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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: LOS ANGELES, CA

Date: 12 SEP 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 Los Angeles, California district office denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner filed an Application for Advance Processing of Orphan Petition (Form I-600A) and the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on March 9, 1999 and March 16, 1999 respectively. The petitioner is a 47-year-old married citizen of the United States. The beneficiary was 15 years at the time the petitions were filed. She is 19 years old at the present time and was born in Nigeria on March 31, 1983.

The director denied the petition because the beneficiary entered the United States as a nonimmigrant.

Section 101(b)(1)(F) of the Immigration and Nationality Act (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.

The record of proceeding contains the Form I-600A application, the Form I-600 petition and accompanying documentation, the director's July 2, 2001 Notice of Intent to Deny, the director's April 10, 2002 denial notice, and the petitioner's May 7, 2002 appeal.

In a Notice of Intent to Deny, the director informed the petitioner that the beneficiary did not meet the definition of orphan as set forth in the Act because the beneficiary had entered the United States as a nonimmigrant. The director cited 8 CFR 204.3(k)(3):

A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

The petitioner failed to respond to the Notice of Intent to Deny.

The director denied the petition for the reasons set forth in the Notice of Intent to Deny.

On appeal, the petitioner submits a three-page letter, his certificate of naturalization, an affidavit by the beneficiary's natural mother, a letter from the Ministry of Women Affairs and Social Development granting approval for the adoption of the beneficiary, and an updated home study conducted in Nigeria.

On appeal, the petitioner asserts that he sought approval of his I-600 petition for two years and when he learned that the beneficiary had become homeless, he felt desperate so he arranged for the beneficiary to enter the United States as a nonimmigrant. The petitioner believes that the petition should be granted due to the Service's inability to adjudicate the petition in a timely manner.

The petitioner failed to overcome the director's reason for denying the petition. The regulation at 8 C.F.R. 204.3(k)(3) clearly states that a child who is in the United States in a nonimmigrant status is ineligible for classification as an orphan. Here, the beneficiary has been in the United States since July of 2000. She, therefore, is not eligible for the benefits of an orphan petition. The petitioner may wish to consult legal counsel regarding the merits of petitioning for an immediate relative (adopted child).

ORDER: The appeal is dismissed.