



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

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

In Re: 26620198

Date: JUL. 31, 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 Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), concluding that the Petitioner did not establish eligibility for the benefit sought. 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.

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, 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 Petitioner filed the orphan petition on behalf of the Beneficiary, his nephew and a citizen of Liberia, in December 2021, when the Beneficiary was 15 years old. The Petitioner indicated, through a box check on the orphan petition, that the Beneficiary is an orphan because he “has a sole or surviving parent who is incapable of providing proper care and who has irrevocably released the child for emigration and adoption in writing.” In support of that assertion, the Petitioner further explained “the father is dead, mother is unemployed, and has no source of income.” The Petitioner submitted documentary evidence with the orphan petition, including: the Beneficiary’s birth certificate; the Beneficiary’s medical certificate; a report from the Ministry of Gender, Children, and Social Protection; and a copy of a National Visa Center Notice regarding the Petitioner’s Form I-600A, Advance Processing of an Orphan Petition. U.S. Citizenship and Immigration Services (USCIS) issued a request for evidence (RFE), asking the Petitioner to provide documentary evidence to establish eligibility for a grant of his orphan petition. The Petitioner responded, providing additional documentary evidence, including, in pertinent part, an additional copy of the previously submitted

report from the Ministry of Gender, Children, and Social Protection. The report states that the Beneficiary's biological mother engages in petty trading for income, and he resides with his grandmother in a two-bedroom house where he sleeps in his own room. The report further indicates the home utilizes community electricity, well water is used for cooking and bathing, and mineral water is purchased for drinking. Determining this evidence insufficient to establish the Beneficiary's surviving parent is incapable of providing proper care, USCIS issued a notice of intent to deny (NOID). The Petitioner responded to the NOID, submitting an updated Affidavit of Relinquishment from the Beneficiary's biological mother. The Petitioner, however, did not submit any additional evidence relevant to or establishing the Beneficiary's surviving parent is incapable of providing proper care.

In October 2022, the Director subsequently denied the Petitioner's orphan petition, and in doing so determined that the Petitioner did not provide a sufficient factual basis for determining that the Beneficiary's surviving parent is incapable of providing him with proper care, as defined by the regulation. Specifically, 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.

Upon de novo review, although the record shows that the Beneficiary's surviving parent has consented to his adoption and emigration, it does not show, by a preponderance of the evidence, that she is incapable of providing the Beneficiary with proper care, consistent with local standards in Liberia. On appeal, the Petitioner submits a statement in which he briefly describes the Beneficiary's living conditions in Liberia. He states that his living conditions are "deplorable," explaining that they lack reliable drinking water, that insects and germs can encroach on their living space, that they lack reliable electricity, and that the Beneficiary's family members generally struggle to support themselves and the Beneficiary. The Petitioner additionally submits photographs of the Beneficiary's life in the Liberia and that corroborate aspects of his statement. We acknowledge and do not seek to diminish this evidence; however, the Petitioner has not provided evidence to explain how these conditions and level of care are inconsistent with the local standards in Liberia. The Petitioner's claim that the Beneficiary's biological mother is unable to provide proper care is based largely on his own assessments and is not supported by any reference to the biological mother's earning capacity or to local standards in Liberia. The Petitioner did not submit any objective evidence or offer any explanation as to why the biological mother cannot obtain gainful employment which would enable her to provide proper care to the Beneficiary, consistent with local standards in Liberia. Absent evidence, such as country conditions evidence describing standards of living and care for children and an explanation of how the care the surviving parent provides for the Beneficiary differs from those standards, we are unable to conclude the Petitioner has met his burden of proof to establish by a preponderance of the evidence eligibility for benefit sought. Therefore, the orphan petition remains denied, and the appeal is dismissed.

ORDER: The appeal is dismissed.