



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

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

In Re: 26741982

Date: SEP. 20, 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. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or who is coming to the United States for such an adoption, may be classified as an immediate relative.

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 record did not establish that the Beneficiary met 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. We decline the Petitioner's request for oral argument. *See* 8 C.F.R. § 103.3(b)(2).

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 United States citizen, or who is coming to the United States for adoption by a United States 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(b) states, in pertinent part, the following:

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*.

....

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. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

II. ANALYSIS

A. Procedural History

The Petitioner filed this orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in January 2020. The Petitioner claimed that the Beneficiary met the definition of an orphan as a child who “has only one sole or surviving parent who is incapable of providing proper care and who has irrevocably released the child for emigration and adoption in writing.” After receipt of the petition, the Director issued two requests for evidence (RFE) from the Petitioner. Once the RFE responses were received, the Director issued a notice of intent to deny (NOID). In the NOID, the Director instructed the Petitioner to provide a copy of the Beneficiary's birth certificate or appropriate secondary evidence of identity, evidence that the Beneficiary meets the definition of an orphan, evidence of a full and final adoption, and evidence that the Petitioner was present in court for the adoption. After receiving the response to the NOID, the Director denied the petition, finding that the Beneficiary's orphan status was not supported by credible evidence.

On appeal, the Petitioner contends that the documents submitted were provided to her from the court and the children's ministry. The Petitioner disagrees with the Director's determination that the Beneficiary does not qualify as an orphan and contends that USCIS failed to provide adequate reasoning for rejecting the adoption decree.

B. Relevant Documentation

While the orphan petition was before the Director, the Petitioner submitted various letters prepared by [redacted] (orphanage). The first, dated December 14, 2017, is directed to the commissioner of the Ministry of Health, Women Affairs & Social Development of [redacted]. This letter indicates that an unnamed child was brought to the orphanage on December 11 and requests permission to keep and nurse him. A response was received on letterhead from the Ministry of Health,

Women Affairs and Social Development, Child Department, on December 20, 2017. In this response letter, the orphanage is approved to keep custody “of the abandoned baby.” The next letter from the orphanage, dated January 15, 2018, is directed to the same commissioner. This letter notes that the Petitioner and her spouse are qualified to adopt the Beneficiary and requests permission to foster the child with them. In response, the ministry directs the orphanage to “give out the said baby to the adoptive parents” and ensure they are referred to the ministry for paperwork and proper investigation before the final adoption.

Next, the Petitioner provides an “Intake Report of a Baby Boy” (intake report) from the orphanage, dated February 27, 2018. The intake report indicates the Beneficiary was abandoned at the orphanage by his birth mother in December 2017; as the child was born at a maternity center, he had no birth certificate. He was thereafter fostered by the Petitioner and her spouse on February 15, 2018. It also notes that the biological mother was an “indigent social girl” who could not care for the beneficiary as she was a “petty trader.” The intake report states that the child’s biological father, who is not named, denied being responsible for the pregnancy and efforts made by the orphanage to locate him were unsuccessful.

An Affidavit of Facts executed by the biological mother on December 11, 2017 (affidavit) noted that she gave birth to the child at General Hospital, that the man who impregnated her denied the baby, and that she lacked “the facilities to take care of the baby and so will not be able to take care of the said baby.” The affidavit does not provide biographical details for the biological father. The portion of the affidavit relating to the mother’s biographical information and the child’s birth is handwritten, while the remainder, including the details regarding the mother’s pregnancy and financial means, is typed.

A Foster Order signed by the Family Court at [redacted] (foster order) dated March 8, 2018 directs the Beneficiary to be placed with the Petitioner. As support that the adoption was completed in Nigeria, the Petitioner also submitted an Adoption Order dated [redacted] 2018 from the Family Court at [redacted] (adoption order). The adoption order indicates that the Ministry of Gender Affairs and Social Development conducted an investigation to determine the best placement for the child. It does not address the situation of the child’s biological parents.

