



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

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

In Re: 19017742

Date: MAR. 7, 2022

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. On appeal, the Petitioner submits previously submitted evidence and a brief reasserting the Beneficiary’s eligibility. In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews 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 June 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 December 2019.

The record indicates that, during a review of the orphan petition, a consular officer in [] Nigeria, noted that the letters from the Ministry of Gender Affairs and Social Development (the Ministry) and the [] (orphanage) associated with the Beneficiary’s case were dated weeks and months *after* his adoption was finalized. 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 Ministry, the consular officer confirmed that the Ministry had the same documentation as the consulate regarding the Beneficiary’s adoption. The consular officer also noted that, based on prior visits to the Ministry, it was standard investigative practice to accept an orphanage’s statement that the child was an orphan. As a result, the consular officer declined to accept the Ministry’s statement alone as sufficient evidence of the Beneficiary’s origins. The consular officer then visited the orphanage where he asked to review the Beneficiary’s file. The consular officer discovered that the file contained multiple affidavits with conflicting information regarding the Beneficiary’s origins and birth mother.¹ When asked to explain why the Beneficiary’s file contained multiple affidavits, the director of the orphanage had no response. Instead, she stated that there was a form that mothers

¹ As stated in the Director’s decision, one letter was signed by J-M- attesting to having given birth to a baby boy in [] 2018, to being 33 years of age, and to holding the occupation of “student.” Another letter was signed by J-M- attesting to having given birth to a baby boy in [] 2018, and contained handwritten amendments changing J-M-’s age to 32 years and occupation to “petty trader.” The third letter was signed N-M-J- attesting to having given birth to a baby boy in [] 2018 and contains handwritten amendments to the author’s name.

were given to complete when they arrive at her orphanage and provided the consular officer with a copy of the form.

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 April 2020. In the NOIR, the Director informed the Petitioner that the I-604 investigation discovered “inconsistencies that discredited the evidence [the Petitioner] provided in support of the [Beneficiary’s] orphan status” and, as such, he could not be considered an orphan due to abandonment by both of his parents.” The Petitioner, through counsel, disputed that determination, and submitted a timely response to the NOIR. The Director acknowledged the Petitioner’s response,² but determined that it did not overcome the deficiencies noted in the NOIR. As a result, the Director revoked approval of the orphan petition. 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.

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 affidavits from the Beneficiary’s birth mother confirming that the birth father denied paternity and his whereabouts were unknown, that she was unable to provide for the Beneficiary, and that she voluntarily left the Beneficiary with the orphanage for adoption by any qualified couple. The Petitioner also references the final adoption order she obtained from the Family Court [redacted] of Nigeria unconditionally divesting the Beneficiary’s parents of their parental rights over the Beneficiary. Regarding the deficiencies the Director noted in her prior decisions, the Petitioner argues that she provided credible explanations for the absence of the Beneficiary’s original birth certificate and the presence of multiple affidavits in the Beneficiary’s file at the orphanage. She further notes that the Ministry provided a letter indicating that they investigated the Beneficiary’s adoption and concluded that he had been abandoned by his birth parents. Finally, she acknowledges the consular officer’s conclusion that the Ministry generally “relied on information provided by the orphanage” without further investigation, but asserted that the consular officer did not state that this had necessarily occurred in the Beneficiary’s case.

The Director acknowledged the Petitioner’s arguments and her evidence submitted in response to the NOIR. However, she determined that it was insufficient evidence of the Beneficiary’s abandonment as defined by 8 C.F.R. § 204.3(b) because “[the Petitioner] did not establish that the true birth mother of the child willfully renounced all parental rights, obligations, claims, control, and possession to the orphanage.” The Director specifically acknowledged the updated letter from the director of the orphanage stating that the orphanage “deal[s] with a lot of documents and it may have been that some documents were inadvertently put in a wrong file.” However, she determined that the letter failed to adequately explain or reconcile the inconsistencies in this case. We additionally note that the letter from the Ministry discussing their investigation into the Beneficiary’s adoption was dated in May 2019—one month *after* the Beneficiary’s adoption was finalized. Furthermore, the letter does not

² In response to the NOIR, the Petitioner submitted an updated affidavit, an Applicant Registration Form, intake form and multiple letters from the [redacted] addressing the Beneficiary’s adoption, an affidavit of consent from the Beneficiary’s birth mother, a copy of the *Foster Order* from the Family Court [redacted] of Nigeria, a copy of the Beneficiary’s late registered birth certificate, and letters from the Ministry addressing the Beneficiary’s adoption and late-registered birth certificate.

contain any details of an investigation into the Beneficiary's origins or otherwise describe how they confirmed the background or identity of his birth parents. Rather, the letter simply states that "the orphanage reported the matter to the ministry and *after much interaction with the birth mother and thorough investigation*, we found out that [the birth mother] gave birth to the above mentioned [*sic*] baby. . . [and that] she is unmarried, unemployed and cannot fend for the child." (emphasis added). As a result, we agree with the Director's conclusion that the letter from the Ministry is not probative evidence of the Beneficiary's abandonment by his birth parents.

Finally, the Petitioner asserts that the Director erred in indicating in the decision that the Petitioner bears the burden to establish, by clear and convincing evidence, that the Beneficiary was an orphan under the Act. We concede that the Director's decision references the wrong standard of proof in this case. We note that, except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *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). Accordingly, the "preponderance of the evidence" is the standard of proof governing visa petition proceedings. *Id.*; *see also 1 USCIS Policy Manual E.4(B)*, <https://www.uscis.gov/policy-manual> (providing, as guidance, that "[t]he standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard"). Nonetheless, for the reasons discussed above, 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).

We acknowledge the Petitioner's assertions on appeal including her claim that neither she nor her spouse were aware of the discrepant information, and that they relied on the information provided to them by the orphanage. However, we reiterate that an I-604 investigation revealed significant, derogatory information—including multiple affidavits and discrepant statements from the director of the orphanage—discrediting the Petitioner's evidence of abandonment by his birth parents. Furthermore, we agree with the Director that the Petitioner's NOIR response—namely, the letter from the director of the orphanage—is insufficient to overcome the deficiencies the Director identified in the NOIR. 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.