



U.S. Citizenship
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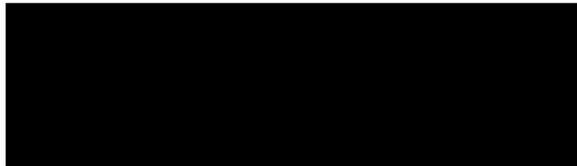
Petitioner:
Beneficiary:



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 APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland revoked the immigrant visa petition 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 petition) on February 3, 2005. The petitioner is a forty-five-year old married citizen of the United States. The beneficiary was born in Nigeria on August 25, 2004, and he is two-years-old.

The district director approved the Form I-600 petition on October 6, 2005, based on the supporting documentation submitted by the petitioner. A subsequent investigation by the U.S. Consulate in Lagos, Nigeria, revealed that the petitioner had not been abandoned by his family, and that the beneficiary continues to live with his biological family in Nigeria. The consular investigation revealed further that the beneficiary's adoption was based on fraudulent information from the Social Welfare Officer in Nigeria. Based on the consular investigation information, the district director issued a Notice of Intent to Revoke the approval of the petitioner's Form I-600 petition, on October 20, 2006. The petitioner responded, through counsel, to the district director's notice. The district director found, however, that the petitioner's response failed to overcome the grounds for revocation set forth in the Notice of Intent to Revoke, and the district director determined that the petitioner had failed to establish that the beneficiary met the definition of *orphan* as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The Form I-600 petition was revoked on November 29, 2006.

On appeal, the petitioner indicates, through counsel, that the people who were interviewed during the consular investigation misunderstood the consular officer's questions, and that the consular investigation conclusions are erroneous. The petitioner asserts further that the beneficiary's adoption decree was obtained legally, and that no intent to commit fraud has been established. The petitioner concludes, through counsel, that the cumulative evidence submitted by the petitioner establishes that the beneficiary meets the statutory definition of an *orphan*.

On appeal, counsel for the petitioner also requests oral argument before the AAO. Under 8 C.F.R. § 103.3(b), counsel must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The AAO finds that in the present matter, no cause for oral argument has been stated or shown. The petitioner's request will therefore be denied.

Section 101(b)(1)(F)(i) of the Act, 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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

The regulation provides at 8 C.F.R. § 204.3(k)(1) that:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

The regulation provides at 8 C.F.R. § 204.3(h)(14) that:

[T]he approval of an advanced processing application or an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

The regulation provides further at 8 C.F.R. § 204.3(b) that:

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. . . .

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The record of proceedings contains the following evidence relating to the beneficiary's *desertion* and *abandonment by both parents*, and his status as an *orphan*:

An Adoption Order from the Magistrate's Court of Imo State of Nigeria in [REDACTED] Magisterial District, reflecting that the beneficiary was adopted by the petitioner and her husband on January 5, 2002. The Adoption Order reflects that it was based on the information contained in the petitioner's husband's [REDACTED] application for adoption, and [REDACTED] Social Welfare Officer documents in the case.

An August 28, 2004, letter from the [REDACTED] addressed to the Social Welfare Office, entitled "Report of Child Abandonment". The letter states that a young woman gave birth to a baby boy on August 25, 2004, and that the baby was abandoned at the clinic on that day.

An August 31, 2004, letter from the Social Welfare Department of the [REDACTED] Local Government, signed by Social Welfare Officer, [REDACTED] addressed to the [REDACTED]. The letter refers to the August 28, 2004, [REDACTED] and states that the clinic should provide the baby with adequate medical attention, "[a]nd if possible, entrust interim custody to any interested person for the proper up-keep of the baby pending further development."

The petitioner's, "Affidavit in Support of the Application for Adoption," stating the petitioner and her husband's intent and desire to adopt the beneficiary, and referring to the above abandonment letters. The application indicates that [REDACTED] a blood relative, is entrusted with the interim custody of the baby pending legal proceedings.

