



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

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

In Re: 21187835

Date: MAY 4, 2022

Motion on Administrative Appeals Office Decision

Form I-600, Petition to Classify Orphan as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary, a citizen of Nigeria, 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 that the Beneficiary meets the definition of an orphan. We dismissed the Petitioner's appeal of that decision and subsequent motion to reopen and reconsider. The matter is again before us on a motion to reopen and reconsider. On motion, the Petitioner submits previously submitted evidence, new evidence, and reasserts the Beneficiary's eligibility. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* at § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

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) of the Act. A petitioner bears the burden to demonstrate eligibility by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issue on motion is whether the Beneficiary, a native and citizen of Nigeria, meets the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act. On appeal, the Petitioner submitted a

statement requesting the orphan petition be approved and a copy of the Beneficiary's late-registered birth certificate listing herself and her spouse as the Beneficiary's birth parents. We dismissed the Petitioner's appeal, concluding that the Petitioner had not established, by a preponderance of the evidence, that the Beneficiary was an orphan under section 101(b)(1)(F)(i) of the Act. Specifically, we determined that the Petitioner had not submitted evidence regarding the Beneficiary's birth parents or that he met the definition of an orphan due to death or disappearance of, abandonment or desertion by, or separation or loss from, both of his birth parents. The Petitioner filed a motion to reopen and reconsider our dismissal again claiming that the Beneficiary met the definition of an orphan under the Act. We acknowledged the Petitioner's resubmission of a copy of the Beneficiary's birth certificate listing herself and her spouse as the birth parents and a newly submitted affidavit of facts from the Beneficiary's birth mother detailing the circumstances of his birth. However, we dismissed the Petitioner's motion because the Petitioner did not submit a copy of the Beneficiary's original birth certificate or sufficient evidence that that the Beneficiary met the definition of an orphan under the Act. Additionally, we noted that the affidavit of facts from the Beneficiary's birth mother did not state that she gave birth to the Beneficiary or list the name of the Beneficiary's birth father.

We acknowledge the Petitioner's submission of a copy of the Beneficiary's original birth certificate on motion. We note, however that the birth certificate is not probative evidence of the Beneficiary's origins as the place of birth listed is different than the one listed on several late-registered birth certificates in the record, and the Petitioner does not submit additional evidence explaining this discrepancy. Additionally, the original birth certificate does not list the Beneficiary's birth father even though the birth mother implied in her affidavit of facts that she knew the birth father's identity. Most importantly, the Petitioner has still not submitted evidence on motion that the Beneficiary is an orphan as required by section 101(b)(1)(F)(i) of the Act. Instead, she resubmits a copy of the affidavit of facts from the Beneficiary's birth mother. As mentioned in our decision on first motion, the affidavit of facts does not indicate that the Beneficiary's birth parents have died, or that they have disappeared after a reasonable effort to locate them, or abandoned the Beneficiary by willfully forsaking all parental rights, obligations, and claims to the child, as well as control over and possession of the child as contemplated by section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(b). The affidavit, likewise, does not indicate that the Beneficiary was a ward, as required for desertion by both parents, was separated or suffered from the loss of both parents, that a competent authority involuntarily severed the Beneficiary from his parents, as required for separation, or that such an involuntary severance was caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as required for loss. *See* 8 C.F.R. § 204.3(b) (defining disappearance, abandonment, desertion, separation and loss). As a result, we again conclude that 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)(i) of the Act.

III. CONCLUSION

Based on the foregoing, the Petitioner has again not established any error of law or policy in our previous decision and has not submitted evidence sufficient to demonstrate the Beneficiary's eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.