



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

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

In Re: 20996008

Date: APR. 19, 2022

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 Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative (orphan petition), but ultimately revoked the approval after proper notice. The Director concluded that the Beneficiary did not meet the definition of an “orphan” under section 101(b)(1)(F)(i) of the Act. On appeal, the Petitioner submits previously submitted evidence and a brief reasserting the Beneficiary’s eligibility. In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews 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 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 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; 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.

Regarding the revocation of approved visa petitions, section 205 of the Act, 8 U.S.C. § 1155, states the following: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.”

The regulation at 8 C.F.R. § 204.3(k)(1), regarding a consular officer’s Form I-604, Determination on Child for Adoption (Form I-604), provides, in pertinent part:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. . . . In any instance 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. Depending on the circumstances surrounding the case, the 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.”

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

*Abandonment by both parents* means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer or without transferring these rights to any specific persons.

*Desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

## II. ANALYSIS

### A. Relevant Facts and Procedural History

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in May 2019. The Petitioner claimed that the Beneficiary met the definition of an orphan as the child who “has no parents due to . . . abandonment or desertion by . . . both parents.” With the orphan petition, the Petitioner submitted an intake report for the Beneficiary from [REDACTED] (orphanage) and a Social Welfare Investigation Report for Adoption from the Ministry of Women Affairs and Social Development (Ministry) indicating that the Beneficiary was abandoned at the orphanage by her birth mother in [REDACTED] 2010, and adopted by the Petitioner in August 2017. The Director approved the orphan petition in July 2019.

The record indicates that, during a review of the orphan petition, a consular officer in [REDACTED] Nigeria, noted that the intake report from the orphanage and report from the Ministry submitted in support of the Beneficiary’s adoption were dated months and years *after* the Beneficiary’s adoption was finalized. As a result, a consular officer decided to conduct a site visit to the Ministry and the orphanage to confirm the veracity of the documents submitted in the case. A visit to the Ministry revealed that the only documents it had regarding the Beneficiary’s adoption were dated in 2019. Due to the length of time between the Beneficiary’s adoption in August 2017 and the Ministry’s reports in 2019, the consular officer surmised that the documents were created solely for the purpose of facilitating the Beneficiary’s adoption. Moreover, the consular officer confirmed that the only available record from the orphanage was an intake report from May 2019, almost nine years after the Beneficiary’s birth. The consular officer found the intake record particularly concerning because the Consulate had

evidence that the orphanage provided falsified documentation for other children in the past and officials admitted on a prior occasion that many orphanages often submit falsified documents and that [REDACTED] had rampant problems with child racketeering and trafficking. Given the belated date of the documents the Petitioner submitted with the orphan petition, the consular officer declined to accept them as evidence of the Beneficiary's origins and status as an orphan under the Act.

Upon completion of its I-604 investigation, a consular officer returned the petition for revocation, and the Director issued a notice of intent to revoke (NOIR) in March 2020. In the NOIR, the Director informed the Petitioner that the I-604 investigation "revealed information that discredited the submitted documents and claims of orphanhood [she] presented to USCIS with the filing of the form [I-600]." The Petitioner did not respond to the Director's NOIR. Accordingly, the Director revoked approval of the orphan petition.

The Petitioner filed a motion to reopen and submitted her response to the NOIR as new evidence.<sup>1</sup> The Director granted the Petitioner's motion, but noted that the Petitioner did not provide a signed statement from the Beneficiary's birth parents releasing her to the Ministry or orphanage. Additionally, the Director noted that the response contained discrepant information regarding the Beneficiary's origins and entry into the orphanage. As a result, the Director determined that "the evidence and statements [the Petitioner] provided failed to adequately explain or reconcile the inconsistencies that [the] Embassy [in] [REDACTED] noted that discredit[ed] the evidence she provided."

The Petitioner subsequently filed a second motion to reopen. With the motion, the Petitioner submitted an updated affidavit from the director of the orphanage, and an affidavit of facts from the Beneficiary's birth mother, and a Police Clearance from Crime Diary from the Nigerian Police. The Director again acknowledged the response, but concluded that the evidence was insufficient to overcome the reasons for the revocation of the Form I-600. The Petitioner timely appealed the revocation.

