



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

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

In Re: 27951685

Date: NOV. 21, 2023

Appeal of National Benefits Center Decision

Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify a Convention adoptee as an immediate relative under section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(G). The Director of the National Benefits Center (Director) denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative (Convention adoptee petition), concluding that the record did not establish that the Beneficiary's birth father is incapable of providing proper care for her. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief reasserting her eligibility for the benefit sought.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A Convention adoptee is defined as a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative, who has been adopted in a foreign country that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), or who is emigrating from such a foreign country to be adopted in the United States by a U.S. citizen and spouse jointly or by an unmarried U.S. citizen who is at least 25 years of age, provided that,

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child. Section 101(b)(1)(G) of the Act.

The regulation at 8 C.F.R. § 204.301 states, in pertinent part, the following:

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth

parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

II. ANALYSIS

The Beneficiary, a native and citizen of Ghana, was born to M-K-¹ and B-A- on [REDACTED] 2010. The Petitioner filed a Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, on February 1, 2021, and it was approved on June 22, 2021. The Petitioner filed the instant Convention adoptee petition on behalf of the Beneficiary on February 3, 2022, when she was 11 years old.

The Director issued a request for evidence (RFE) seeking evidence that the Beneficiary's birth parents are incapable of providing proper care. The Petitioner submitted a letter from the [REDACTED] [REDACTED] adoption agency in Ghana. The Director acknowledged this letter, but concluded that it was insufficient evidence of the Beneficiary's birth parent's inability to provide proper care. The Director then issued a notice of intent to deny (NOID) seeking additional evidence that the Beneficiary's birth parents are unable to provide proper care for her. In response, the Petitioner submitted affidavits from M-K- and B-A-, a copy of the Beneficiary's medical and dental records, several reports on country conditions and wages in Ghana, and photographs of M-K-'s residence and the Beneficiary. Based on her affidavit and photos of her current residence, the Director concluded that M-K- could not provide proper care to the Beneficiary. However, she concluded that B-A- had not provided sufficient evidence of his inability to provide proper care because his affidavit "d[id] not detail his real financial status with his new living circumstances in a different town in Ghana."

The Petitioner filed a motion to reopen and reconsider with an updated affidavit from B-A- and a letter from I-N-A-, an assemblyman from the district where B-A- lives. The Director determined that the letter from I-N-A- "appear[ed] to only be an affidavit in favor of the [B]eneficiary, and not sufficient evidence to show that [B-A-] is unable to support [the Beneficiary]." Additionally, the Director noted that she gave B-A-'s updated affidavit the same weight she gave to the affidavit submitted in response to the RFE and NOID because it did not provide additional evidence of B-A-'s financial status. The Director then denied the orphan petition, concluding that there was insufficient evidence that B-A- is financially incapable of supporting the Beneficiary.

On appeal, the Petitioner contends that the Director erred in concluding she submitted insufficient evidence of B-A-'s inability to provide proper care to the Beneficiary. Specifically, she argues that the Director gave M-K-'s affidavits significant weight, but determined that B-A-'s affidavit coupled with the letter from I-N-A- were insufficient evidence without further explanation. She maintains that she has met her burden and the orphan petition should be approved.

Upon review, the record reflects that the Director did not adequately evaluate previously submitted evidence of B-A-'s inability to provide proper care to the Beneficiary. First, I-N-A-'s letter does not mention the Beneficiary so it is unclear why the Director determined that it only appeared to be a letter in favor of her. In his letter, I-N-A- stated B-A- came to his office on four occasions beginning in

¹ Initials are used to protect the individual's privacy.

March 2018 when he requested charitable financial support for himself and his family. B-A- told I-N-A- that he had no regular employment, and that he worked as a farm laborer for different farms in the surrounding areas. I-N-A- further stated that, although he had no record of B-A-'s exact monthly income, he was one of their citizens facing "extreme hardship." We further note that B-A-'s updated affidavit does provide details of his financial status after he moved to a different town. Specifically, B-A- stated the following in his affidavit:

"That in 2016. I left [the Beneficiary] and the rest of my family with the intent of finding a job in another town to help support them.

"That I travelled to different towns and could not find a job as a labourer, I finally arrived at [redacted] region where I met a lady called A- who offered to help me find a job. She also offered to provide me temporary accommodation. She shared her room and the little food she could get with me even though she had no regular job."

"[t]hat over the days and weeks following my arrival in her village she took me to see some farmers to ask for a job."

"[t]hat none of the farmers in that area needed a permanent labourer because they were all subsistence farmers. I only worked when a land owner/farmer needed extra help. I only got paid for the number of days I worked.

"[t]hat nothing was left for me to save."

"[t]hat to this day, I continue to work only when any subsistence farmer needs my help."

"[t]hat my average income is between Ghc 150 to Ghc 200 a month depending on who I work for.

"[t]hat I have nothing left over to support [the Beneficiary]. At this time, my energy level has also diminished.

"[t]hat I am not a bad person. I just don't have any means to support [the Beneficiary] and I feel ashamed and terrible."

In light of the Petitioner's arguments and the deficiencies in the analysis, we find it appropriate to remand the matter to the Director to reevaluate the evidence to determine whether the Petitioner has established her eligibility for the benefit sought.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.