



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

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

In Re: 22554376

Date: JAN. 17, 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 based on a determination that the Beneficiary does not meet the definition of an orphan. 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 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. A foreign national who is younger than 18 years of age may also be considered a child under the Act if adopted with or after a sibling who qualified as a child under the Act. Pub. Law 106-139, section 1(a) (December 7, 1999) (amended section 101(b) of the Act).

The regulation at 8 C.F.R. § 204.3(k)(1), regarding a consular officer's I-604, Determination on Child for Adoption (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.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Uganda, in December 2019. The Petitioner claimed 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 support of the orphan petition, the Petitioner submitted a Probation and Social Welfare Report and petition for adoption indicating that the Beneficiary’s father died in 2012 and her mother died in 2018, leaving her orphaned. The documentation reflected that after the death of the Beneficiary’s mother, she and her sister were in the care of the Petitioner, who is their maternal aunt, and that when the Petitioner had to return to the United States, she left them in the care of a cousin, N-S-.¹ The Petitioner also submitted an order of adoption issued by the High Court of Uganda reflecting that she adopted the Beneficiary in [REDACTED] 2019.

Prior to final adjudication of the orphan petition, the Director received the completed I-604 from a consular officer at the U.S. Embassy in Kampala, Uganda. The consular officer indicated on the I-604 that the orphan petition was not clearly approvable because an investigation showed that the Beneficiary was over the age of 18 years on the date the orphan petition was filed. Furthermore, the consular officer determined that the Beneficiary did not meet the definition of an orphan under any of the sub-definitions pursuant to section 101(b)(1)(F) of the Act due to 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. Accordingly, the Director denied the orphan petition.

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

Based on the I-604 investigation, the consular officer determined that the Beneficiary was born in 1997 and was 22 years old when the adoption order was issued. Accordingly, the Director denied the orphan petition because the Beneficiary did not meet the definition of an orphan under section 101(b)(1)(F) of the Act. On appeal, the Petitioner asserts that the investigation regarding the Beneficiary was flawed and unfair and that she has submitted sufficient evidence to establish that the Beneficiary meets the definition of an orphan. The Petitioner has not overcome the Director’s determination on appeal.

The consular officer indicated in the report relating to the I-604 that the Beneficiary is older than claimed on the orphan petition and that if her true age were known, the High Court in Uganda would

¹ We use initials to protect privacy.

not have issued the adoption order. The consular officer explained that the Beneficiary's birth certificate was registered in May 2019, 16 years after her claimed date of birth in [] 2003 and only [] months before the Petitioner applied to adopt the Beneficiary in July 2019. Accordingly, investigators sought to verify the Beneficiary's age by requesting school and baptism records, but the Petitioner was unable to provide such documents. The Beneficiary's family provided a verbal statement that the Beneficiary attended [] Primary School for several years prior to 2018, repeating information provided in support of the orphan petition. Investigators then visited [] Primary School, where the Head Teacher and other teachers stated that no student by the Beneficiary's name appeared in any of the school records. The memorandum indicates that the Head Teacher "physically handed the investigators all the available annual school registration records to look through for [the Beneficiary's] name, but her name was not there." Additionally, the investigators interviewed J-O-, "who has taught in [] Primary School for several years and is a friend of [the Beneficiary's] uncle," and he stated that the Beneficiary never attended that school.

On appeal, the Petitioner asserts that the investigator spoke with "one of the village men who pretended to be" J-O-, and that no one named J-O- was ever a teacher at the school. She submits a handwritten letter and a sworn declaration from A-O-, who has the same surname as J-O- and states he was a teacher at [] Primary School from 1980 to 1989 and is now a member of the board. A-O- claims that he saw the Beneficiary during his visits to the school as a board member, there was never a teacher there named J-O-, and no embassy investigator ever spoke with him. The Petitioner also submits a 1989 notice to A-O- informing him of his transfer as a teacher from [] Primary School to another school. In response to the Director's notice of intent to deny (NOID), the Petitioner provided a 2021 letter from the head teacher at [] Primary School, S-O-, stating that the Beneficiary attended the school from 2012 to 2016 but that her attendance was irregular because of her family situation. S-O- further stated that investigators arrived at the school in 2020 to request records of the Beneficiary's attendance in 2018, but "according to [the] register she was not found, since she left in 2016." Also, S-O- stated that there was never a teacher named J-O- at the school. However, as discussed, the memorandum relating to the I-604 specifies that the investigators conducted their own physical search of all of the [] Primary School records to confirm that the Beneficiary's name did not appear there. Their own physical verification of the records is consistent with the information obtained during in-person interviews. The Petitioner's claims that the investigators did not speak with a teacher at the school and did not review the proper records is not sufficient to refute these findings.