An undated Social Welfare Investigation Report for Adoption (investigation report) indicates that the Petitioners submitted an application letter to the Commissioner of the Ministry of Gender Affairs and Social Development. It notes that the child’s biological mother gave the Beneficiary to the orphanage for adoption. The biological father is not mentioned in this document and the mother’s situation is not otherwise discussed.

The sole birth certificate provided for the child was issued September 10, 2018, following the entry of the adoption order.

The Petitioner also submitted documents on letterhead from the Ministry of Gender Affairs & Social Development, Child Dept., dated April 17, 2019. One of these documents indicates that it was issued with regard to the Beneficiary’s adoption (2019 adoption letter). It explains that the biological mother was an unmarried woman and surrendered the Beneficiary to the orphanage. The ministry conducted an investigation, and concluded that the birth mother, “as an apprentice is not gainfully occupied and

cannot fend for the child.” The 2019 adoption letter indicates that the ministry made efforts to locate the father, but these efforts were unsuccessful. The letter concludes that “[c]onsequently on 11th of December 2017, she willingly . . . transferred parental rights to anybody who so wish to adopt the child.” The 2019 adoption letter does not provide biographical information for the father.

On appeal, the Petitioner submits an application for adoption dated February 14, 2017 and additional copies of the foster order and adoption order. She also provides a letter from a Nigerian attorney explaining that a petitioner’s physical presence can be waived at certain adoption court hearings.

C. The Petitioner Has Not Established that the Beneficiary is an Orphan

While the Petitioner has submitted documentation tending to show that the Beneficiary was adopted in Nigeria, orphan petitions are not available to all adopted children; rather, these petitions are limited to children who meet the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act. We acknowledge the foster order and adoption order, and we have considered the Petitioner’s argument regarding the adoption procedures. However, the existence of a final adoption decree does not alter the requirement that an adopted child meet the definition of an orphan under U.S. law to qualify for emigration with an orphan petition.

As there is no written release for adoption or emigration from the child’s father, the Petitioner must show that the biological mother was a sole parent. This requires a showing, first, that the Beneficiary was illegitimate, and second, that the father has severed all parental ties, rights, duties, and obligations. Furthermore, the mother must have been incapable of providing proper care for the Beneficiary – as noted above, this requires an inability to provide for the child’s basic needs consistent with local standards in Nigeria.

i. The Petitioner Has Not Established That the Mother Meets the Definition of a Sole Parent

At the outset, we note the existence of inconsistencies in the record regarding the available documentation for the child. Because no birth certificate contemporaneous with the birth has been provided, we have increased difficulty in determining the Beneficiary’s parentage. The 2017 intake report indicates that the child was born to an indigent mother and no birth certificate was issued because the child was born at a local maternity center. However, the affidavit indicates that the mother gave birth at a hospital – although the form includes an option to select maternity as a birthplace, this option was not selected. In addition, the court paperwork indicates that the magistrate judge reviewed documentation including a birth certificate for the child. However, the only provided birth certificate was issued after the final adoption order. The 2019 birth certificate letter indicates that the Beneficiary had no original birth certificate and makes no reference to any birth certificate being created other than the post-adoption certificate.

With respect to whether the Beneficiary is considered an illegitimate child, the documentation from 2017 from the orphanage and ministry are silent as to the mother’s marital status; likewise, the affidavit does not address the mother’s marital status. The court documents also do not provide any details regarding the parents’ circumstances. We acknowledge that the 2019 adoption letter describes the child’s biological mother as an “unmarried girl” who “as an apprentice is not gainfully occupied and cannot fend for the child.” The 2019 adoption letter goes on to state that the child’s biological father

“denied” the mother and had no interest in the pregnancy, and that efforts were made to locate him. However, this letter fails to provide any meaningful detail regarding the biological father and does not include basic biographical information such as a name or date of birth.

Much of the information available regarding the status of the child’s birth parents comes from the affidavit and the 2019 adoption and birth certificate letters. However, after review, we cannot give these documents significant evidentiary weight. The affidavit appears to be a typewritten form letter that contains general conclusory statements; the only portions of the affidavit that are handwritten relate to the mother’s biographical information and the location and date of the child’s birth. Among the prepared, typed statements are allegations that “the man who impregnated me denied the baby” and “I lack the facilities to take care of the baby.” There are no individualized details in this document beyond the handwritten portions noted above. It is unclear why the mother’s information would not have been included initially when details purporting to be related to her specific pregnancy were typed.