A May 4, 2006, Consular Report of Investigation, and a June 1, 2006, Consular Memorandum reflecting in pertinent part, based on personal interviews, that: 1) the Social Welfare Officer responsible for the beneficiary's adoption admitted to writing what the petitioner's wanted him to write; 2) the petitioner's husband's family [REDACTED]—referred to as the matriarch of the family) and [REDACTED] (the petitioner's husband's brother) stated that the beneficiary lives with his biological mother. [REDACTED] stated further that the beneficiary was never abandoned, and that the beneficiary is the child of their relatives.

An October 27, 2006, affidavit signed by [REDACTED] Social Welfare Officer, [REDACTED] Local Government in Nigeria. The affiant states in pertinent part that: the report relating to the beneficiary is recorded in the social welfare office; that the petitioner and her husband adopted the beneficiary; and "[t]hat inquiries duly [*sic*] carried out by the Social Welfare Officer concerning the couple show that there is no lawful impediment against this adoption."

A December 5, 2006, affidavit signed by [REDACTED], written in response to the revocation of the petitioner's Form I-600 petition. The affiant states that he told the consular official that the beneficiary was at his maternal home with the beneficiary's maternal sister and grandmother, respectively. The affiant states that he also stated that the beneficiary had not been abandoned and that he was taken good care of. The affiant states that, "[a]bandonment to me sounded ridiculous, since [the beneficiary] was adopted by [the petitioners] based in U.S.A. and they handed him over to their sister-in-law to take good care of." The affiant additionally states that the beneficiary was abandoned at the [REDACTED] [REDACTED] c by his biological mother before the beneficiaries "[c]ame for him and they couldn't have abandoned him"

An October 24, 2006, letter from [REDACTED] (the petitioner's sister) stating in pertinent part that the beneficiary has been under their care since October 5, 2004, and that the petitioners have supported the beneficiary financially since that time.

A Home Study Report dated August 28, 2005, indicating in pertinent part that the petitioner stated in an interview that her sister is taking care of the beneficiary while the petitioner's complete the necessary adoption process in the United States.

The petitioner asserts on appeal, through counsel, that, "[t]he un-educated so called [REDACTED] in his unqualified exuberance to impress United States Embassy personnel, gave wrong answers to questions he did not totally understand." The petitioner indicates that a subsequent affidavit written by [REDACTED] demonstrates that he misunderstood the consular officials questions and that, in stating that the beneficiary lived with his maternal family, he meant that the beneficiary lived with [REDACTED]'s maternal sister. The petitioner does not address the statements made by the Social Welfare Officer on appeal. However, the petitioner, through counsel, incorporates the assertions made in her November 2, 2006, rebuttal to the Notice of Intent to Revoke. In her rebuttal, the petitioner asserts, through counsel, that, "[t]he allegation that the Reporting Investigator visited Ezinihite Local government Headquarters and confronted the Social Welfare Officer with the background information and he stated 'I wrote what they asked me to' is ridiculous and scandalous." The petitioner refers to the October 27, 2006, affidavit signed by the Social Welfare Officer, to rebut the consular investigation conclusion regarding the Social Welfare Officer.

The AAO finds that the assertions and evidence presented by the petitioner fail to overcome the basis of the district director's revocation of the Form I-600 petition. The October 27, 2006, rebuttal affidavit written by the Social Welfare Officer is generic and does not refer to the consular investigation of the beneficiary's adoption; the concerns surrounding the investigation; or the fraud-related statement made by the officer to the consular official. The AAO notes further that counsel's indication on appeal that [REDACTED] is uneducated and uninformed is uncorroborated by any evidence in the record. Furthermore, the December 5, 2006, rebuttal affidavit written by [REDACTED] fails to demonstrate that he misunderstood the consular officials questions regarding the beneficiary's abandonment or the regarding the beneficiary's place of residence. Rather, the affiant attempts to change his statement in the rebuttal affidavit, and thereby deny that he stated the beneficiary lives with his biological mother, and that the beneficiary was never abandoned and is the child of their relatives.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the cumulative evidence in the present matter fails to overcome the district director's determination that the beneficiary's adoption was obtained through fraud, and that the beneficiary was not *deserted* or *abandoned* by his parents. Accordingly, the petitioner has failed to meet his burden of establishing that the beneficiary is an *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and the petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.