



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

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

In Re: 26616380

Date: JUN. 15, 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 Petitioner did not submit sufficient evidence to establish that the Beneficiary is 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.

The regulation at 8 C.F.R. § 204.3(k)(1) 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. 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.”

## II. ANALYSIS

### A. Relevant Facts and Procedural History

The Petitioner filed an orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in 2021, based on his adoption of the Beneficiary in [ ] 2020. 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 documentation relating to the birth, placement in an orphanage, fostering, and adoption of the Beneficiary. The Director issued a request for evidence (RFE) and a subsequent notice of intent to deny (NOID), in response to which the Petitioner provided additional evidence. Subsequently, the Director denied the orphan petition based on a determination that the Petitioner had not established that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner has not overcome the basis for denial.

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

Upon de novo review, we agree with the Director that the Petitioner has not submitted sufficient evidence to meet his burden of showing that the Beneficiary is an orphan under section 101(b)(1)(F) of the Act. In support of the orphan petition, the Petitioner initially submitted evidence relating to the Beneficiary’s birth, surrender at the orphanage, placement in foster care, and adoption. However, as the Director stated, that evidence contains internal discrepancies and is inconsistent with other evidence the Petitioner later submitted in response to the Director’s RFE and NOID. The Director also noted that the consular officer who conducted the I-604 investigation concluded the orphan petition was not clearly approvable due to a lack of credible, consistent evidence, poor record-keeping practices by the orphanage and a government ministry, and questions about the timeline of events. Additionally, the Director discussed concerns in the I-604 investigation about whether there was any effort to locate the Beneficiary’s biological father.

The Petitioner argues on appeal that any discrepancies are minor and irrelevant because the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act. He correctly notes that he only needs to establish that the Beneficiary meets one sub-definition of an orphan due to either the death or disappearance of, abandonment or desertion by, separation or loss from both parents, or because his sole or surviving parent is incapable of providing him proper care, and need not show that he meets the requirements of every category or that the same category applies to both parents. Nevertheless, he also argues that the Beneficiary does qualify as an orphan under all of the sub-definitions under section 101(b)(1)(F) of the Act. First, he contends that the Beneficiary is an orphan because his mother abandoned him, as that term is defined at 8 C.F.R. § 204.3(b), when she willingly relinquished her rights by leaving him at the orphanage without intending that he be adopted by a specific person. He also asserts that the Beneficiary is a deserted child per the definition at 8 C.F.R. § 204.3(b) because his parents have willfully forsaken him and refused to carry out their parental rights and obligations, resulting in his becoming a ward of a competent authority under Nigerian law. Further, he contends that the Beneficiary is an orphan due to the disappearance of his father and that the Nigerian government determined the efforts to locate his father were unsuccessful.

Finally, the Petitioner asserts that the Beneficiary is an orphan because his biological father never acknowledged him and he was an illegitimate child under Nigerian law, meaning his birth mother was a sole parent who is incapable of providing proper care and relinquished her rights in writing, pursuant to 8 C.F.R. § 204.3(b). However, due to the unresolved discrepancies in the evidence relating to the circumstances surrounding the Beneficiary's birth, surrender at the orphanage, foster placement, and adoption, the record does not support a determination that the Beneficiary meets any definition of an orphan under section 101(b)(1)(F) of the Act. The record lacks consistent, credible information about the relevant dates and circumstances, and the Petitioner has not met his burden.

With the initial orphan petition, the Petitioner submitted a [redacted] 2018 Affidavit of Facts from the Beneficiary's birth mother, sworn at the High Court in [redacted] Nigeria, claiming she gave birth to a baby boy on [redacted] 2018 and decided to surrender him to the Ministry of Women Affairs and Social Development through the [redacted] (orphanage). The Petitioner also provided an Extract from Crime Diary issued by the Nigeria Police Force, indicating that the birth mother appeared in person on [redacted] 2018 and provided information consistent with her Affidavit of Facts. The Director noted concerns about this evidence as discussed in the I-604 investigation because it appears to indicate that the birth mother, who was purportedly indigent, traveled to multiple rural locations around [redacted] Nigeria within only a few days of giving birth in order to complete additional steps to relinquish her parental rights after already leaving the baby at the orphanage. On appeal, the Petitioner argues that the birth mother's efforts to follow proper procedures should be commended rather than doubted, that the contemporaneous documents should be viewed favorably because they show the Beneficiary's date of birth and surrender, and that it is unfair to require him to determine how the birth mother traveled around her home state. Although the Petitioner need not establish the birth mother's means of travel, the timeline of events is not clear.

