



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

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

In Re: 31433419

Date: APR. 17, 2024

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. The Director subsequently denied the Petitioner's combined motion to reopen and reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief reasserting the Beneficiary's eligibility.

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 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.

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 the child who “has no parents due to . . . abandonment . . . by . . . both parents.” The Director approved the orphan petition in September 2019.

The record indicates that, during a Form I-604, Determination on Child for Adoption (Form I-604 investigation), a consular officer in Lagos, Nigeria, reviewed evidence submitted with the initial Form I-600 filing. The Petitioner claims that that the Beneficiary was abandoned by his birth mother in April 2013. In support of that contention, the Petitioner submitted memorandum and Affidavit of Facts (affidavit) from the Ministry and an intake report from the orphanage. The consular officer noted that all three of the documents were dated in 2015— more than two years after the Beneficiary's abandonment. A consular officer subsequently conducted a site visit to the [redacted] (Ministry) and the [redacted] (orphanage) to verify the Affidavit of Facts submitted in the case. During a visit to the Ministry, the Deputy Director of Child Development stated that she had no records for any of the children adopted through the Ministry, including the Beneficiary. She maintained that all records were submitted to the Magistrate Court and the Ministry did not keep any records after an adoption case had been filed. Additionally, she confirmed that the Ministry “[would] create letters at adoptive parents' requests [*sic*] without referring to any records. . . and without verifying the accuracy of what they put in the letters.” As a result, the consular officer refused to accept the Ministry's Affidavit of Facts as evidence of the Beneficiary's origins. The consular officer then visited the orphanage to inquire about the Beneficiary and several other children adopted from the facility. The director was unable to provide

any documentation for the Beneficiary or confirm that he was ever at the orphanage. She was also unable to verify any of the documentation the Petitioner submitted with the orphan petition. She explained that the Ministry kept all of the records related to children at the orphanage because it was run by the State.

Upon completion of its Form I-604 investigation, a consular officer returned the petition for revocation, and the Director issued a Notice of Intent to Revoke (NOIR) in April 2020. In the NOIR, the Director informed the Petitioner that the Form I-604 investigation “revealed information discrediting the submitted documents and claims of orphanhood [he] presented to [U.S. Citizenship and Immigration Services (USCIS)] with the filing of the [orphan petition].” Specifically, the Director noted that the NOIR was based on evidence not previously available to USCIS, including the results of site visits to the Ministry and orphanage, and testimony from the Deputy Director of Child Development. The Petitioner, through counsel, disputed that determination, and submitted a timely response to the NOIR.¹ The Director forwarded the Petitioner’s NOIR response to the U.S. Consulate in Lagos which determined that it was not credible. The Director then concluded that the Petitioner had not overcome the deficiencies noted in the NOIR or established, by a preponderance of the evidence, that the Beneficiary met the definition of an orphan under the Act. Accordingly, the Director revoked approval of the orphan petition in August 2022. The Petitioner filed a combined motion to reopen and reconsider with additional evidence.² The Director again determined that the Petitioner’s response did not overcome the grounds for revocation. 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.

The Petitioner argues, among other things, that he submitted sufficient and credible evidence that the Beneficiary was abandoned by his birth parents. He stresses that unwanted children are frequently abandoned in Nigeria, and the police do not have the resources to investigate such cases. He maintains that the consular officer should have visited the Magistrate Court to verify the Beneficiary’s documents once the Ministry informed him that it had forwarded the documents to the Court.

The Director acknowledged the Petitioner’s arguments and his evidence submitted in response to the motion to reopen and reconsider. However, she determined that the evidence did not overcome the grounds for revocation as it was insufficient to establish the Beneficiary’s origins and abandonment, or that he met the definition of an orphan under the Act. The Director conceded that she incorrectly stated that the Beneficiary’s date of birth was [REDACTED] 2015. Nevertheless, she found the error harmless as it did not form the basis for the revocation. The Director acknowledged the Affidavit of Records (affidavit) from the Assistant Chief Registrar from the Magistrate Court attesting to the veracity of the documents in the Beneficiary’s court file but noted that the affidavit was dated seven

¹ In response to the NOIR, the Petitioner submitted a copy of the Beneficiary’s court file containing various documents regarding his abandonment and adoption.

² The Petitioner submitted previously submitted evidence and copies of an updated personal statement, Beneficiary’s baptismal record and vaccination card, a report from the National Human Rights Commission, a Police Extract from the Nigeria Police Force, several affidavits from family members, a letter from the Petitioner’s attorney in Nigeria, his spouse’s passport with entry and exit stamps, and miscellaneous photographs.

days prior to the court stamp on the documents in the court file. The Director further acknowledged the police extract dated in October 2022, which stated that no one matching the Beneficiary's description had been reported missing. However, the Director determined that the police extract was insufficient evidence of the Beneficiary's orphanhood because it was dated more than nine years after his reported abandonment in 2013. The Director also acknowledged a report from an inquiry team from the National Human Rights Commission detailing their efforts to verify the adoption order, and letters from the Ministry and orphanage with the Ministry and the Magistrate Court. However, the Director noted that the documents, including the letter from the orphanage, were dated more than two years after the Beneficiary's abandonment in 2013 and pertained to his adoption rather than his origin, identity, or abandonment.

We note additional discrepancies casting doubt on the Beneficiary's origins and abandonment. Specifically, the social welfare officer noted in her April 2013 report that, "social welfare inquiries in finding the birth mother or parents of the child in unraveling the intentions of dumping the baby proved abortive." The orphanage supervisor stated in a July 2015 intake report that the social welfare officer was "invited from the Ministry to commence social inquiry" and that all efforts to find the biological mother were unsuccessful. However, a Ministry official stated in a letter later that same month that "no investigation was done to trace [the Beneficiary's] biological parents." Also, an April 2013 letter from the Ministry states that an official witnessed the Beneficiary's release to the Petitioner and his spouse in April 2013, and that a social welfare officer visited the Petitioner and his spouse in Nigeria, despite no evidence that the Petitioner ever traveled to Nigeria.

As discussed previously, it is the Petitioner's burden to establish his eligibility by a preponderance of the evidence. An I-604 investigation conducted by a U.S. Department of State consular officer determined that the Petitioner's evidence was not sufficient to show that the Beneficiary was an orphan. Specifically, the Petitioner did not provide consistent evidence of the Beneficiary's abandonment, or the Ministry's efforts to investigate his origins. Furthermore, evidence submitted by the Petitioner in response to the NOID 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 denied.

ORDER: The appeal is dismissed.