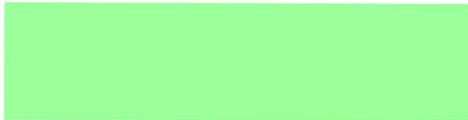
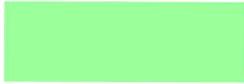


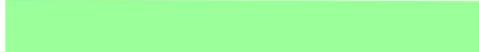


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 13 2014** OFFICE: NATIONAL BENEFITS CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

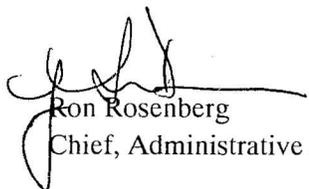
ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the National Benefits Center (the director) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

*Applicable law*

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Act, which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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 and spouse jointly. . . or who is coming to the United States for adoption by a United States citizen and spouse jointly . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

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 person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. 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. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

\* \* \*

*Competent authority* means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

\* \* \*

*Foreign-sending country* means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

\* \* \*

(1)(iii) Evidence that the child is an orphan as appropriate to the case:

- (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section[.]

*Facts and procedural history*

The petitioner is a 38-year-old U.S. citizen. He filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on September 18, 2013, seeking to classify the beneficiary, a citizen of Bangladesh, as an orphan under section 101(b)(1)(F)(i) of the Act, due to abandonment by both parents. The director found, in a decision dated January 9, 2014, that the evidence failed to establish that a court with authority in Bangladesh gave permission for the beneficiary to emigrate to the United States; and that the petitioner failed to establish abandonment by both parents because the beneficiary's biological parents relinquished their parental rights over the beneficiary directly to the petitioner. The Form I-600 was denied accordingly. On appeal, the petitioner submits evidence to establish that the beneficiary has permission to emigrate to the United States and he asserts, through counsel, that the evidence in the record establishes that the beneficiary's biological parents abandoned the beneficiary, and that he meets the definition of *orphan* under section 101(b)(1)(F)(i) of the Act.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).<sup>1</sup> Upon review, the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed.

*Analysis*

*Legal Guardianship over the Beneficiary and Permission to Emigrate to the United States*

The U.S. Department of State (DOS) advises, in pertinent part at: <http://adoption.state.gov>, that there is no independent central government adoption authority in Bangladesh, and that:

Prospective adoptive parents seeking to gain guardianship of a Bangladeshi child must submit an application for legal guardianship to the Family Court having jurisdiction over the child's place of residence[.]

*Id.* Prospective adoptive parents must also obtain a No Objection certificate from the Ministry of Home Affairs in Bangladesh. *Id.* Here, the record contains evidence establishing that the petitioner obtained legal guardianship over the beneficiary before a Family Court in Bangladesh. In addition, the record now contains a March 4, 2014, No Objection certificate from the Ministry of Home Affairs in Bangladesh. The petitioner has therefore established that he obtained legal guardianship of the beneficiary, and that the government of Bangladesh does not object to his taking the beneficiary out of the country.

*Abandonment by both parents*

The term *abandonment by both parents* is specifically defined at 8 C.F.R. § 204.3(b), and the petitioner must demonstrate that both of the beneficiary's biological 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 person(s)." 8 C.F.R. § 204.3(b).

The regulation emphasizes that "relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment." *Id.* Moreover, if the child was relinquished or released to a third party for custodial care in anticipation of, or preparation for, adoption, then a finding of abandonment cannot be made 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. *See id.*

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<sup>1</sup> Some of the petitioner's assertions indicate that he is filing a motion to reopen the director's decision, rather than an appeal. The Form I-290B Notice of Appeal clearly reflects, however, that the petitioner has filed an appeal of the director's decision with the AAO.

In the present case, evidence contained in the record reflects that the beneficiary's biological parents are both alive; they are financially unable to provide proper care to the beneficiary; and "per unanimous family decision" they agree that the petitioner should be appointed as guardian and custodian of the beneficiary. The beneficiary's biological parents state, in pertinent part, in a May 23, 2013 affidavit, that they are financially insolvent and unable to provide proper care to the beneficiary; they give up their parental rights and responsibilities over the beneficiary, and hand over all responsibilities of maintenance of their son to the petitioner, to "carry out all responsibilities" as the beneficiary's parent.<sup>2</sup>

A direct relinquishment or release of parental rights by the biological parents to the prospective adoptive parent, or for a specific adoption, does not constitute *abandonment by both parents*, as defined at 8 C.F.R. § 204.3(b). Here, the evidence in the record clearly reflects that the beneficiary's biological parents relinquished their parental rights over the beneficiary directly to the petitioner. Accordingly, the record fails to establish that the beneficiary was abandoned by both parents. The petitioner has therefore failed to establish that the beneficiary meets the definition of *orphan*, as that term is defined at section 101(b)(1)(F)(i) of the Act, due to abandonment by both parents.

*Conclusion*

As set forth in the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an "orphan," as that term is defined at section 101(b)(1)(F)(i) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.

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<sup>2</sup> The record also contains an affidavit from [REDACTED] attesting to the petitioner's good character, and to the beneficiary's biological parents' relinquishment of parental rights due to their inability to provide proper care to the beneficiary. There is no documentation in the file to reflect that the beneficiary ever became a ward of the court or that the biological parents' parental rights were limited or terminated prior to the guardianship proceedings.