With the orphan petition, the Petitioner submitted a [redacted] 2018 approval letter from the Ministry of Health, Women Affairs & Social Development indicating receipt of a letter from the orphanage dated [redacted] 2018, reporting the presence of "an abandoned baby boy in [the] home." The approval letter gives consent for the orphanage "to keep the baby for care and up-keep." However, the Petitioner later submitted a Report of a New Baby Boy in Our Home issued by the orphanage on [redacted] 2018, stating the baby was willingly handed over and again requesting approval to keep him at the orphanage, and a [redacted] 2018 response<sup>1</sup> and approval from the Ministry of Health Woman Affairs & Social Development.<sup>2</sup> The response states "that approval has been given to your home to temporarily keep the said baby boy . . . ." It is unclear why the orphanage would send a letter reporting the baby's presence and requesting permission to care for him on [redacted] 2018 and then send another similar letter on [redacted] 2018, or why there would be two separate ministry approvals to keep the baby. The duplicative nature of the letters casts doubt on their authenticity. The Petitioner has not provided a copy of the [redacted] 2018 letter from the orphanage, despite the Director raising this issue. Further, neither the Report of a New Baby Boy in Our Home, the January approval letters from the ministry, nor any other document in the record specifies the date the Beneficiary arrived at the orphanage. It is not clear when the birth mother surrendered her baby at the orphanage, but the

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<sup>1</sup> As the Director noted, this response contains a typographical error in the date ("[redacted] 20218").

<sup>2</sup> The [redacted] 2018 approval letter from the Ministry of Health, Women Affairs & Social Development and the [redacted] [redacted] 2018 response and approval from the Ministry of Health Woman Affairs & Social Development are written on similar letterhead with matching logos and are signed by the same person, but bear different names for what appears to be the same entity. We will discuss this discrepancy later in this decision.

reference to a [ ] 2018 letter implies that she did so by that date. However, the Petitioner has not submitted any documentation created by the orphanage on that date to reflect the mother's voluntary surrender of the baby. Also, an undated Social Welfare Investigation Report for Adoption states the baby "was abandoned at the home, though after the birth mother had given her consent, through a relinquishment affidavit," but the only documents in the record containing the birth mother's consent are the Affidavit of Facts and the Extract from Crime Diary, both dated [ ] 2018, after she apparently left the baby on [ ]. Finally, the birth mother's reason for subsequently traveling from the orphanage in [ ] Nigeria to the High Court in Owerri and then to Nigerian Police headquarters on [ ] 2018, to execute additional release documents at least two days after she left the baby at the orphanage, is not apparent from the record.

As additional supporting evidence for the orphan petition, the Petitioner provided an Intake Report from the orphanage dated November 4, 2019, documenting that the birth mother brought the baby there and signed an affidavit of consent giving up her rights. The Intake Report was issued more than a year after the Beneficiary's birth and, like the other documents, does not specify the date of the baby's arrival at the orphanage. In response to the Director's NOID, the Petitioner submitted a statement opining that the orphanage may have intended to write "[ ]18" but mistakenly typed "11/4/19" instead. However, the record does not support his claim because the date is written out as "4<sup>th</sup> November, 2019" rather than in numerals. Furthermore, the Intake Report notes that the baby at the orphanage "was identified as baby KK at birth," but a name matching those initials does not appear elsewhere in the record. We acknowledge the Petitioner's assertion that it is common for an orphanage to assign a name for record-keeping purposes and allow adoptive parents to rename a child later, but the Intake Report lists the Beneficiary's current name, with initials V-O-, at the top. The Petitioner submitted a timeline of events relating to the adoption process showing that he first met the Beneficiary in December 2018, began to foster him in November 2019, and adopted him in [ ] 2020. If the Intake Report were created in [ ] 2018, as the Petitioner alleges, and the Petitioner later renamed him in connection with the adoption, it is not clear how that document could list the Beneficiary's new name more than ten months prior to their first meeting. Further, even if the Intake Report were dated [ ] 2018 as the Petitioner suggests was intended, that would conflict with the approval letter from the ministry indicating that the orphanage had already reported the baby's presence in a [ ] [ ] 2018 letter. Accordingly, the record lacks a reasonable explanation for the late date on the Intake Report and its reference to the baby as "KK," and the document does not support the Petitioner's claims that the Beneficiary meets the definition of an orphan.

