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U.S. Citizenship
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Services

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FILE:



Office: BALTIMORE, MD

Date:

JUN 13 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland revoked approval and denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600.) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600 will be denied.

The petitioner filed the Form I-600 on May 25, 2005. The petitioner is a thirty-nine year-old married citizen of the United States. The beneficiary was born in Nigeria on January 21, 1992, and he is presently sixteen years old.

The district director initially approved the Form I-600 on December 7, 2005. A subsequent investigation by the U.S. Consulate in Lagos, Nigeria revealed that the beneficiary continues to live with his natural mother, that his natural mother is employed, and that his natural mother is capable of providing proper care to the beneficiary in accordance with the standards 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. In a decision dated January 22, 2008, the district director determined that the petitioner had 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 was denied accordingly.

On appeal the petitioner asserts, through counsel, that the beneficiary's natural father is deceased, and that his natural mother is unable to provide for the basic needs of the beneficiary in accordance with the local standards of Nigeria. The petitioner indicates that the beneficiary's mother earns N32,998.96 a month, the equivalent of \$258 a month, and that she needs \$943 a month to support herself, her three children and her ailing mother. The petitioner asserts that the evidence contained in the record establishes that the beneficiary's natural mother is incapable of providing proper care to the beneficiary, and that the beneficiary therefore qualifies as an orphan.

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

The regulation at 8 C.F.R. § 204.3(b) states 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.

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. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The evidence relating to the beneficiary's status as an orphan consists of the following:

A Nigerian Certificate of Registration of Birth reflecting that the beneficiary was born on January 21, 1992 to [REDACTED] (father) and Mrs [REDACTED] (mother.)

A Nigerian Final Adoption Order reflecting that the petitioner adopted the beneficiary on February 10, 2005. The Adoption Order reflects that the beneficiary's father is deceased. The Adoption Order reflects further that the beneficiary's natural mother is alive, and that she works as a teacher. The stated reason for issuance of the Adoption Order is, "to give the child a better future."

An October 12, 2006, Memorandum from the U.S. Consular Section in Lagos, Nigeria recommending revocation of the Form I-600 approval. The Memorandum states that the beneficiary's natural mother has three children, a girl who is nineteen, a boy who is **eighteen, and the fourteen year-old beneficiary.** The two oldest children attend university. The report states that the beneficiary's natural mother has worked as a school teacher and counselor for twenty three years. The report indicates that the present case was sent to the post's fraud prevention unit (FPU) for investigation, and that the FPU confirmed that the beneficiary's mother earned a good income for Nigeria and that she is healthy and not incapacitated in any way.¹

¹ The regulations at 8 C.F.R. § 204.3(k)(1) provide 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.

An FPU interview report reflecting that the FPU interviewed the beneficiary's natural mother at her home on August 22, 2006. The beneficiary was not present at the time of the interview and his mother stated that he was on holiday in Lagos with his cousins. The beneficiary's natural mother stated that the beneficiary attends a Federal Government College, and that relatives help her to pay his school fees. The FPU report indicates further that the beneficiary's natural mother has two elder children who attend university. The report indicates that the beneficiary's natural mother lives in a big house that appears to need repair, and that she is a primary school teacher on grade 14 who earns N32,000 a month. The report concludes that the beneficiary's adoption appears to be for immigration purposes. The FPU report notes further that proper international adoption procedures may not have been followed in the present case.

A May 4, 2007, Social Welfare Department affidavit signed by [REDACTED] Director Social Welfare, Ekiti State, Nigeria, stating in pertinent part that the petitioner's adoption of his cousin was granted by the Juvenile Court:

[A]fter due consideration of the social and psychological conditions of his mother (a widow) vis-à-vis the required care of her other siblings and aged parent. The children are in different higher institutions where they require huge financial needs.

The affidavit states that the beneficiary's natural mother is on a monthly allowance of N32,998.96, which is not paid regularly, and that she provides and cares for her children and her aged and infirmed mother.

A March 16, 2005 affidavit signed by the beneficiary's natural mother stating that she irrevocably releases the beneficiary for adoption and emigration to the petitioner and his wife. She states that after the death of the beneficiary's father, she has been responsible for the financing and upbringing of the beneficiary, and that now her source of income is not enough to finance the beneficiary's education as well as the education of her other children.

General Nigerian travel cost information by the Consulate General of Nigeria in Atlanta, Georgia.

General newspaper articles on social and social-economic issues in Nigeria.

The AAO finds, upon review of the totality of the evidence, that the petitioner has failed to establish that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b). It is uncontested that the beneficiary's natural mother is employed as a teacher in Nigeria and that she earns a monthly salary of N32,998. The evidence reflects that the beneficiary lives with his mother, and that she has cared for him since his father's death. The evidence reflects further that that the beneficiary's mother is financially able to send her nineteen and eighteen year-old children to university, and that she pays for the beneficiary to attend the Federal Government College. The general newspaper articles submitted by the petitioner fail to indicate or establish that the beneficiary's natural mother's salary is insufficient to provide for the beneficiary's basic needs in

Nigeria. The cost estimates provided by the petitioner on appeal are also unsupported by any specific evidence or details. Furthermore, the affidavits written by the beneficiary's natural mother, and the Social Welfare Department, as well as the FPU and Consular reports, and the Adoption Order reflect the beneficiary's natural mother's concern that she will be unable to provide the beneficiary with a higher education was the motivating factor behind the beneficiary's adoption.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* Section 291 of the Act; 8 U.S.C. § 1361. In the present matter, 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 Form I-600 petition will be denied.

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