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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JAN 22 2014** OFFICE: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The appeal will remain dismissed and the petition will remain denied.

*Requirements of a Motion to Reopen*

The general motion requirements are described at 8 C.F.R. § 103.5(a)(1) and state, in pertinent part:

[A]ny motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.<sup>1</sup>

The AAO issued its September 25, 2013 decision to the petitioner at his address of record. U.S. Citizenship and Immigration Services (USCIS) received the motion as properly filed on November 8, 2013, or 44 days later. On October 7, 2013, counsel contacted the AAO, informing the office that the petitioner had received the decision, and requesting that a copy be provided to her. On October 16, 2013, the AAO delivered a copy to counsel via facsimile upon receipt of a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28). Both the petitioner and counsel received the AAO's appellate decision within the 33-day period to file a motion. Counsel has not presented any evidence that the failure to file a timely motion was reasonable and beyond the petitioner's control.<sup>2</sup> Consequently, the AAO does not excuse the late filing of the motion, and will dismiss it for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4). Nevertheless, to ensure that all of the facts and legal issues are addressed in the beneficiary's administrative record, the AAO has reviewed and shall discuss counsel's arguments made on motion regarding the beneficiary's eligibility for classification as an orphan under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1101(b)(1)(F)(i).

*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

<sup>1</sup> For decisions served by mail, an additional three days are added to the filing period. 8 C.F.R. § 103.8(b).

<sup>2</sup> In a November 21, 2013 letter to counsel, the AAO discussed why it had not provided a copy of its appellate decision to her when mailing the same to the petitioner. The AAO will not address the issue further, as the letter is part of the beneficiary's administrative record.

has in writing irrevocably released the child for emigration and adoption. . . . *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.

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*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.

*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.

*Disappearance of both parents* means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

*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.

\* \* \*

*Incapable of providing proper care* means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country.

*Loss from both parents* means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign-sending country.

\* \* \*

*Separation from both parents* means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

*Sole parent* means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

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)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;
- (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; or
  - (B) The death certificate(s) of the orphan's parent(s), if applicable;
  - (C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption. . . .

*Facts and Procedural History*

The petitioner is a 54-year-old married U.S. citizen. The petitioner and his wife adopted the beneficiary, who is their nephew, in Cameroon on [REDACTED] 2012. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on January 18, 2013, and sought to classify the beneficiary as an orphan due to abandonment and desertion by both parents, or as the child of a sole parent who is incapable of providing proper care to the beneficiary.

On February 12, 2013, the director issued a Notice of Intent to Deny (NOID) because the record did not establish that the beneficiary met the definition of an orphan at section 101(b)(1)(F)(i) of the Act. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on March 5, 2013 and the petitioner timely appealed.

On appeal, the petitioner asserted that the beneficiary qualified as an orphan based on abandonment and desertion by his birth parents. The petitioner further asserted that the beneficiary has a sole parent who is incapable of providing proper care. In support of the appeal, the petitioner submitted: the beneficiary's birth certificate and passport; the beneficiary's birth parents' adoption agreement; the adoption decree; an investigative report from a competent authority; affidavits from the beneficiary's birth parents, the beneficiary's grandmother, the petitioner and the petitioner's wife; and general articles on adoption law, orphans and care of children by family members in Cameroon.

The AAO dismissed the appeal on September 25, 2013, finding that the petitioner failed to establish that the beneficiary qualified for classification as an orphan as defined in section 101(b)(1)(F)(i) of the Act. On motion, the petitioner submits a statement and additional evidence, and requests oral argument before the AAO so that the petitioner “can fully detail all the information and situations regarding the children.” The record in this case is voluminous and adequately addresses the pertinent facts and legal issues. Counsel’s request is therefore denied pursuant to 8 C.F.R. § 103.3(b)(2).

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner’s eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

#### *Analysis*

In its September 25, 2013 decision, the AAO determined that the petitioner failed to establish by a preponderance of the evidence that the beneficiary qualified for classification as an orphan. The AAO’s detailed discussion of the relevant evidence is incorporated here by reference. In sum, the AAO determined that the evidence in the record failed to establish that the beneficiary had become a ward of a competent authority, as required by 8 C.F.R. § 204.3(b) to establish “desertion by both parents.” The AAO further determined that the adoption-related documents reflected that the beneficiary’s biological parents specifically intended to, and did, transfer their parental rights over the beneficiary to the petitioner and his wife. Accordingly, the beneficiary did not qualify as an orphan due to “abandonment by both parents,” as defined in 8 C.F.R. § 204.3(b). The AAO also determined that the petitioner failed to establish that the beneficiary has a “sole parent,” as defined in 8 C.F.R. § 204.3(b), because the beneficiary was legitimated by his birth father’s declaration of paternity on his birth certificate, as set forth in section 44(5) of the Cameroon Civil Status Ordinance of August 1, 1981.

On motion, counsel reasserts that the beneficiary has a sole parent who cannot take care of him. Counsel requests that the AAO look beyond “the strictest interpretation” of the definition of orphan to find that the beneficiary has been abandoned by his birth parents. Counsel states that it is in the best interests of the beneficiary to be placed with the petitioner because he has no one else to care for him. Counsel contends that the beneficiary’s adoption in Cameroon should be recognized. Counsel submits as additional evidence, a second adoption decree for the beneficiary, which counsel states, is a “Grosse Adoption Decree,” fully terminating the rights of the beneficiary’s birth parents. Counsel also submits an affidavit from the petitioner, dated September 8, 2013, in which the petitioner discusses his efforts to support the beneficiary, the beneficiary’s sister, and another child in Cameroon.