With regard to the Beneficiary's foster placement, the Petitioner initially submitted a Foster Order issued by the Family Court of [ ] of Nigeria dated November 4, 2019, the same date as the orphanage's Intake Report, placing the Beneficiary in the care of the Petitioner and his spouse. Relating to the adoption, the Petitioner submitted a handwritten December 2018 letter from the Petitioner and his spouse to the Ministry of Women Affairs, indicating their intent to adopt a baby boy from the orphanage; a Medical Certificate of Fitness for the Beneficiary; a [ ] 2020 Adoption Order; an affidavit explaining that some documents bear the maiden name of the Petitioner's spouse while others bear her married name; an Identification Certificate for the Beneficiary; a birth certificate for the Beneficiary issued in May 2021 and listing the Petitioner and his spouse as parents; a May 2021 letter from the Ministry of Women Affairs & Vulnerable Group explaining that the Beneficiary lacks an original birth certificate because his birth mother did not want her name to be listed so he was issued a birth certificate after the adoption was finalized; a May 2021 letter from the Ministry of

Women Affairs & Vulnerable Group, stating in part that the Beneficiary “was willingly relinquished” by his mother to the orphanage prior to a determination that it was in his best interest to be placed for adoption, and that the Petitioner and his spouse followed the proper procedures to adopt; an undated Social Welfare Investigation Report for Adoption from the Ministry of Gender and Vulnerable Group Affairs indicating in part that the Petitioner and his spouse expressed their intent to adopt in a February 2019 letter; and a timeline of the adoption process.

In response to the Director’s RFE, the Petitioner submitted two November 2021 letters from the Ministry of Women Affairs & Vulnerable Group. These letters are nearly identical in content to the two May 2021 letters from the same entity the Petitioner previously submitted. Additionally, the Petitioner provided copies of his passport showing that he visited Nigeria in November 2019 around the time of the issuance of the foster order.

In response to the NOID, the Petitioner submitted an October 2019 Request for Approval/Fostering from the orphanage, requesting permission to place the Beneficiary in the Petitioner’s care, and a response from the Ministry of Health Woman Affairs & Social Development approving the foster placement. Additionally, the NOID response included a letter from the Petitioner’s spouse describing the difficulties of the adoption process; a letter from Beneficiary’s school stating that he started attending in October 2020 at the age of two years; and a childhood vaccination record. However, the vaccination record does not contain the name of any child and the vaccinations listed are inconsistent with the Beneficiary’s age at the time they were administered. For example, the vaccination record shows vaccinations to be given at six months of age were administered in January 2020, when the Beneficiary would have been two years old, and the vaccinations scheduled to be given at two years of age were administered in January 2021, when the Beneficiary would have been three years old. The vaccination record does not clearly apply to the Beneficiary.

On appeal, the Petitioner submits case law, statutory law, and scholarly articles relating to legitimation and custody of children in Nigeria, plus additional identification documents for the Beneficiary confirming his date of birth. He also provides an affidavit from the Beneficiary’s current guardian in Nigeria, who states that the Beneficiary “was born on the [REDACTED] 2018 into the family of [the Petitioner] (Father) and [his spouse] (Mother) . . .” and that “his birth was not officially registered . . . .” However, the guardian’s affidavit does not acknowledge that the Beneficiary was born to different biological parents and later adopted in 2020. Accordingly, the record does not show that the Beneficiary was “born into the family of [the Petitioner],” as the guardian’s affidavit indicates, and the affidavit does not provide support for the Petitioner’s claims.