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

On appeal, the Petitioner asserts that the Beneficiary is an orphan due to abandonment or desertion by her birth parents. She argues that the Beneficiary's birth parents took no active role in her life and have not had any contact with her for the past 11 years. She further asserts that the Beneficiary became a "ward of a competent authority" when her birth mother relinquished custody to the Ministry and the Petitioner filed an application to start adoption proceedings with the court. Lastly, the Petitioner contends that the Director's refusal to accept the updated affidavit from the director of the orphanage, the affidavit of facts from the Beneficiary's birth mother, and the Police Clearance from Crime Diary was "arbitrary, capricious and improper."

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<sup>1</sup> In response to the NOIR, the Petitioner submitted an Application Form for Adoption/Fostering of Babies, Intake Form and two copies of fostering memoranda from the orphanage from February 2009 and January 2010, two copies of the Authority to Foster from May 2010 and May 2015, interview notes with the director of the orphanage and the Ministry conducted by the Petitioner's attorney in Nigeria from 2020, a memorandum from the Ministry regarding the Director's NOIR from 2020, a copy of the Petitioner's Application for Adoption of Baby Girl from February 2009, a copy of the Fostering Memorandum from the orphanage from May 2010, a copy of the Social Welfare Investigation Report from the Ministry from 2020, a copy of the adoption order from 2017, a copy of the Beneficiary's late-registered birth certificate, memoranda from the Ministry regarding the adoption process, the Beneficiary's late-registered birth certificate and the Director's RFE, a copy of interview notes with and affidavit of facts from the Petitioner's sister, and miscellaneous photos.

In denying the Petitioner's orphan petition, the Director specifically noted that the updated affidavit from the director of the orphanage was written in response to issues detailed in the notice of revocation. In the affidavit, the director of the orphanage stated that she personally drove the Beneficiary's mother in the orphanage's vehicle to obtain sworn affidavits from the local court and police the day after she gave birth to the Beneficiary. However, those specific facts were never included or mentioned in any of her previous affidavits regarding her interactions with the Beneficiary's birth mother and she does not explain why they were previously not included. The Director also noted that the director of the orphanage's assertion that the affidavit from the Beneficiary's birth mother and the Police Clearance from Crime Diary, both dated in [REDACTED] 2010, were lost during a relocation in 2016 and recently discovered was not plausible. We additionally note that the affidavit of facts from the Beneficiary's birth mother in 2010 is inconsistent with a statement from the director of the orphanage that, "by then 2010, [the orphanage] [didn't] use affidavit of facts of the mother rather we use[d] written consent of the mother by handwritten or verbale [*sic*] words." The affidavit of facts is also inconsistent with a letter from the Ministry clarifying that "the consent referred to in [Adoption of [the Beneficiary] (DOB) [REDACTED] 2010] was a verbal consent by the birth mother. She did not sign a written consent." Moreover, we stress that there are other unresolved discrepancies in the file regarding the Beneficiary's adoption. For instance, the letter from the Ministry discussing their investigation into the Beneficiary's adoption was dated in February 2018—more than six months *after* the Beneficiary's adoption was finalized in August 2017. The letter from the Ministry also does not contain any details of an investigation into the Beneficiary's origins or otherwise describe how they confirmed the background or identity of her birth parents. Rather, it simply states that "the chairman, Board of Trustees of the home, C-O-<sup>2</sup> (Mrs.) informed [the Ministry] that the child was born on [date] and abandoned at the home." Most notably, the letter does not reference any investigation they conducted into the Beneficiary's *birth parents*. Rather, the report focused solely on the Petitioner and her suitability as the Beneficiary's adoptive parent. We further note other inconsistencies in the record namely, statements a Ministry official made to the Petitioner's attorney in Nigeria that the responsibility for conducting an investigation into a child's birth family "[wa]s for the orphanage home. They report to the Ministry after admitting children and investigation [*sic*]." These statements directly contradict the director of the orphanage, who told the same attorney that it was the responsibility of the "Ministry and police" to investigate the birth family's background.

We acknowledge the Petitioner's assertions on appeal particularly those regarding USCIS' refusal to accept the updated affidavit from the director of the orphanage, the affidavit of facts from the Beneficiary's birth mother, and the Police Clearance from Crime Diary. However, we reiterate that a Form I-604 investigation revealed significant, derogatory information casting doubt on the Petitioner's claim that the Beneficiary is an orphan due to abandonment and desertion by her birth parents. Furthermore, as discussed above, we identified other unresolved discrepancies in the record casting additional doubt on the Beneficiary's claim of orphanhood. As a result, we agree with the Director's conclusion that the totality of the evidence in the record is insufficient to overcome the grounds for revocation. 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 revoked.

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<sup>2</sup> Initials are used to protect the individual's privacy.

**ORDER:** The appeal is dismissed.