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U.S. Citizenship  
and Immigration  
Services

F1



FILE:



Office: ST. LOUIS DISTRICT OFFICE

Date **JUL 28 2004**

IN RE:

Petitioner:

Beneficiary:



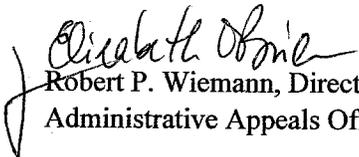
Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director of the St. Louis, Missouri district office denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted and the prior decisions of the director and the AAO shall be affirmed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on January 14, 2000. The petitioner is a 39-year old married citizen of the United States. The beneficiary was born on May 6, 1987 in Liberia and is now 17-years old. According to the evidence on the record, the beneficiary lives with his paternal grandmother and biological father in Liberia. The beneficiary is a nephew of the petitioner. The petitioner and her spouse adopted the beneficiary in Liberia on October 30, 1996.

The director denied the petition, finding that the petitioner had 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), 8 U.S.C. § 1101(b)(1)(F).

On motion, the petitioner submits additional evidence.

Section 101(b)(1)(F) of the Act, defined the term *orphan* as follows:

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.

In a request for additional evidence dated March 12, 2001, the director requested that the petitioner submit evidence that the beneficiary's surviving parent was incapable of providing proper care to the beneficiary and that he had released the beneficiary for emigration and adoption. The director also requested that the petitioner submit a certified copy of documentation showing the final disposition of the petitioner's spouse's arrest on July 3, 1997.

In response to the request for evidence, the petitioner submitted the requested court documents and a letter of affirmation from the beneficiary's surviving parent. The affirmation states: "I willingly and wholeheartedly give my consent to [REDACTED] . . . to be the legal father of my son, James Janjay Tisdell. Because of the hardship in the Country and my poor health condition."

The AAO dismissed the appeal, finding that the petitioner had failed to establish that the birth father was incapable of providing for the beneficiary's basic needs, consistent with the local standards of the foreign sending country.

On motion, the petitioner provides additional documents as evidence that the beneficiary's surviving parent is incapable of providing proper care to the beneficiary consistent with the local standards of Liberia.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the district director.

As noted in the previous decision, the petition was also denied for the petitioner's failure to prove that she saw the beneficiary prior to or during the adoption proceeding. The petitioner did not address this issue on motion. Because the district director's concerns have not been overcome, the petition is denied for this additional reason.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the prior decisions of the director and the AAO will be affirmed.

**ORDER:** The prior decisions of the director and the AAO are affirmed.