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U.S. Citizenship
and Immigration
Services

F2

FILE:

Office: ATLANTA, GA

Date: **MAR 10 2005**

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a fifty-four year-old married citizen of the United States, filed the Petition to Classify Orphan as an Immediate Relative (Form I-600 petition) on November 16, 1998. The information contained on the Form I-600 petition indicates that the beneficiary was born in Somalia on October 12, 1988, and that he is presently sixteen-years-old.

The district director approved the Form I-600 petition on February 22, 2000, based on supporting documentation submitted by the petitioner. A subsequent investigation by the U.S. Embassy in Riyadh, Saudi Arabia revealed serious problems with the supporting documentation submitted by the petitioner. The Embassy investigation also revealed that previous personal interview records with the beneficiary's brother contained inconsistent information relating to the beneficiary's parents. In light of the information discovered by the investigation, the district director issued a Notice of Intent to Revoke the approval of the petitioner's Form I-600 petition, on May 21, 2001. The petitioner responded, through counsel, to the district director's notice. However, the district director found that the petitioner's response failed to establish that the beneficiary met the definition of an "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 subsequently denied on June 28, 2002, based on the petitioner's failure to establish the death or disappearance of the beneficiary's parents, and the petitioner's failure to establish that he adopted or obtained custody over the beneficiary through a competent authority. On July 27, 2002, the petitioner, through counsel, submitted a Motion to Reopen and/or Reconsider his Form I-600 petition denial. The motion to reopen and/or reconsider was denied by the district director on March 24, 2003, and a timely appeal was forwarded to the AAO in October 2004.

Counsel asserts on appeal that the district director did not consider all of the evidence that the petitioner submitted in response to the Notice of Intent to Revoke. Counsel asserts further that the cumulative evidence submitted by the petitioner establishes that the beneficiary meets the statutory definition of an "orphan" as set forth in section 101(b)(1)(F) of the Act.

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. (Emphasis added).

8 C.F.R. § 204.3(k)(1) states:

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.

8 C.F.R. § 204.3(h)(14) states:

[T]he approval of an advanced processing application or an orphan petition shall be automatically revoked in accordance with Sec. 205.1 of this chapter, if an applicable reason exists. The 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.

In the present matter, the district director determined that information and facts discovered by the U.S. Embassy in Riyadh, Saudi Arabia investigation of the petition revealed that the Somali documentation used to support the petitioner's Form I-600 petition was "unverifiable, dubious and possibly fraudulent". The district director noted the discovery that a guardianship/adoption decree, considered to be a key document in approving the Form I-600 petition, did not qualify as a legitimate court document because Somalia lacked a centralized government authority and lacked civil institutions at the time the decree was issued.¹ The district director noted further the discovery that the beneficiary's birth certificate, submitted by the petitioner, contained material internal discrepancies regarding which authority issued the document (Municipality of Interior versus Municipality of Hargeisi). In addition, the district director noted that the beneficiary's birth certificate contained two different kinds of typeface, and that the birth certificate contained problematic official stamps and signatures, and lacked a complete year of issuance. In addition to the above concerns, the district director noted that the birth month listed on the Form I-600 petition was different than the birth month listed on the beneficiary's birth certificate (October versus November).

Furthermore, the district director noted that the U.S. Embassy investigation revealed that the beneficiary's brother (co-beneficiary, [REDACTED]) had been personally interviewed by a consular officer in Riyadh, Saudi Arabia on July 15, 2000, and that statements made by Mohamed regarding the death of their parents contained serious internal inconsistencies and were inconsistent with claims made in the Form I-600

¹ U.S. Department of State country condition information on Somalia reflects that civil war has caused a complete collapse of the central government in Somalia since 1991. See generally, U.S. Department of State Background Note: Somalia, January 2005.

petition. Specifically, the district director noted that Mohamed initially stated during his interview that he believed his mother might still be alive and that his father died in Djibouti, not Somalia. [REDACTED] later stated that both of his parents died at the same time in Somalia in 1988. Mohamed also stated that his parents divorced after the birth of his sibling [REDACTED] (the beneficiary), and that he had no sisters.

