



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: BALTIMORE, MARYLAND

Date: NOV 20 2002

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

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

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Baltimore, Maryland district office denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter will be remanded to the director for further action.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on June 7, 2000. The petitioner is a 58-year-old citizen of the United States. The beneficiary is 12 years old at the present time and was born in Liberia on April 13, 1990. According to the record, the petitioner adopted the beneficiary in Liberia on March 3, 2000.

The director denied the petition because the petitioner failed to establish that the beneficiary was the child of a surviving parent, or that both of the biological parents were deceased.

On appeal, the petitioner submits a statement and additional evidence.

Section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), 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

In an October 4, 2001 Notice of Intent to Deny, the director informed the petitioner that the I-600 petition could not be approved because the record lacked a home study report as required by 8 C.F.R. 204.3(e) and evidence that the beneficiary was an orphan. The director noted that the petitioner claimed on the I-600 petition that the beneficiary had one surviving parent; however, the petitioner had not submitted the death certificate for the deceased parent and an explanation regarding the whereabouts of the surviving parent. The director provided the petitioner 12 weeks to supplement the record.

In response, the petitioner submitted a death certificate for the biological father, [REDACTED] and two *Affidavits of Confirmation of Death*. Both of the affidavits were executed by [REDACTED] and [REDACTED] the alleged cousin and uncle of the biological parents. Both parties testified that the biological father died on October 15, 1992 and the biological

mother died "on the occasion of the 1990 Civil Crisis in the Republic of Liberia."

The director denied the petition on February 8, 2002 due to discrepant information in the record concerning the whereabouts of the beneficiary's biological parents. The director noted that the petitioner claimed at the time of filing the I-600 petition that the beneficiary had one surviving parent, then subsequently claimed that both of the beneficiary's parents were deceased. The director stated that the petitioner failed to submit a death certificate for the biological mother and noted that the death certificate for the biological father was issued more than eight years after his alleged death.

On appeal, the petitioner states that at the time she filed the I-600 petition, she knew that the beneficiary's biological father was dead; however, she did not know the whereabouts of the biological mother. The petitioner further claims that even if the biological parents were alive, they would be unable to take care of the beneficiary. Regarding the death certificate of the biological mother, the petitioner claims that death records are not customary in Liberia and obtaining such a record usually occur when a relative or other person brings the facts of a person's death before a judge. In support of this claim, the petitioner submits a letter from the Justice of the Peace, Office of the Justice of the Peace, Montserrado County, Liberia.

As the record is presently constituted, there is insufficient evidence to either affirm the director's decision to deny the petition or find that the petitioner has successfully overcome the director's objections to the approval of the petition. In order to resolve the central question of whether the beneficiary's biological parents are deceased, the petitioner must be provided an opportunity to submit additional evidence.

The United States Department of State¹ is a primary source of information on the legal requirements for adoption in foreign countries. The Department of State provides the following information on adopting a child under the laws of Liberia:

. . . A petition for the adoption must be filed with the Probate Court. **The petition must contain . . . facts (if any) that render consent [to the adoption] of either parent unnecessary. . . . The court will also require written consent by the biological parents. . . . Parental consent is not required if the parents have**

¹ General information on international adoptions as well as country-specific information may be found at the Department of State's website at www.state.gov. At the home page click to "Children's Services."

abandoned the child, if the parental rights have been legally terminated, if the parents are deceased, or if a legal guardian has been appointed. . . . Following the filing of the petition, the court serves notice on all interested parties and orders an investigation by an investigator, who is appointed by the court. A written report of the investigation must be filed with the court within 30 days of issuance of the investigation order. Upon receipt of the investigation, the Court schedules the hearing and serves notice on all interested parties. The petitioners and children are required to attend the hearing. The court may waive the appearance of the child for good cause. This waiver must be stated in the order of adoption. All hearings are confidential and held in closed court. The court must be satisfied that the "moral and temporal interests" of the child will be satisfied by the adoption. Upon this showing, the adoption is ordered. .

(Emphasis added.) The petitioner adopted the beneficiary pursuant to the laws of Liberia on March 3, 2000. As part of the adoption process, the petitioner was required to establish to the satisfaction of the court the whereabouts of the biological parents. If the biological parents are both deceased, as the petitioner now claims, the adoption records should reflect this fact. The director should, therefore, allow the petitioner to procure all of the adoption records and submit them to the Service for examination.

Beyond the decision of the director, the petitioner has not complied with the regulation at 8 C.F.R. 204.3(c)(1) on documenting her marital status, and she has not established that she has complied with the requirements of 8 C.F.R. 204.3(d)(1)(iv).

Regarding the petitioner's marital status, the petitioner listed her marital status on the Form I-600 as divorced. The home study preparer, however, stated the following in the home study report about the petitioner's marital status:

In October of 1991, [REDACTED] husband was called back [from the United States] to Liberia by the government to participate in the war. She has not heard from him since and believes that he is dead. . . . She loves and misses her husband dearly.

The home study report indicates that the petitioner is married and possibly a widow, but that she is not divorced. It is noted that the petitioner has not submitted the documents required at 8 C.F.R. 204.3(C)(1), which include, a copy of the petitioner's

marriage certificate and/or evidence of legal termination of all previous marriages for the petitioner and/or spouse. The petitioner has also not submitted any evidence of her husband's death, if he did die during the war.

Regarding compliance with 8 C.F.R. 204.3(d)(1)(iv), the petitioner has not submitted any evidence that she saw the beneficiary prior to or during the adoption proceedings or, if she did not personally see the beneficiary, that she has complied with the requirements at 8 C.F.R. 204.3(d)(1)(iv)(B). Furthermore, if the petitioner is married, she would need to establish that she and her husband validly adopted the beneficiary jointly in Liberia, or that they will be able to adopt her jointly in the United States.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for entry of a new decision which, if adverse to the director, is to be certified to the Associate Commissioner for review.