Regarding the 2019 birth certificate and adoption letters, these letters are dated after the final adoption order was entered, nearly two years after the birth of the child. There is no contemporaneous record of the biological father’s identity or any detail regarding a diligent search. Second, the letters’ formatting varies significantly from earlier letters allegedly originating from the same agency. They lack the same standardized fields for case reference number, date, and department that are present on the earlier letters. The 2017 responses are on letterhead for the Ministry of Health, Women Affairs, and Social Development. They are both signed by [REDACTED], whose title is omitted, above a line which reads “For: Hon. Commissioner.” The 2019 birth certificate and adoption letters list the Ministry of Gender Affairs & Social Development as the issuing agency. Though the 2019 birth certificate and adoption letters are both dated April 17, were prepared by the same ministry, and relate to the same case, they contain different case reference numbers. Furthermore, the adoption letter lists the official’s name as [REDACTED] while the 2019 birth certificate letter has her names in an alternate order: [REDACTED]. In addition, [REDACTED] title on the 2019 adoption letter is “Director, CHILD Development”, while on the 2019 birth certificate letter she is listed as “Director Child Development Dept.”

In addition, we note that the identity of the child’s father has not been provided, although the documentation implies that his identity is known. The record is also inconsistent regarding efforts to apprise him of the Beneficiary’s birth. In the 2017 intake letter, the orphanage claimed it was the entity that attempted to find the father: “[a]ll efforts we made to trace the man responsible for the pregnancy.” However, the 2019 adoption letter asserts that the ministry undertook this diligent search. In addition to the conflict regarding who undertook the diligent search, the timeline laid out in the 2019 adoption letter appears to conflict with the letters submitted to the ministry in 2017. The 2019 adoption letter states that the diligent search for the father and interviews with the mother took place, the father could not be located, the mother was found unable to care for the child, and that *consequently* on December 11 the mother transferred parental rights. This strongly implies that the ministry was involved in the child’s case before the affidavit was signed on December 11, 2017. However, the initial letter from the orphanage alerting the ministry to the child’s existence and attaching the mother’s affidavit is not dated until December 14, 2017.

After reviewing the provided documentation and weighing its credibility, the Petitioner has not established by a preponderance of the evidence that the child was illegitimate at the time of his birth and that the mother should therefore be considered a sole parent.

ii. The Petitioner Has Not Established That the Mother Was Incapable of Providing Proper Care

Even if the mother were appropriately considered a sole parent, the record evidence regarding the mother's ability to care for the Beneficiary is insufficient to meet the Petitioner's burden of proof. Although there are various references to the mother's capability to care for the child, these references are conclusory and at times contradictory. The intake report concluded that the child was willingly given up because the mother "cannot cope with care of her baby" as a petty trader. The affidavit indicated that the mother "lack[ed] the facilities" to take care of the baby but did not specify why. The 2019 adoption letter states that the mother was an apprentice who was "not gainfully occupied" and could not "fend for the child." There are no contemporaneous notes documenting any investigation by the ministry into the mother's circumstances, and the 2019 adoption letter does not provide her income or otherwise support the conclusion that she was not gainfully occupied. It is not clear why the orphanage would characterize the mother as a petty trader while the ministry would describe her as an unemployed or underemployed apprentice.

As outlined above, the relevant standard with respect to providing care is the mother's ability to meet the basic needs of the child in accordance with the local standards of Nigeria. The record before us is not sufficient to establish that she could not provide this level of care.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the definition of an orphan, as that term is defined at section 101(b)(1)(F)(i) of the Act. The Petitioner has not established that the Beneficiary's mother meets the definition of a sole parent because the Beneficiary is an illegitimate child whose father has severed all parental rights. In addition, the Petitioner has not demonstrated that the Beneficiary's mother was incapable of meeting the Beneficiary's basic needs in accordance with the local standards of Nigeria.

ORDER: The appeal is dismissed.