Counsel asserts on appeal that the inconsistent statements made by [REDACTED] are the result of his youth at the time of the alleged events and at the time of the interview with the consular officer. Counsel asserts that the inconsistent statements are also due to interpretation errors made during [REDACTED] interview. In addition, counsel asserts that the petitioner did not intend to defraud or mislead immigration service, and that he obtained the birth certificate and adoption/guardianship decree documentation submitted on the beneficiary's behalf solely because he believed, based on a conversation with a consular officer, that he was required to submit such documentation. Counsel asserts that the petitioner was forthcoming about problems relating to the documentation that he submitted on the beneficiary's behalf. Counsel additionally asserts that that letters written by experts on Islamic family law and affidavits written by the petitioner and family members establish that the beneficiary is an "orphan" despite the fact that the guardianship/adoption documentation submitted by the petitioner is not legally valid, and despite the unreliability of the Somali birth certificate documentation submitted by the petitioner.

8 C.F.R. § 204.3(d) states in pertinent part:

(1) [T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

....

(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable . . . and

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad.

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

- (1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country.

It is uncontested that Somalia has no centralized government authority or centralized civil institutions, and that, at best, the guardianship/adoption decree submitted by the petitioner was issued by a localized court structure in Somalia that operated independently pursuant to general Islamic family law principles. The AAO therefore finds that the guardianship/adoption decree submitted by the petitioner was not issued by a Somali court or governmental agency having jurisdiction and authority to make decisions in matters of child welfare. *See* 8 C.F.R. § 204.3(b). The petitioner thus failed to establish that he adopted or obtained legal custody of the beneficiary in Somalia.²

Moreover, the AAO finds that the information contained in the affidavits written by the petitioner's sister, his two nephews, and his niece, as well as the declaration written by the petitioner himself, fail to overcome the inconsistent testimony and documentary evidence concerns presented in the petitioner's case. The AAO notes that the petitioner and his nephews, [REDACTED] and [REDACTED], were in the United States when the beneficiary's parents were allegedly killed, and that they therefore have no personal knowledge of the event. The AAO notes further that although the petitioner's sister, [REDACTED], and his niece, [REDACTED], state in their affidavits that they have personal knowledge of the beneficiary's parents' deaths, and that they were present at the parents' burial in Somalia, the AAO finds that the two statements alone do not overcome the inconsistent statements made by [REDACTED] during his consular interview and the documentary concerns contained in the present matter. The AAO notes that [REDACTED] was approximately fifteen years old when he was interviewed by a consular officer on July 15, 2000. The AAO finds that the petitioner has failed to establish that, at fifteen [REDACTED] was too young to adequately or fully respond to questions posed to him by a consular officer. The AAO finds further that counsel's assertion that the inconsistencies contained in [REDACTED]'s statements were the result of interpretation errors is speculative and unsupported by any evidence provided on appeal or contained in the record.

The AAO additionally finds that the explanation that the petitioner's submission of invalid and possibly fraudulent birth certificate documentation was the result of a good-faith effort to comply with U.S. Embassy requirements does not overcome the serious concerns raised by the submission of the documents. The petitioner provides no specific evidence or detail about the evidentiary instructions he received. Moreover, 8 C.F.R. § 204.3(d) reflects clearly that if a beneficiary's birth certificate is not available, the petitioner should submit an explanation with other proof of identity and age, and that evidence that a child is an orphan should be submitted as appropriate to the individual case, and it is unclear why the petitioner failed to discuss the circumstances regarding the documents at the time of his initial submission of the documents, and why he instead waited until after notification of possible revocation of the petition.

² The AAO notes that whether or not the guardianship/adoption decree submitted by the petitioner conforms with general Islamic family law principles as discussed in the letters by Professor [REDACTED] (Director, Islamic Family Law Project, Emory University School of Law) and [REDACTED] (Imam, Masjid Assunnah & Da'wah Center), does not change the fact that the court lacked jurisdiction to issue a guardianship or adoption order for U.S. immigration purposes.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. Based on the foregoing concerns, the AAO finds that the cumulative evidence in the present matter fails to establish that the beneficiary's parents died in Somalia in 1988 or 1989, or that the petitioner adopted or obtained legal custody over the beneficiary. The petitioner has therefore 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, and the appeal will be dismissed.

ORDER: The appeal is dismissed.