

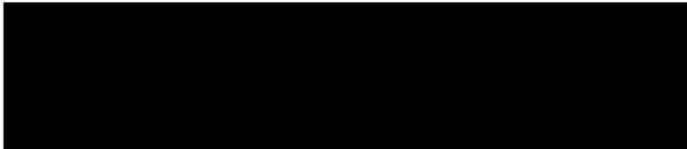


U.S. Citizenship
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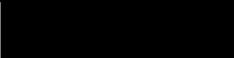
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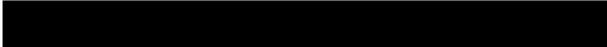


Office: ST. PAUL, MN

Date:

FEB 12 2008

(Related:



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, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, St. Paul, Minnesota denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on July 1, 2004. The petitioner is a forty-one year old married U.S. citizen. The beneficiary was born in Togo on July 15, 1988, and she is presently nineteen years old.

The field office director determined that the petitioner had failed to establish the beneficiary's natural father was incapable of providing proper care to the beneficiary, in accordance with the local standards in Togo. The I-600 petition was denied accordingly.

On appeal, the petitioner asserts that evidence from the Ministry of Justice Department in Togo establishes that the applicant's natural father is incapable of providing proper care to the beneficiary, and that she therefore qualifies as an orphan for immigration purposes.¹

Section 101(b)(1)(F) of the Act defines the term, "orphan" 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.)

The record contains birth certificate evidence reflecting that the beneficiary was born in Lome, Togo on July 15, 1988, to [REDACTED] (mother) and [REDACTED] (father). Death certificate evidence contained in the record reflects that that the beneficiary's natural mother died in Togo on July 27, 2003.

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

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

¹ The AAO notes that the petitioner listed the A numbers of all of the beneficiary's siblings on the Form I290B. The siblings also had I-600 petitions which were denied. As there was a single fee paid for the appeal, the AAO cannot provide separate decisions on all four cases. However, the reasoning in the present proceeding would apply equally in all the cases.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence, . . .

The evidence relating to the beneficiary's natural father's () ability to provide proper care to the beneficiary, and her status as an orphan consists of the following:

An undated statement signed by stating that due to the loss of his wife and his health situation, he irrevocably releases the beneficiary and her siblings to the petitioner and the petitioner's wife, for emigration and adoption purposes.

An August 31, 2004, Judgment of Delegation of Parental Authority, from the Lome, Togo First Instance Tribunal Civil and Commercial Chamber, reflecting that () relinquished his parental rights and duties over the beneficiary to the petitioner and the petitioner's wife, based on the petitioner's ability to provide for the beneficiary's well-being, and his ability to take appropriate care of the beneficiary's physical, moral and intellectual education.

An October 13, 2006, affidavit signed by () reflecting that he is a retired civil servant, television and radio presenter (since December 2005), and that he has not yet received his retirement pension due to processing delays. () states that he has four children, aged 19 (the beneficiary), 18, 14 and 3, and he indicates that his civil servant's salary will not be enough to provide for the support and education of his four school age children, and for other children he has custody over. He indicates that his deceased wife was the main provider for the family's food needs, based on income she received from her commerce. () concludes that he delegated his parental authority to the petitioner because he cannot, "assure a serene education to my children and the availability of their uncle constitutes for me and for them a life preserver and a hint to assure them a good education, to equip them to be able to take care of themselves later."

An August 3, 2007, Social Investigation Report prepared by the Ministry of Justice, Social Service at Court, Lome, Togo. Based on conversations with () the report indicates that, in addition to the beneficiary and three other natural children () has custody over five other children. The report states that the beneficiary and two of her siblings attend the private, College St. Augustin of Togoville. All are in "scol boarder" status at the school, and () plans to send the beneficiary's three-year-old sister to the school when she is old enough to attend. The report indicates that since the beneficiary's natural mother's death, () has had difficulty meeting the needs of his natural children and the other children in his custody. At present, () brother-in-law (the petitioner) assumes responsibility for ()'s natural children's' school expenses. The report indicates that

since December 2006, [REDACTED] has received a monthly pension of 80,000 F CFA, but that this amount is insufficient to pay for his family's maintenance allowance and expenses, and for his children's school fees of 300,000 F CFA each, per year.

The AAO has reviewed the totality of the evidence contained in the record. Upon review of the evidence, the AAO finds that the record contains no detailed information or corroborative evidence regarding [REDACTED] physical or legal custody of children other than his own. The AAO finds further that the **Delegation of Parental Authority** court judgment, the **Social Investigation Report** and the affidavits written by [REDACTED] contain only general statements relating to [REDACTED] inability to provide proper care to the beneficiary. None of the documents contain detailed information or corroborative evidence to support the assertion that the beneficiary's natural father suffers from health problems or financial problems that make him incapable of providing for the beneficiary's basic needs, consistent with local standards in Togo. To the contrary, the statements contained in the record indicate that the beneficiary lives with her natural father, when she is not at private boarding school, and the evidence reflects that it is primarily [REDACTED]'s inability to provide a high-quality education to the beneficiary that motivated him to transfer his parental rights to the petitioner.

The AAO finds, based on all of the above factors, that the petitioner has failed to establish the beneficiary's natural father is incapable of providing for the basic needs of the beneficiary, consistent with the local standards in Togo, as set forth in 8 C.F.R. § 204.3(b).

The AAO additionally notes that country adoption information contained at the U.S. Department of State website, <http://travel.state.gov>, reflects a clear adoption process and authority which allows for the adoption of a child in Togo. It is noted that the Delegation of Parental Authority judgment contained in the record does not establish that the beneficiary has been adopted in accordance with adoption requirements in Togo.

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 petitioner has failed to establish that the beneficiary meets the definition of 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.