



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

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

In Re: 24915630

Date: JUNE 6, 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 the Beneficiary's eligibility for the benefit sought. On appeal, the Petitioner submits previously submitted evidence, additional evidence, and requests approval of her petition. We review the questions in this matter de novo. *See 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

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, 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)(l) provides, in pertinent part, that an I-604, Determination on Child for Adoption (I-604), "investigation must be completed in every orphan case" by a consular or USCIS officer. An 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." In cases 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."

Relevant regulations provide that the term sole parent "means the mother when it is established that the child is illegitimate" 8 C.F.R. § 204.3(b). The regulations further provide that "[i]n all cases, a sole parent must be incapable of providing proper care" *Id.* The term 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." *Id.*

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

II. ANALYSIS

A. Relevant Factual and Procedural History

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in November 2020. In her petition, the Petitioner claimed that C-M-¹, a native and resident of [REDACTED] gave birth to the Beneficiary and traveled to [REDACTED] to surrender her at the [REDACTED] Orphanage Home (orphanage) five days later. She further claimed that she was matched with the Beneficiary shortly thereafter, and her application for adoption was approved in November 2018. The Petitioner submitted a copy of C-M-'s Affidavit of Facts (affidavit), a Police Extract from the Nigeria Police Force, Foster and Adoption Orders from the Family Court of [REDACTED] of Nigeria, reports from the Ministry of Gender Affairs and Social Development (Ministry) and the orphanage, a letter from the Ministry regarding the Beneficiary's birth certificate, e-mail correspondence between the Petitioner and the U.S. Consulate in Lagos, Nigeria, and a copy of a U.S. home study report.

During a Form I-604 investigation, a consular officer in Lagos, Nigeria reviewed the Petitioner's initial evidence. He noted that the orphan petition contained very little evidence that C-M- existed, other than her signature and vague statements in her affidavit. He further noted that the affidavit from C-M- and other documents did not explain why she traveled to an orphanage in [REDACTED] when there were orphanages in [REDACTED]. The consular officer also emphasized that the Ministry's report stated that the Beneficiary's birth father was unknown; however, C-M-'s affidavit indicated that she was aware of his identity. Additionally, the Ministry's report made very little reference to the Beneficiary's origins or indicate that her adoption was thoroughly investigated. Finally, the consular officer stressed that 2021 e-mail correspondence from the Petitioner indicating that she called the orphanage to get approval for the Beneficiary's release to her niece in [REDACTED] 2018 was contradicted by previously-submitted evidence indicating that the Beneficiary was released directly to her after the Foster Order was issued. The consular officer returned the orphan petition as "not clearly approvable," and the Director issued a request for evidence (RFE). In the RFE, the Director informed the Petitioner of the discrepancies and sought reliable documentation as to how the Beneficiary met the definition of an orphan due to abandonment. The Petitioner submitted a timely response to the RFE.²

The Director subsequently denied the orphan petition, concluding that "[the Petitioner] had not provided contemporaneous evidence of [the Beneficiary's] abandonment, and the evidence [she had] provided wa[s] insufficient to determine the origins of [the Beneficiary], and therefore, the identity, whereabouts, and intent of the birth parent(s)."

¹ We use initials to protect the identities of individuals.

² In response to the RFE, the Petitioner submitted a personal statement, e-mail correspondence from July 2021 between herself and the U.S. Consulate in Lagos, an Attestation of Foreign Government Authority from July 2020 from a Family in [REDACTED] letters from the Ministry regarding the identification/location of the Beneficiary's birth father and her release to the Petitioner's niece, a letter from the orphanage regarding the release of the Beneficiary to the Petitioner's niece, a copy of her Nigerian passport with entry and exit stamps for travel in 2018, 2019 and 2020, and miscellaneous photographs.

The Director acknowledged C-M-'s affidavit and the Police Extract indicating that she gave birth to the Beneficiary, then surrendered her at the orphanage in [REDACTED]. The Director further acknowledged e-mail correspondence from the Petitioner stating that the Ministry contacted her about the Beneficiary the same day she was surrendered at the orphanage. However, the Director noted that the Petitioner provided no supporting documentation that the Ministry was aware of the Beneficiary or that the orphanage had notified the Ministry of the Beneficiary at the time. Additionally, the Director noted that the Petitioner provided no evidence that the Ministry attempted to contact or locate the Beneficiary's birth father, despite a statement in the affidavit from C-M- that she was aware of his identity. Finally, the Director stressed that the Petitioner's RFE response indicating the Beneficiary was released to her niece contradicted her initial evidence, which included records from the orphanage and the Ministry stating that the Beneficiary had been released to the Petitioner and was in her custody since [REDACTED] 2018. The record indicates that the Petitioner did not travel to Nigeria until November 2018, when the adoption hearing took place.

On appeal, the Petitioner argues that additional letters from the Ministry and the orphanage address deficiencies raised by the Director regarding the Beneficiary's age and identity. She further argues that the Ministry was not required to investigate the whereabouts of the Beneficiary's birth parents, and the fact the Beneficiary was released to her niece rather than to her directly does not negate the validity of the adoption order.