Furthermore, the record contains inconsistent dates regarding the Petitioner’s application to adopt. The Social Welfare Investigation Report for Adoption from the Ministry of Gender and Vulnerable Group Affairs states the Petitioner and his spouse expressed their intent to adopt in a February 2019 letter. However, the Petitioner submitted a copy of his handwritten letter expressing such intent, dated December 2018, while the timeline of relevant dates the Petitioner provided lists a third date, stating he “Applied to Ministry” to adopt in December 2017. The date the Petitioner became involved in the process is in question. This discrepancy, when considered in conjunction with the lack of clear information about the date the Beneficiary was left at the orphanage and the absence of consistent, credible documentation created around the time of his birth and surrender, raises concerns about the timeline and circumstances under which his birth mother gave up her rights.

Additionally, although the Petitioner submitted documentation relating to communications from a government ministry about the care and custody of the Beneficiary, the name of that ministry is inconsistent throughout the record. The ministry's name differs, including on documents purporting to be official communications on ministry letterhead with similar logos, such that the record contains at least nine different names for what appears to be the same entity. The Affidavit of Facts from the Beneficiary's birth mother, which was sworn to before the High Court, states her intention to surrender the baby to the "Ministry of Women Affairs and Social Development" via the orphanage. The [REDACTED] 2018 approval letter, indicating receipt of a report of an abandoned baby boy, is issued on official government letterhead showing the entity's name as the "Ministry of Health, Women Affairs & Social Development," but the signature block lists the name as the "Ministry of Gender Affairs and Social Development." The Petitioner provided duplicate copies of two letters, issued in May 2021 and again in November 2021, on official government letterhead from the "Ministry of Women Affairs & Vulnerable Group." The Social Welfare Investigation Report for Adoption indicates the Petitioner informed the "Ministry of Gender and Vulnerable Group Affairs" of his intent to adopt. The [REDACTED] 2018 Report of a New Baby Boy in Our Home and subsequent Request for Approval/Fostering from the orphanage are both addressed to the "Ministry of Gender and Vulnerable Group" but bear receipt stamps from the "Ministry of Gender Affairs and Social Development," and the responses to those requests are from the "Ministry of Health Woman Affairs & Social Development." The Adoption Order from the Family Court identifies the entity as the "Ministry of Gender Affairs and Vulnerable Group." Although the multiple names for the ministry have similarities, they vary in vocabulary, phrasing, punctuation, and spelling. The documentation appears to purport that the ministry is a single entity and we therefore generally refer to it herein as "the ministry," but the documents raise such significant inconsistencies that they merit reduced evidentiary weight. Accordingly, they provide little corroboration about the timeline of events or confirmation that the proper procedures surrounding the foster placement and adoption were followed, and therefore do not help establish that the Beneficiary meets the definition of an orphan.

Other concerns in the evidence also remain. The [REDACTED] 2020 Adoption Order waived "the three months consecutive fostering period" because it would cause inconvenience to the Beneficiary, but the need for such a waiver is not clear since the foster order was granted more than three months prior, in November 2019. Additionally, as the Director noted, the orphan petition and birth certificate list different places of birth for the Beneficiary. Although the Petitioner states on appeal that "[a]ll government issued documents correctly state the name, date and place of birth," the orphan petition lists the Beneficiary's place of birth as [REDACTED] while his birth certificate and passport list [REDACTED] [REDACTED] and the Petitioner does not address the discrepancy. And as the Director noted, the Beneficiary's birth certificate was issued in May 2021, when he was three years old and more than a year after his adoption. The Petitioner claims on appeal that he has submitted all of the primary and secondary evidence he has available, and correctly states that we will not reject the evidentiary value of a delayed birth certificate solely because it was not issued at the time of birth, as the guidance at 5 *USCIS Policy Manual* 7 (B)(3), <https://www.uscis.gov/policy-manual>, explains. We have considered the Beneficiary's birth certificate and other identification documents, and recognize that the birth certificate was issued late due to the adoption. The birth mother's Affidavit of Facts and Extract from Crime Diary indicate that the Beneficiary was born on [REDACTED] 2018, which is consistent with the date of birth shown on his other identification documents.

