



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

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

In Re: 27007908

Date: OCT. 18, 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 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 revoked the approval of the orphan petition, concluding that the record did not establish that the Beneficiary did not meet 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. On appeal, the Petitioner submits a statement reasserting the Beneficiary’s eligibility for the benefit sought.

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 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 I-604, Determination on Child for Adoption (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.

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 August 2019. The Petitioner claimed that the Beneficiary met the definition of an orphan as a child who “has no parents due to . . . abandonment . . . by . . . both parents.” The Director approved the orphan petition in November 2019.

The record indicates that, during a review of the orphan petition, a consular officer in [redacted] Nigeria noted that letters from the *Ministry Women Affairs and Social Development* in [redacted] State (Ministry) contained conflicting accounts of how the Beneficiary was found. Furthermore, the intake report from the *Government of [redacted] State of Nigeria Model Motherless Babies Home* (orphanage) was dated more than three years after the Beneficiary’s birth. 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. During a visit to the orphanage, the consular officer spoke to P-A-¹ the orphanage’s director, about several cases involving children recently adopted from the orphanage. Regarding the Beneficiary, P-A- could not provide any documentation about her adoption or confirm that she was ever at the orphanage. P-A- was also unable to authenticate the documentation filed with the petition that allegedly originated from the orphanage. The consular officer then visited the Ministry where he spoke to A-N-, the Deputy Director of Child Development. A-N- told the consular officer that she had no files regarding the Beneficiary’s adoption. She also told the consular officer that all documents for the Beneficiary had been submitted to the court and that the Ministry did not keep records of any kind once the case was filed. Additionally, she admitted that Ministry officials would create letters when adoptive parents request additional documentation without referring to court or ministry records and without verifying the veracity of the information in those letters. Based on the

¹ Initials are used to protect the individual’s privacy.

information gathered during both site visits, the consular officer declined to accept the Ministry's or orphanage's statements as sufficient evidence of the Beneficiary's origins.

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 2021. In the NOIR, the Director informed the Petitioner that the I-604 investigation "revealed information discrediting the submitted documents and claims of orphanhood [she] presented to USCIS with the filing of the form [I-600]." As a result, the Beneficiary could not be considered an orphan due to abandonment by both of her parents. The Petitioner disputed that determination and submitted a previously submitted *Intake Report* from the orphanage, an online article regarding a strike of the Judicial Staff Union of Nigeria, an *Affidavit of Facts* from A-N-, and a letter from the Petitioner's attorney in Nigeria. The Director determined that the affidavit and other evidence did not overcome the deficiencies noted in the NOIR. Consequently, the Director revoked approval of the orphan petition. The Petitioner subsequently filed a motion to reopen and reconsider with additional evidence. The Director acknowledged the evidence,² but determined that it did not overcome the grounds for revocation. The Petitioner timely appealed the Director's decision.

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 she submitted sufficient evidence of the Beneficiary's abandonment as required by 8 C.F.R. § 204.3(b). She references previously submitted evidence including an affidavit from O-O-, the court registrar, certifying that the Petitioner's documents were true copies, an October 2014 letter from the orphanage coordinator detailing the Beneficiary's intake, and an affidavit and letters from A-N- describing her visit with the consular officer and clarifying her and the orphanage director's roles in the Beneficiary's adoption. Regarding the deficiencies noted by the Director in her decision, the Petitioner asserts that a translation of her conversation with the orphanage director discussing the NOIR, and the letters and affidavits from A-N- also explain the Ministry's and orphanage director's inability to verify the documentation the Petitioner submitted with the orphan petition or confirm that the Beneficiary was ever at the orphanage.

The Director acknowledged the Petitioner's arguments and evidence submitted with her motion to reopen and reconsider. However, she determined that the orphan petition should remain revoked because the Petitioner failed "to provide clear and sufficient evidence to prove that the prospective adoptive child meets the definition of an "orphan" as defined in INA 101(b)(1)(F)(i)." The Director acknowledged the affidavits and documents from C-O- and A-N-, the former and current Directors of Child Development at the Ministry. However, she concluded that the documents held no probative value because they were dated years after the relevant events occurred. We additionally note that a

² The evidence submitted on motion included a statement from the Petitioner, documentation from the Ministry concerning the Petitioner's fostering and adoption, a letter from the Christ Intercessory Deliverance Mission, a letter of recommendation from U-A-, a Nigerian attorney, multiple letters from the orphanage and the Ministry, a copy of the Beneficiary's baptismal certificate, a copy of the Order from the Magistrate's Court of [] State, affidavits from multiple family members, and an internet article about abandoned children in Nigeria.

November 2017 letter from C-O- stated that that the Beneficiary was born “to an unmarried birth mother whose name was given as [J-O-] and who signed an adoption consent on the 23rd day of January 2015.” However, in another letter entitled *Adoption of a Child* with the same date, C-O- stated that the Beneficiary was delivered by “unknown parents” with no mention of a signed adoption consent. We acknowledge A-N-’s affidavits in which she addresses some of the inconsistencies in the Petitioner’s documents. Furthermore, in one of her affidavits, A-N- stated that we should disregard the November 2017 letter listing the Beneficiary’s birth mother, because “it contained incorrect information as to the birth of the [Beneficiary] and should not have been submitted.” However, the affidavit does not explain why the Ministry issued two documents on the same date containing conflicting information regarding the Beneficiary’s origins. Moreover, A-N- acknowledges in her affidavit and letters that she and the orphanage director assumed their positions at the Ministry and the orphanage in 2018 and 2019, respectively-- years after the Beneficiary’s birth and adoption, and she indicated during the consular investigation that the Ministry did not keep records once an adoption case is filed and that all documents for the Beneficiary had been submitted to the court. As such, it remains unclear what knowledge A-N- and the director have of the facts surrounding the Beneficiary’s origins and adoption. As a result, we agree with the Director’s determination that the evidence submitted with the motion to reopen and reconsider does not overcome the grounds for revocation.

Finally, the Petitioner asserts that the Director erred in stating that she bears the burden of establishing, by “clear and sufficient” evidence, that the Beneficiary is an orphan under the Act. Except where a different standard is specified by law, the “preponderance of the evidence” is the standard of proof governing immigration benefit requests, and the Director’s decision references an incorrect standard of proof. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Nonetheless, for the reasons discussed above, the evidence submitted does not resolve the inconsistencies on the record or overcome the grounds for revocation, and the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary is an orphan due to abandonment as required by 8 C.F.R. § 204.3(b).

In sum, we acknowledge the Petitioner’s assertions on appeal, including her claim that this case should be viewed through a humanitarian lens due to her prolonged separation from the Beneficiary. However, we reiterate that a Form I-604 investigation revealed negative information, including conflicting statements from the Ministry and orphanage regarding how the Beneficiary was found, the absence of records from the Ministry and the orphanage regarding the Beneficiary’s arrival at the orphanage, and other information discrediting the documents submitted with the petition to establish that the Beneficiary was abandoned by her birth parents. Furthermore, evidence submitted by the Petitioner in response to the NOIR did not sufficiently address the discrepancies identified in the Director’s decision, and the Petitioner has not submitted new evidence credibly explaining or otherwise addressing the same on motion or appeal. 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.

ORDER: The appeal is dismissed.