



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

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

In Re: 26619783

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 niece and a citizen of Liberia, in February 2022, when the Beneficiary was four years old. The Petitioner indicated, through a box check on the orphan petition, that the Beneficiary is an orphan because she “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 unknown, mother is unemployed, has no source of income, and a teenager.” The Petitioner submitted the orphan petition without any initial supporting evidence. U.S. Citizenship and Immigration Services (USCIS) subsequently sent a request for evidence (RFE). The Petitioner responded to the RFE, submitting documentary evidence, including, in pertinent part, a copy of a report from the Ministry of Gender, Children, and Social Protection. The report states that the Beneficiary lives in the three-bedroom home of her grandmother, where she shares a room with her biological mother. The family home utilizes community electricity, has access to well water for cooking and showering, and mineral water is purchased for drinking. The Beneficiary’s biological

mother is unable to fully care for the Beneficiary as she is a 10th grade student, and they rely on the Beneficiary's grandparents – her grandfather, who is a nurse, and her grandmother, who is a businesswoman – for support. Determining this insufficient to establish that the Beneficiary's sole 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 and another copy of the Beneficiary's birth certificate. The Petitioner, however, did not submit any additional evidence relevant to or establishing the Beneficiary's sole parent is incapable of providing proper care.

In October 2022, the Director 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 sole parent is incapable of providing her with proper care, as defined by the regulation.<sup>1</sup> Specifically, the regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

*Sole parent* means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption.

*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 sole parent has consented to her 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 her 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

---

<sup>1</sup> The Director also determined the Petitioner failed to provide sufficient secondary evidence for proof of the Beneficiary's identity, birth parent(s), and age, as required by 8 C.F.R. § 204.3(b)(1)(ii). The need for additional evidence to establish identity, age, and birth parents was identified in both the RFE and NOID. On appeal, the Petitioner has provided no additional secondary evidence to prove any of these requirements, and he makes no arguments as to the validity of the Director's related finding. Since the above-identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of proof of the Beneficiary's identity, birth parents, and age. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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).

assessments and is not supported by any reference to the biological mother's earning capacity or to local standards in Liberia. The Petitioner's statement on appeal identifies the Beneficiary's grandmother as her primary caregiver because her biological mother was a teenager when the Beneficiary was born. Nothing is provided to explain why the sole parent, the Beneficiary's biological mother, cannot provide for or care for her daughter now. 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 sole 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.