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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



File:



Office: ATLANTA, GEORGIA

Date:

NOV 14 2003

IN RE: Petitioner:
Beneficiary:



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.

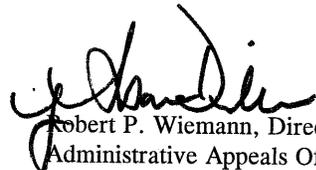
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 District Director, Atlanta, Georgia, denied the visa petition to classify the beneficiary as an immediate relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the district office on June 25, 2001. The petitioner is a 54-year-old married citizen of the United States. The beneficiary is two years old at the present time and was born in Owerri, Nigeria on March 15, 2001. The petitioner indicated on the petition that he and his wife had adopted the beneficiary in Nigeria on April 23, 2001.

On June 25, 2002, the district director notified the beneficiary of his intent to deny the petition because the petitioner had not established that the beneficiary is an orphan within the meaning of section 101(b)(1)(F) of the Immigration and Nationality Act (the Act). After considering evidence submitted in response to the notice, the district director denied the petition, finding that the petitioner failed to establish that the beneficiary is an orphan as defined within section 101(b)(1)(F) of the Act.

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

The sole issue in this matter is whether the beneficiary meets the definition of an orphan, as defined at section 101(b)(1)(F) of the Act.

In his decision, the district director stated:

There were two birth certificates submitted to this office in support of your petition. The first birth certificate dated and sealed on May 11, 2001 listed the petitioners, Mr. and Mrs. Edoziem, as the parents. This birth certificate precedes the order for adoption, which was dated and sealed on August 6, 2002. Once this discrepancy was noted, this office requested the original birth certificate, which listed the child's

natural birth mother. Upon receipt of this request, a second birth certificate [was] submitted to this office. The second birth certificate submitted is dated and sealed April 3, 2002. It lists Miss [REDACTED] as the birth mother. The second birth certificate number (2484) precedes the first birth certificate number (2726).

In view of the above discrepancies, the two birth certificates were forwarded to our Forensic Document Laboratory for examination of authentication. The Forensic Document Laboratory has determined that the documents submitted appear to have been altered. Both birth certificates contained misspellings of the words birth and witness. The first birth certificate, listing the petitioners as the parents, contained overwriting. The second birth certificate, listing the birth mother as Miss Chidinma Adiele, revealed that the hand printed certificate may have been washed out and altered.

Based on the report of the Forensic Laboratory, the birth certificates for the beneficiary appear to be fraudulent.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner submitted the following, some of which had already been submitted:

- A copy of an adoption order.
- An affidavit of a Nigerian social worker.
- An affidavit of an official from the Owerri Municipal Council.
- An affidavit from the midwife-in-charge purportedly present at the beneficiary's birth.
- An affidavit of the beneficiary's maternal grandfather.
- Two affidavits from the beneficiary's alleged birth mother.
- An affidavit from the petitioner's sister-in-law who has actual custody of the beneficiary.

On appeal, the petitioner submits a statement explaining the discrepancies in the documents on record.

The affidavit of the Owerri Municipal Council official states that the Owerri administration department issued the birth certificates even though they are not serially issued. The official states "the first certificate was issued on the 11th of May 2001 while the second certificate was issued at your request on the 3rd day of April, 2002, to reflect the biological name of the mother of [the beneficiary]. We equally admit some typographical or printing errors on the two certificates."

In review, this affidavit is not persuasive evidence as to the authenticity of the birth certificates. The affidavit's author fails to explain why it issued a birth certificate listing the prospective adoptive parents as the beneficiary's parents *before* they adopted the child.

On appeal, the petitioner's husband states the following:

The existence of the two birth certificates can be explained as follows: Upon his delivery and since the birth mother had given up all rights and privileges to the child, she released [the beneficiary] to us for birth registration while legal adoption was still in progress. Hence the first birth certificate listed us as parents. Upon presentation of the birth certificate to your office, we were asked to present a certificate that shows [the beneficiary's birth mother] as the mother. The second birth certificate correctly lists [the birth mother] as the biological mother. There was no intention to deceive.

This explanation is not adequate. Until the adoption was final, the petitioner and her husband could not be considered the beneficiary's *legal* parents. After the adoption, the birth mother would not be the beneficiary's *legal* parent. It is implausible that the Owerri administration would have issued a birth certificate upon request to the petitioners, without a court order or other legal documentation indicating that they were the legal parents.

Although the petitioner has submitted evidence to establish that the beneficiary is the child of a sole parent, these documents appear to be forgeries. This evidence will not be deemed probative absent independent and objective evidence that would clearly explain and rebut the disputed evidence. *Id.* Accordingly, the evidence will not be accepted to establish the identity and parentage of the beneficiary. The petitioner has not established that the beneficiary meets the definition of an orphan pursuant to section 101(b)(1)(F) of the Act.

ORDER: The appeal is dismissed.