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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: BALTIMORE, MARYLAND 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 Baltimore, Maryland district office denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the case remanded for entry of a new decision.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on January 14, 2002. The petitioner is a 41-year-old married citizen of the United States. The beneficiary is 7 years old at the present time and was born in Imo State of Nigeria on December 6, 1994.

The director denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan according to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act).

On appeal, the petitioner provided additional documentation.

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.

8 C.F.R. 204.3(b) 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.

In a February 8, 2002 Notice of Intent to Deny, the director informed the petitioner that the I-600 petition could not be approved. According to the director, even though the petitioner had established that the biological mother was a surviving parent, the petitioner had failed to show that the biological mother was unable to provide for the beneficiary's care according to the local standards in Nigeria.

In response to the notice of intent to deny, the petitioner submitted an adoption decree which was already in the Service file, a letter from the petitioner, and an affidavit by her sister, Catherine Nwakego Ewuzie stating that the petitioner is financially supporting the beneficiary and that the beneficiary has been residing with her since the petitioner adopted the child

on January 6, 1999. She also submitted copies of money orders made payable to Donatus O. Ewuzie and Christian Obi as evidence that she and her husband have been paying for the beneficiary's support. She included an addendum to a home study dated December 18, 2001.

While the petitioner submitted an affidavit from her sister who was presumably familiar with the biological mother's circumstances, the affidavit provided no information regarding the biological mother's ability to provide for the beneficiary. The affidavit states that the petitioner provides financial support for the beneficiary. The petitioner also included her own affidavit that indicates that she provides financial support for the child. She provided no information about the biological mother's finances, income, or employment.

The director denied the petition on March 29, 2002 for the reasons stated in the Notice of Intent to Deny. He said that the petitioner had failed to provide any documentation regarding the biological mother and her inability to provide for the support of the child. The director noted that sending money to the beneficiary or the beneficiary's guardian does not establish to the satisfaction of the Service that the biological mother is incapable of providing for the proper care and support of her child.

The record of proceedings contains, inter alia, an adoption order, which makes reference to a social welfare director's investigation of the beneficiary's condition. The social welfare director may have investigated the biological mother's ability to provide proper care for the child. The social welfare director's report may provide valuable insight into the biological mother's living situation and the reasons why she cannot provide for the beneficiary's care. If the social welfare director's report verifies the biological mother's declaration that she cannot provide for the beneficiary's care, such verification may be sufficient evidence. Matter of Rodriguez, 18 I&N Dec. 9, 10 (INS 1980). Therefore, the petitioner should endeavor to procure these documents in support of her claim that the biological mother cannot provide for the beneficiary's basic needs, consistent with the local standards in Nigeria. As this issue affects the beneficiary's eligibility to be classified as an orphan, the director should provide the petitioner an opportunity to obtain and submit this evidence.

As always, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); 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 petitioner, is to be certified to the Associate Commissioner for review.