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

The Petitioner claims that C-M-, a native of [REDACTED] gave birth to the Beneficiary in [REDACTED] 2018, and surrendered her at an orphanage in Imo state five days later. She further claims that the Beneficiary's birth father denied the pregnancy when she informed him of it, and later relocated to an unknown destination. However, she provided no evidence on appeal corroborating this information about the Beneficiary's origins or C-M-'s identity, other than an affidavit from C-M-. The Petitioner also did not provide an explanation as to why C-M- traveled from [REDACTED] to surrender the Beneficiary when there were orphanages in [REDACTED]. Regarding the Beneficiary's birth father, the Director noted that C-M-'s affidavit indicated that she knew his identity. However, a 2018 Ministry background report the Petitioner submitted in support of her applications for fostering and adoption stated that the birth father was unknown. The Director further noted that the Petitioner did not provide any evidence that the Ministry attempted to contact or locate the Beneficiary's birth father, despite C-M-'s statement that she knew who he was. The Petitioner argues that the Ministry was not required to locate the birth father. We note however, that abandonment by both parents, as defined at 8 C.F.R. § 204.3(b) means that both parents have willfully forsaken all parents rights, obligations, and claims to the child. . . .” In this case, the evidence remains unclear as to whether the Beneficiary's birth parents abandoned her, as the Petitioner has provided very little evidence concerning the identity of C-M- or the Beneficiary's birth father, including any efforts to locate them leading up to the Beneficiary's fostering and adoption. While we acknowledge the letters from the Ministry, the Nigeria Police Force and public notices from several Nigeria newspapers documenting their efforts to locate the Beneficiary's birth parents submitted on appeal, they were dated in May 2022 and June 2022—almost four years *after* the Beneficiary's adoption was finalized.

In addition, the Petitioner claims that the Ministry investigated her suitability and the Beneficiary's origins, and based on those reports, the Family Court granted her applications for fostering and adoption in [] 2018 and November 2018. Specifically, the Ministry stated in a report they submitted to the Family Court that they had "several interactions" with the Petitioner during the course of their suitability investigation. Moreover, in issuing the [] 2018 Foster Order, the Family Court directed the Ministry to periodically visit the Petitioner at her residence in [] and report back to it where necessary. However, the record indicates the Petitioner did not travel to Nigeria until November 2018. The Petitioner offered no explanation as to how the Ministry had several interactions with her or periodically visited her in [] when she did not travel to Nigeria until November 2018.

Additionally, we note that the Ministry stated in another report that "an officer was sent to interact with [C-M-]" and that "[s]he affirmed that she gave birth to her daughter on the above stated date. She further stated that "the man who impregnated her denied her" and that "she ha[d] no support from anybody and she [could] not cope with taking care of [the Beneficiary] both emotionally and financially since she is not meaningfully engaged economically." However, as stated above, the Petitioner submitted letters from the Ministry, the Nigeria Police Force, and copies of public notices reflecting their efforts to investigate the Beneficiary's origins. It is unclear why the Ministry would request such assistance or issue public notices if they had previously spoken to C-M- and confirmed her story.

Finally, we note additional discrepancies in the Petitioner's evidence leading up to the Beneficiary's adoption. Specifically, the Petitioner submitted the orphanage director's report stating that "[the Beneficiary] remained in [the orphanage director's] custody and care till [sic] she was lifted on [] [] 2018, by [the Petitioner] . . . based on the Foster Order made by the Family Court, [] on [] 2018." However, the orphanage director's report is contradicted by his own handwritten notes submitted on appeal indicating that the Ministry notified him that the Beneficiary could be released to the Petitioner's niece on [] 2018. The Petitioner has not explained on appeal why the orphanage director issued reports on [] 2018, and [] 2018, indicating that the Beneficiary was released to the Petitioner on [] 2018, if he was notified two days beforehand that the Beneficiary should be released to the Petitioner's niece.

As discussed previously, it is the Petitioner's burden to establish her eligibility by a preponderance of the evidence. An I-604 investigation conducted by a U.S. Department of State consular officer determined that the Petitioner's evidence was not sufficient to show the Beneficiary's origins or that she was abandoned. Specifically, the evidence did not provide detailed or consistent information about C-M- or the Beneficiary's birth father or the Ministry's efforts to determine the Beneficiary's birth father's whereabouts, and documentation from the Ministry regarding the investigation into the Petitioner's suitability falsely stated that the Beneficiary was in the Petitioner's custody when the Petitioner had not yet traveled to Nigeria. The Petitioner has not provided evidence to explain why the records submitted contained this false information or otherwise resolved the discrepancies noted by the Director; instead, the Petitioner provided additional statements that were inconsistent with the evidence previously submitted with the petition. The unresolved inconsistencies in this documentation casts doubt on the Petitioner's evidence of abandonment by the Beneficiary's birth parents. Accordingly, the Petitioner 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.