*De novo* review of the record fails to establish that the beneficiary meets the definition of an “orphan” in section 101(b)(1)(F)(i) of the Act. As previously discussed, the adoption-related documents in the record reflect that the beneficiary’s biological parents specifically intended to, and did, transfer their parental rights over the beneficiary to the petitioner and his wife. The record contains an adoption agreement, which provides that the beneficiary’s birth parents appeared before a notary in

Cameroon on November 24, 2011 to consent to the petitioner and his wife's adoption of the beneficiary. The initial adoption decree in the record, issued by the [REDACTED] High Court on May 22, 2012, specifically references the adoption agreement as evidence of the beneficiary's birth parents' consent to the adoption.<sup>3</sup> The final adoption decree from the [REDACTED] High Court, submitted by the petitioner on motion, is dated October 8, 2013 and it also references the beneficiary's birth parents' consent to the petitioner's adoption of the beneficiary. Although the circumstances described in the adoption-related documents may have deemed the beneficiary abandoned and eligible for adoption under Cameroonian law, the petitioner must still demonstrate eligibility for classification as an orphan under United States immigration law. The regulation at 8 C.F.R. § 204.3(b) states that a relinquishment or release by the birth parents to the prospective adoptive parents for a specific adoption does not constitute abandonment. The adoption-related documents in the record show the beneficiary's birth parents' consent to and desire for the petitioner and his wife's adoption of the beneficiary. Accordingly, the petitioner has not established that the beneficiary was "abandoned by both parents," as the term is defined at 8 C.F.R. § 204.3(b).

The record also does not establish that the beneficiary meets the definition of an orphan because he has a sole parent incapable of providing proper care. The regulation at 8 C.F.R. § 204.3(b) prescribes that the term "sole parent" means the mother of an illegitimate child who has not acquired another parent within the meaning of section 101(b)(2) of the Act. As discussed in the AAO's previous decision, even if the beneficiary's birth father's abandonment or desertion was established, for orphan petitions filed under section 101(b)(1)(F) of the Act, a birth father only ceases to be the child's parent when: (1) the child was born out of wedlock as described at section 101(b)(1)(D) of the Act; and (2) the child was not legitimated under section 101(b)(1)(C) of the Act. Section 101(b)(2) of the Act; 8 U.S.C. § 1101(b)(2). The record in this case indicates that the beneficiary was born in wedlock and is the legitimate child of his birth parents. An investigative report in the record from the Ministry of Social Affairs, Cameroon's adoption authority, dated March 25, 2013, provides that the beneficiary's birth parents were married at the time of the beneficiary's birth. The affidavits in the record from the beneficiary's birth father, the beneficiary's grandmother, and the petitioner's wife (who is the beneficiary's aunt), also provide that the beneficiary's birth parents were married at the time of his birth. Since the beneficiary was born in wedlock, he is the legitimate child of his birth parents, and therefore does not have a sole parent, as defined in 8 C.F.R. § 204.3(b).

The record does not show that the beneficiary is an orphan under any other criteria delineated at section 101(b)(1)(F)(i) of the Act and defined at 8 C.F.R. § 204.3(b). The record does not indicate that both of the beneficiary's birth parents have died, or that they have disappeared as determined by a competent authority. The record also does not indicate that the beneficiary was involuntarily severed from his birth parents by action of a competent authority for good cause and in accordance with the laws of Cameroon. Nor does the record show that the beneficiary was involuntarily and

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<sup>3</sup> The Ministry of Social Affairs and High Courts (*Tribunal de Grande Instance*) are Cameroon's adoption authority. See *Intercountry Adoption, Cameroon*, U.S. Department of State, [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=cameroon](http://adoption.state.gov/country_information/country_specific_info.php?country-select=cameroon) (last visited December 18, 2013).

permanently severed or detached from his birth parents due to a natural disaster, civil unrest, or other calamitous event beyond the control of his birth parents and as verified by a competent authority. The record establishes that both of the beneficiary's birth parents are living. As such, neither the beneficiary's birth mother nor birth father is a "surviving parent."

The AAO acknowledges the sympathetic facts in this matter, and the petitioner and his wife's assiduous support and care for the beneficiary as they pursue his immigration to the United States. Counsel acknowledges that the beneficiary does not "fit neatly into the schema of orphan" but asks the AAO to "look beyond the narrow scope and see the broader picture of one million orphans in Cameroon." In its adjudications of the petitioner's appeal and motion, the AAO has thoroughly reviewed the administrative record and considered the facts and legal issues presented; however, USCIS has no discretion to approve an orphan petition where a petitioner fails establish a child's eligibility under the statutory criteria at section 101(b)(1)(F)(i) of the Act. Here, the facts of the beneficiary's young life, while compelling, do not demonstrate that he is eligible for orphan classification under any of the definitions found under the pertinent regulations. He is not the child of a sole parent, as counsel asserts. The beneficiary is also not an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, 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 and the appeal will remain dismissed.

**ORDER:** The motion is dismissed. The September 25, 2013 decision of the Administrative Appeals Office is affirmed. The petition remains denied.