The Petitioner also submits on appeal the Beneficiary's identification card from [] Girls' School in 2020, indicating that her age was 16 years and her date of birth was [] 2003, and an identification card from [] school also indicating that she was 16 years old, but bearing no date of birth or date of issuance. Additionally, she resubmits copies of the records of adoption from the High Court of Uganda. We also note that she previously submitted a copy of the Beneficiary's baptism card in response to the Director's NOID, showing her date of birth as [] 2003. However, this evidence conflicts with the information the investigators obtained in their review of records and personal interviews, and there is insufficient evidence to explain the discrepancies.

The Petitioner further contends that the investigators contacted a distant cousin, P-O-, to ask about the identity of the Beneficiary's father and other information relating to the family, and that P-O- later told her that because she did not know the answer to most of the questions, she called someone else in the village and relayed the information she received from that third party. The Petitioner also claims

that the investigators went to a village burial and asked people there about the Beneficiary's family, but that many of those in attendance do not know her and only became involved in the investigation out of curiosity. Accordingly, the Petitioner contends that the investigation results are improperly based on hearsay and interviews with people who have no personal knowledge of the family. She states that someone who reported the Beneficiary "might have been born the same time as her kid" had never met her or the Beneficiary, and that the investigators should have started with a visit to the "LC chairman" of the area. However, the report of the I-604 investigation specifies that the Beneficiary's aunt P-, who is the sister of the Beneficiary's mother, stated during an in-person interview at the U.S. Embassy that she first heard of the Beneficiary's birth in 1999, when the Beneficiary was two years old. The memorandum shows that this information is consistent with that provided by other maternal relatives of the Beneficiary, who stated during interviews in [redacted] Village in October 2020 that the Beneficiary was born in 1997 and that "their memory of her birth was anchored to their memory of their own closer family member born within the same year." The report does not indicate that investigators relied on information from people who did not know the family personally. The record indicates that the Beneficiary's aunt P- is a close relative who has personal knowledge of the Beneficiary and her family, and helped to support the Beneficiary in Uganda after her mother's death when the Petitioner had to return to the United States. Specifically, the adoption application states that the Beneficiary was left in the care of N-S- and her maternal aunt P-, both of whom "are supportive and guide the [Beneficiary] in any way that they can." The record also contains an affidavit from P- stating that she knows the Beneficiary because she is her mother's biological sister.

The Petitioner also states on appeal that she obtained the Beneficiary's birth certificate from the entity that handles all birth, adoption, and death certificates in Uganda and that they confirmed to her that "unless her names were written wrong or the date of birth written wrong, what they issued is valid." She also contends that the court in Uganda would not have granted the adoption if the birth certificate were not valid. However, she does not describe what, if any, documentation she provided in support of her application for the birth certificate or whether it was validated in any way. With regard to the late registration of the birth, the Petitioner states that she obtained the birth certificate at the request of the Beneficiary's "first stable school," [redacted] where she registered the Beneficiary after her mother's death. The Petitioner also notes that the lawyer she spoke with about adoption told her that a birth certificate would be a required document. She states that "it is not unusual for poor people to process documents only when there is a need for it" due to the cost, and emphasizes that the Beneficiary had inconsistent care prior to this because her mother was seriously ill with sickle cell disease. We acknowledge the Petitioner's arguments, but she has not submitted sufficient explanations for the discrepancies between the investigator's findings and her claims regarding the Beneficiary's date of birth.

The Petitioner has not provided sufficient evidence to overcome the conclusions in the I-604. Therefore, the Petitioner has not established by a preponderance of the evidence that the Beneficiary meets the definition of an orphan as a child who was under the age of 16 at the time an orphan petition was filed on their behalf or a foreign national who was younger than 18 years of age when adopted with or after a sibling who qualified as a child under the Act. Section 101(b)(1)(F)(i) of the Act; Pub. Law 106-139, section 1(a) (December 7, 1999) (amended section 101(b) of the Act).

We note the consular officer also determined that the Beneficiary does not meet the definition of an orphan due to the death of both parents because of questions regarding her father's identity, and that she does not meet any other sub-definition of an orphan pursuant to section 101(b)(1)(F)(i) of the Act. We acknowledge the Petitioner's concerns on appeal regarding the stress caused by the findings in the I-604 and her separation from the Beneficiary. However, because the issue of the Beneficiary's age is dispositive of this appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the Beneficiary otherwise meets the definition of an orphan due to 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. *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).

ORDER: The appeal is dismissed.