origins. In response to the second RFE, the Petitioner submitted an *Investigation Report for Adoption* (2021 investigation report), issued in August 2021 by the Social Development Department for the [REDACTED] Local Government, Nigeria, explaining the history of the Beneficiary's birth and subsequent adoption by the Petitioner in 2007. The 2021 investigation report named the Beneficiary and his biological mother and stated that his mother abandoned him three days after his birth in [REDACTED] 2007, after which the Petitioner and her spouse adopted him.

The Director denied the petition based on a determination that the Beneficiary did not meet the definition of an orphan due to the lack of credible evidence of his origins. The Director stated that the 2021 investigation report was created 14 years after the claimed abandonment and did not indicate what type of investigation took place, who performed it, or when it occurred, but instead focused on the qualifications of the Petitioner and her spouse as adoptive parents.

On appeal, the Petitioner submits new evidence, including a personal affidavit from the Beneficiary's biological mother, dated March 2007, indicating her intent to leave him in the custody of social welfare workers for the purpose of placing him for fostering or adoption; an April 2007 foster placement document stating that the Beneficiary was placed in foster care with the Petitioner and her spouse after his mother abandoned him; an *Undertaking of Foster Placement* document, signed by the Petitioner in April 2007, agreeing to care for the Beneficiary as her foster child; a May 2007 *Investigation Report for Adoption* (2007 investigation report), describing the Beneficiary's background and stating that social welfare officers conducted four separate investigational visits between April and May 2007 prior to approving the Petitioner's application to adopt the Beneficiary;¹ a June 2007 letter from the Deputy Director, Social Development Department² confirming the adoption process, including details about the investigations and the people involved; a June 2007 letter from the Director, Social Development Department stating that the Beneficiary did not have an "original" birth certificate and explaining why the Petitioner and her spouse were listed as the parents on the Beneficiary's birth certificate; and scholarly articles about social issues relating to children born out of wedlock in Nigeria. The Petitioner also provides copies of previously submitted evidence.

The Petitioner does not explain why she submits this new evidence, which is dated from 2007, for the first time on appeal but did not provide it with her original filing or in response to the Director's two prior RFEs. Also, she states in her appeal brief that the investigation report has been "amended," but it not clear whether the 2007 investigation report was originally issued in 2007 as indicated on the document or was based on the 2021 investigation report she previously submitted. Because the newly

¹ The 2021 investigation report states that the Petitioner and her spouse submitted their adoption application in January 2007. However, the 2007 investigation report states she and her spouse submitted their adoption application in January 2006.

² The same official from the Social Development Department signed the 2007 foster placement document, letters, and investigation report and the 2021 letters and investigation report. Some documents list her title as "Deputy Director" while others list it as "Director."

submitted evidence is material to the Petitioner's claim, we will remand the matter to the Director to consider the new evidence in the first instance and determine whether the Petitioner has met her burden of establishing that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.