



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

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

In Re: 23070067

Date: JAN. 4, 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 record did not establish that the Beneficiary met the definition of an orphan under section 101(b)(1)(F)(i) of the Act. 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 remand the matter to the Director.

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 that a consular officer's I-604, Determination on Child for Adoption (I-604 investigation) "must be completed in every orphan case."

The Petitioner filed an orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in June 2020, based on her adoption of him in 2006. The Director issued two requests for evidence (RFEs) informing the Petitioner, in relevant part, that the evidence was insufficient to establish the Beneficiary's status as an orphan. In response to the first RFE, the Petitioner provided evidence including the Beneficiary's 2006 birth certificate; a 2006 letter certifying that a "Baby Boy" was abandoned by an unnamed individual and placed in the foster care of the Petitioner and her spouse; an adoption order from [redacted] 2006; a 2007 *Undertaking of Foster Parents* declaration in which the Petitioner and her spouse agreed to provide foster care for an unnamed child; an undated letter regarding an application to foster a baby,

without naming the foster parents or baby; and documents regarding the identity and address of the Petitioner and Beneficiary.

In the second RFE, issued in June 2021, the Director explained that the foster placement records were undated and did not name the child or the biological parents, and the I-604 investigation determined the foster placement records were not credible evidence of the Beneficiary's origins. In response to the second RFE, the Petitioner submitted an *Investigation Report for Adoption* (2021 investigation report), issued in August 2021 by the Social Development Department for the [REDACTED] Local Government, Nigeria, explaining the history of the Beneficiary's birth and subsequent adoption by the Petitioner in 2006. The 2021 investigation report named the Beneficiary and his biological mother and stated that she abandoned him three days after his birth in [REDACTED] 2006, after which the Petitioner and her spouse adopted him. The Petitioner also submitted an August 2021 letter from the Director of Social Welfare, Social Development Department, stating that the Petitioner legally adopted the Beneficiary in 2006 pursuant to the law applicable at the time in [REDACTED] Nigeria.

The Director denied the petition based on a determination that the Beneficiary did not meet the definition of an orphan due to the lack of credible evidence of his origins. The Director stated that the 2021 investigation report was created 14¹ years after the claimed abandonment and did not indicate what type of investigation took place, who performed it, or when it occurred, but instead focused on the qualifications of the Petitioner and her spouse as adoptive parents.

On appeal, the Petitioner submits new evidence, including a personal affidavit from the Beneficiary's biological mother, dated March 2006, indicating her intent to leave him in the custody of social welfare workers for the purpose of placing him for fostering or adoption; a March 2006 foster placement document stating that the Beneficiary was placed in foster care with the Petitioner and her spouse; an *Undertaking of Foster Placement* document, signed by the Petitioner in March 2006, agreeing to care for the Beneficiary as her foster child; a July 2006 *Investigation Report for Adoption* (2006 investigation report), describing the Beneficiary's background and stating that social welfare officers conducted eight separate investigational visits between March and July 2006 prior to approving the Petitioner's application to adopt the Beneficiary;² a July 2006 letter from the Deputy Director, Social Development Department³ confirming the adoption process, including details about the investigations and the people involved; a July 2006 letter from the Director, Social Development Department stating that the Beneficiary did not have an "original" birth certificate and explaining why the Petitioner and her spouse were listed as the parents on the Beneficiary's birth certificate; and scholarly articles about social issues relating to children born out of wedlock in Nigeria. The Petitioner also provides copies of previously submitted evidence.

¹ The 2021 investigation report was actually created more than 15 years after the claimed abandonment of the Beneficiary in March 2006.

² The 2021 investigation report states that the Petitioner and her spouse submitted their adoption application in January 2007. However, the 2006 investigation report states she and her spouse submitted their adoption application in January 2006, and she indicated on the orphan petition that she adopted the Beneficiary in [REDACTED] 2006.

³ The same official from the Social Development Department signed the 2006 foster placement document, letters, and investigation report and the 2021 letters and investigation report. Some documents list her title as "Deputy Director" while others list it as "Director."

The Petitioner does not explain why she submits this new evidence, which is dated from 2006, for the first time on appeal but did not provide it with her original filing or in response to the Director's two prior RFEs. Also, she states in her appeal brief that the investigation report and foster placement records have been "amended," but it not clear whether the versions of those documents submitted on appeal were originally issued in 2006 as their dates reflect, or were issued more recently and are revised versions of the documents she previously submitted. Because the newly submitted evidence is material to the Petitioner's claim, we will remand the matter to the Director to consider the new evidence in the first instance and determine whether the Petitioner has met her burden of establishing that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.