

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



File: [REDACTED]

Office: BALTIMORE

Date: MAR 17 2003

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

Application: 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)

ON 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the District Director of the Baltimore, Maryland district office, who certified the decision to the Administrative Appeals Office (AAO) for review. The decision will be affirmed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on April 11, 2001. The petitioner is a 46-year-old married citizen of the United States. The beneficiary is 15 years old at the present time and was born in Akwa Ibom State, Nigeria on August 15, 1987. The record indicates that the petitioner and his spouse adopted the beneficiary in Nigeria on February 16, 2000.

The director initially denied the petition after determining that the petitioner had failed to establish that the beneficiary was under 16 years of age at the time the petition was filed and that the beneficiary was abandoned by her mother.

On appeal, the AAO determined that the petitioner had established that the beneficiary was under the age of 16 at the time the petition was filed, but remanded the case as the record was insufficient to establish that the beneficiary had been abandoned by both parents or that the sole surviving parent was incapable of providing proper care for the beneficiary.

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 district director requested that the petitioner submit additional evidence to either establish that the beneficiary was abandoned by her birth mother or that that the birth mother is incapable of providing proper care for the beneficiary.

In reply to the request for additional evidence, the petitioner submitted affidavits from two cousins of the petitioner who state that the beneficiary was abandoned by her birth mother.

The assertions of the petitioner and the two sworn affidavits are insufficient evidence that the beneficiary was abandoned by her mother. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).



As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The decision dated February 6, 2003, is affirmed. The petition is denied.

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