



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

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

In Re: 27360874

Date: SEP. 14, 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 petition, concluding that the record did not establish that the Beneficiary met the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act; the Director noted that the documentation submitted to prove the Beneficiary's orphan status were not contemporaneous records and contained inconsistent information. The Director also noted that it was unclear whether the adoption of the Beneficiary was completed by proxy and the court documents did not specifically waive the personal appearance of the Petitioner or the completion of a fostering period, as required by Nigerian law. 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.

**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:

*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. . . . A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.

. . . .

*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.<sup>1</sup>

## II. ANALYSIS

### A. Procedural History

The Petitioner filed this orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in October 2020. The Petitioner claimed that the Beneficiary met the definition of an orphan as a child who “has no parents due to death or disappearance of, abandonment or desertion by, or separation or loss from both parents.” After receipt of the petition, the Director issued a notice of intent to deny (NOID). The Director instructed the Petitioner to provide 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.

On appeal, the Petitioner indicates that she was present in Nigeria, but her entries and exits were recorded on her Nigerian passport rather than her U.S. passport. She also indicates that the discrepancies in the documents, in particular the different reference numbers, noted by the Director are understandable because different agencies in Nigeria issued various documents. The Petitioner

---

<sup>1</sup> The remaining means of showing a Beneficiary’s orphan status are: parental disappearance, loss from parents due to some calamitous event, or separation due to a competent authority ordering involuntary severance from the parents. The record does not support a finding of orphanhood under any of these definitions.

argues that she has therefore shown that the adoption was not completed by proxy and that the documentation references the same child throughout.<sup>2</sup>

#### B. Relevant Documentation

The Petitioner presented documentation from four main sources: the Methodist Church Nigeria [redacted] (orphanage); the Government of [redacted] of Nigeria, [redacted] Local Government, Social Welfare Department [redacted] Social Welfare Department); the Government of [redacted] of Nigeria, [redacted] Local Government, Social Development Department ([redacted] Department); and the Family/Adoption Court at [redacted] (adoption court). In addition, the Petitioner provided affidavits from the Beneficiary's birth mother as well as various petitions and letters that the Petitioner provided to Nigerian authorities.

The documents submitted to the Director generally outline various steps culminating in the Beneficiary's adoption. First, the Petitioner submitted a letter to the [redacted] Social Welfare Department in April 2014 indicating their desire to adopt a baby girl. The Beneficiary was born [redacted] 2014, to an unmarried birth mother who did not procure a birth certificate for her. The birth mother then brought the child to the orphanage on [redacted] 2014, and the orphanage alerted the [redacted] Social Welfare Department of the child's abandonment. The birth mother also executed an affidavit where she affirmed that the child's father was uninvolved, she had no source of income, and she was releasing the child for adoption. An investigation was completed several days later corroborating the mother's affidavit and attempting to locate the birth father, without success.<sup>3</sup> On [redacted] 2014, the [redacted] Social Welfare Department ordered the Beneficiary to be fostered by the Petitioner. The orphanage released her to the Petitioner and the [redacted] Development Department certified the placement.

The Petitioner filed an Application for Adoption Order on August 16, 2016 (adoption application) that was stamped by the adoption court. The adoption application indicated that the Petitioner took custody of the Beneficiary "on the [redacted] 2014" and had provided care since that date. The adoption application further noted that the local government was apprised of their intent to adopt on [redacted]. Other documents prepared by the [redacted] Development Department and presented to the adoption court likewise corroborated that the Petitioner took custody of the Beneficiary on [redacted] 2014.

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

The documentation provided by the Petitioner presents two divergent timelines regarding the custody and adoption of the Beneficiary. As noted above, a Beneficiary must meet one of the definitions of an orphan to be classified as an immediate relative of a U.S. citizen. The relevant orphan definitions exclude situations where a child is abandoned for a specific adoption or directly to the prospective adoptive parents. To qualify as a deserted orphan, a Beneficiary must have been made a ward of a

---

<sup>2</sup> The Form I-290B, Notice of Appeal or Motion (appeal form) filed by the Petitioner indicates that a brief or additional evidence will be submitted within 30 days. However, as of the date of this decision, no supplemental filing has been received. Our appellate review therefore encompasses the record presented to the Director and the documentation provided concurrently with the appeal form.

<sup>3</sup> This investigation report does not contain letterhead for the entity responsible for the investigation, but it appears to have been completed by the [redacted] Social Welfare Department.

competent authority. While several of the documents presented from the orphanage, the [ ] Social Welfare Department, and the [ ] Development Department seem to indicate that the Beneficiary was surrendered to a state-authorized orphanage and only then fostered, the documents underlying the adoption court's decisions show that the Beneficiary was surrendered directly to the Petitioner. Crucially, the Petitioner submitted an adoption affidavit to the adoption court where she indicated that she had taken custody of the Beneficiary on [ ] 2014 and alerted the authorities to this placement afterwards, on [ ]<sup>4</sup>. The [ ] foster date is repeated multiple times in the documentation provided to the adoption court by two different deputy directors of the [ ] Social Development Department. Because some of the record evidence indicates that the birth mother surrendered the Beneficiary directly to the Petitioner rather than to a competent authority and there is conflicting information regarding the Beneficiary's status as a ward of the state, the Petitioner has not established that the Beneficiary is an orphan due to abandonment or desertion.

We also note that the paperwork presented from the orphanage contains inconsistencies that diminish its evidentiary value. The Intake report on Abandoned Baby Girl, written on [ ] 2014 by the orphanage director (intake report) outlines the orphanage's interactions with the Beneficiary and indicates that she was released to the Petitioner on the same date the intake report was written. However, the intake report indicates that after this release the director of the orphanage learned that the "baby was subsequently adopted by them." As the adoption process was not initiated until 2016 and the intake report was purportedly written on the same day the foster placement occurred, it is unclear how the orphanage director could have been aware of events that had not yet taken place.

In addition, there are inconsistencies in the paperwork prepared by the [ ] Social Development Department. The Petitioners submitted a notice prepared by [ ], a deputy director, who indicated that she was initially processing the case, but that she would be unable to continue work on the case between March 14 and June 9, 2017. She therefore assigned the case to another deputy director, [ ], who concluded the adoption proceedings, confirming in a filing to the adoption court in May 2017 that [ ] was unavailable. Despite this, the Petitioner has presented an affidavit purportedly created by [ ] in April 2017, during her absence, detailing the Beneficiary's birth and the circumstances leading to her being fostered.

### III. CONCLUSION

Due to the inconsistencies contained in various documents presented for our review, as well as the internally conflicting timeline regarding the fostering and adoption of the Beneficiary, 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.

**ORDER:** The appeal is dismissed.

---

<sup>4</sup> The year in which the authorities were alerted was left blank.