However, as we have discussed, the evidence contains multiple inconsistencies relating to the dates and circumstances under which the Beneficiary was surrendered at the orphanage, placed in foster care, and adopted. The evidence does not support the Petitioner's assertion that the discrepancies in the record are immaterial. To the contrary, because the evidence provided contains unresolved discrepancies about when, why, and how the Beneficiary was left at the orphanage and approved for fostering and adoption, it does not support the claim that the Beneficiary's mother willfully surrendered all rights, obligations, claims, and control over the child and gave him unconditionally to an orphanage without the intention to place him for adoption by a specific person. Therefore, he does not meet the definition of an orphan due to abandonment, as that term is defined at 8 C.F.R. § 204.3(b). Similarly, the Petitioner has not met his burden of establishing by a preponderance of the evidence that the Beneficiary's parents deserted him, as that term is defined at 8 C.F.R. § 204.3(b). As discussed, the documentation presented to show that the Beneficiary became a ward of the orphanage with ministry approval contains discrepancies. The orphanage documentation does not clearly and consistently record the dates and circumstances of the Beneficiary's arrival there, and the letters from the ministry contain inconsistencies such that they do not support the Petitioner's claims that proper procedures were followed. Accordingly, the evidence is not sufficient to support the claim that the Beneficiary became a ward of a competent authority under Nigerian law because both parents willfully forsook him and refused to carry out their parental rights and obligations.

Furthermore, contrary to the Petitioner's claim, he has not met his burden of showing by a preponderance of the evidence that the Beneficiary is an orphan due to the disappearance of his father. As the regulation at 8 C.F.R. § 204.3(b) specifies, disappearance means that a parent has "unaccountably or inexplicably passed out of the child's life, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country." The Petitioner argues on appeal that the ministry found that the Beneficiary's biological father disappeared and efforts to locate him "proved abortive," and that we should not question this determination by a competent Nigerian authority. However, the document that states there was an unsuccessful effort to locate the father is the November 2019 Intake Report from the orphanage, not the ministry. As we explained above, the Intake Report was created more than a year after the Beneficiary's birth and placement at the orphanage and contains unresolved inconsistencies. Further, although the May and November 2021 letters from the ministry mention the birth mother's claim that the birth father "denied the pregnancy right from conception," they do not reflect an effort to locate the birth father or a determination by a competent authority that he could not be found. Also, as stated, the ministry documents are insufficient to support the Petitioner's claims due to unresolved discrepancies, including the name of the entity. We also note that although the Petitioner states on appeal that the father is unknown, the record does not otherwise support this assertion, as the birth mother claimed the father "denied the pregnancy," implying that she knew who he was.

Finally, the Petitioner claims on appeal that the Beneficiary qualifies as an orphan because his mother was a sole parent who is incapable of providing the proper care. He asserts that the Beneficiary is an illegitimate child under Nigerian law because his biological parents were not married and his father never acknowledged him,<sup>3</sup> and that his mother is therefore a sole parent as defined at 8 C.F.R.

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<sup>3</sup> The brief also discusses whether the biological father took "steps required in Jamaica for acknowledgement" and states

§ 204.3(b). Further, he states that the Beneficiary was placed in foster care pursuant to Nigerian law because he was an orphan without legal parents. However, the Petitioner goes on to state that in this case the regulation does not require that the mother have irrevocably released the Beneficiary in writing because “[h]ere, the father has signed an irrevocable release in writing for the purpose of emigration and adoption. As such, the mother would be the sole parent of the child and she is dead.” But the evidence in the record does not reflect that the Beneficiary’s father signed a release of his rights; instead, he “denied the pregnancy right from conception.” And there is no other evidence or claim in the record that the Beneficiary’s mother is deceased. This argument appears to relate to a different individual, and the record does not contain sufficient evidence for the Petitioner to meet his burden of showing that the Beneficiary is an orphan as the child of a sole parent who is incapable of providing him proper care and has irrevocably released him in writing for the purpose of emigration and adoption.

We have considered the Petitioner’s claims on appeal and evaluated the entirety of the evidence de novo. But the Petitioner has not submitted sufficient reliable, consistent, credible evidence to show that the Beneficiary meets any sub-definition of an orphan under section 101(b)(1)(F)(i) of the Act.

### III. CONCLUSION

The Petitioner has not met his burden of establishing by a preponderance of the evidence that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act.

**ORDER:** The appeal is dismissed.

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that the Beneficiary is illegitimate under Jamaican law, but the Beneficiary in this case was born in Nigeria. The brief appears to contain arguments relating to a child not at issue in this case.