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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: [redacted] Office: BALTIMORE DISTRICT OFFICE Date: SEP 23 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

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, Baltimore, Maryland, denied the visa petition to classify the beneficiary as an immediate relative and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decisions of the director and the AAO 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 47-year-old married citizen of the United States. The beneficiary is 16 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 district director initially denied the petition after determining that the petitioner had failed to establish that the beneficiary was under the age of sixteen 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.

On remand, the district director gave the petitioner the opportunity to supplement the record. The district director denied the petition and certified his decision to the AAO. The AAO affirmed the decision of the district director.

On motion, the petitioner submits additional evidence.

The director and the AAO found that the petitioner did not submit adequate evidence of the beneficiary's purported abandonment by her biological mother or of the biological mother's inability to provide for the beneficiary.

On motion, the petitioner provides the AAO with three additional affidavits that state that the beneficiary was abandoned by her biological mother. The affidavits do not present new facts. Affidavits are insufficient evidence of the beneficiary's abandonment by her biological 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). It is further noted that, according to the evidence on the record, the beneficiary's biological mother remarried, so the beneficiary may have acquired a step-father, in which case she is not the child of a sole or surviving parent.

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); *Matter of Brantigan*, 11 I&N 493 (BIA 1966); *Matter of Yee*, 11 I&N Dec. 27 (BIA 1964); section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the decision of the district director will not be disturbed.

ORDER: The previous decisions of the district director and the AAO are affirmed. The petition is denied.