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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE: 

Office: BALTIMORE, MARYLAND Date: **MAY 19 2004**

IN RE: Petitioner:   
Beneficiary: 

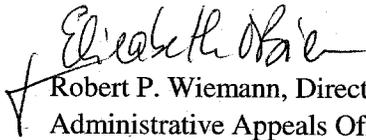
PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

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, 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 was then brought before the AAO on a motion to reconsider. The AAO granted the motion and affirmed the previous decisions of the district director and the AAO. The matter is before the AAO on a second 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, 2000. The petitioner is a 48-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 previous motion, the petitioner provided the AAO with three affidavits that stated that the beneficiary was abandoned by her biological mother. The AAO determined that the affidavits did not present new facts and were insufficient evidence to establish the beneficiary's abandonment by her biological mother. The AAO further noted that, according to the evidence on the record, the beneficiary's biological mother remarried, so the beneficiary may have acquired a stepfather, in which case she is not the child of a sole or surviving parent.

In support of the present motion the petitioner submits a letter stating that the beneficiary's mother is dead. To support this claim the petitioner submits a photocopy of what is purported to be the beneficiary's mother's death certificate. The death certificate shows the date of death as March 28, 1998, yet the date the death was registered is October 8, 2003, more than five years later. There is no explanation of how the petitioner was notified of the death or any explanation as to why registration of the death was delayed for more than five years. These inconsistencies raise serious doubts regarding the veracity of the certificate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even were we to find the death certificate to be sufficient evidence that the beneficiary's mother is deceased, the petitioner does not adequately address the issue of whether the beneficiary acquired a stepfather. In the letter submitted with the present motion, the petitioner states:

It is not common within the Ibibio clan for a living biological father to allow his child to be adopted by another man. On the other hand, it is not common for a man to accept a child, who is not his flesh and blood, as long as the child's father is still living.

However, Section 101(b)(1)(B)(1) of the Immigration and Nationality Act provides:

The term "child" means an unmarried person under twenty-one years of age who is . . . a stepchild, whether or not born out of wedlock, provided the child has not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

The petitioner's claim that a member of the Ibibio clan would not allow for his own child to be adopted and would not accept another man's child is mooted by the definition provided by the Act. Under the immigration laws of the United States the relationship creating the stepparent and stepchild is established at the time of the marriage and occurs regardless of whether there is an adoption. The cited statute defining stepchild takes precedence over the local custom in any case where that definition is at issue. In accordance with the evidence contained in the record that the beneficiary's biological mother remarried, the beneficiary would have obtained a stepfather at the time her mother remarried. As such, the petitioner's unsupported claims made on motion do not overcome the previous decisions of the district director or the AAO.

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. The petitioner has not met that burden. 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.