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U.S. Citizenship and Immigration Services

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[redacted]

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File: [redacted] Office: BALTIMORE Date: AUG 02 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Application: 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:

[redacted]

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 of the Baltimore, Maryland district office 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 filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the district director on June 19, 2003. The petitioner is a 48-year-old single female United States citizen. According to the evidence on the record, the beneficiary, a 16-year old female, was born in Liberia on March 13, 1988 and currently resides in Ghana.

The district director denied the petition, finding that the petitioner failed to establish that the beneficiary met the definition of an orphan according to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F).

On appeal, counsel submits a brief and additional evidence.

Section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F), 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.

The regulation at 8 C.F.R. § 204.3(d)(2) states in pertinent part:

> The following supporting documentation must accompany an orphan petition filed while the advanced processing application is pending:
>
> (iii)(d)(1)(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 orphan is an orphan as appropriate to the case:
>
> * * *
>
> (B) The death certificate(s) of the orphan's parent(s), if applicable.

The regulation at 8 C.F.R. § 204.3(d) further states in pertinent part that each orphan petition must be filed with:

> (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; or

(B) If the orphan is to be adopted in the United States because . . . the unmarried petitioner . . . 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 working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence; and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner . . . did not personally see the orphan prior to or during the adoption proceeding abroad . . .

In a November 14, 2003 Notice of Intent to Deny, the district director informed the petitioner that the I-600 petition could not be approved. According to the district director, the petitioner had failed to establish that the beneficiary's birth parents were deceased and that she had obtained a "full and final" adoption of the beneficiary.

The district director denied the petition on March 16, 2004, for the reasons stated in the Notice of Intent to Deny. In particular, the director stated that:

> Regarding the [beneficiary's parents'] death certificates, [Citizenship and Immigration Services (CIS)] noted that both were late registered and both cited the incorrect age for the deceased (based upon the ages reported on the beneficiary's birth certificate). Furthermore, it was noted that both death certificates were filed on November 28, 2002, and that they were issued on the same date. The informant for these deaths was [redacted] who is the attorney assisting you with this international adoption. The record fails to reflect that any credible evidence was presented to the authorities in Liberia as a basis for the issuance of these documents. As such, it appears that the issuance of these certificates was based solely upon the testimony of [redacted]. CIS therefore questions whether Randall Cooper, who is acting as your attorney for your adoption proceedings in Liberia, possessed credible, objective evidence for each of the deaths in question, or whether he had personal knowledge of each of these deaths.

In response, you submitted a facsimile from the Consulate General of the Republic of Liberia in New York City, stating that there is no time limit to when one can request a birth certificate in Liberia. You also submitted a facsimile copy of a new birth certificate for the beneficiary. The facsimile copy of poor quality and the reverse side of the birth certificate was not included. Apparently, you obtained the new birth certificate in an attempt to reconcile the age discrepancy on the birth parents' death certificates. It is noted that this in no way constitutes evidence that the birth parents are deceased. Furthermore, you failed to provide any evidence to support the ages of the parents now being reported on the beneficiary's birth certificate. As with the birth parents' death certificates, you provide no evidence to support the information now contained on the beneficiary's birth certificate. Again, the reliability of the information contained on each of these documents is therefore called into question.

Regarding your failure to document a "full and final" adoption, you submitted a document from the Monthly and Probate Court for Montserrado stating that you have assumed custody of the beneficiary from [redacted] However, you failed to provide evidence that Arinic Horace has given up all control over the beneficiary and irrevocably released the beneficiary for emigration and adoption. As cited above, you must provide an irrevocable release from the party who previously held custody of the beneficiary.

The District Director must be satisfied with the authenticity of any foreign document of record which is relied upon to establish familial relationships. *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982).

A delayed birth certificate, standing alone, does not amount to a "birth certificate" within the contemplation of 8 C.F.R. § 204.2. *Matter of Herrera*, 13 I&N Dec. 755 (BIA 1971).

Delayed birth certificates are generally not accorded the same weight as birth certificates issued at the time of birth due to the potential for fraud. *Matter of Ma*, 20 (&N Dec. 394 (BIA 1991).

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 (BI 1973).

On appeal, counsel for the petitioner asserts that the petitioner has met her burden of proving that the beneficiary is an orphan and that she has accomplished and documented all necessary elements in order to classify the orphan as an immediate relative, i.e., the adoption was full and final.

According to the evidence on the record, the petitioner adopted the beneficiary by proxy in Liberia on May 23, 2003. The petitioner did not see the beneficiary either before or during the adoption proceeding and she expressed her intent to readopt the beneficiary in the United States. According to the Liberian adoption decree, the petitioner was awarded custody of the beneficiary as of May 21, 2003. According to the evidence on the record, the petitioner's sister, Arinic Horace, petitioned for and received guardianship of the beneficiary on July 21, 2003, after the adoption. The record of proceeding contains an irrevocable release from Arinic Horace, the beneficiary's guardian, for emigration and adoption. The record also contains a favorable home study that indicates that the petitioner has complied with all preadoption requirements. The record contains evidence that the State of intended residence allows readoption.

In review, the petitioner has overcome the district director's concern that the petitioner had failed to establish that the adoption was "full and final" or in the alternative, that the person last having legal custody of the beneficiary, had irrevocably released the beneficiary for adoption and emigration.

As the record is presently constituted, the petitioner has not met her burden of establishing that the beneficiary is an orphan.

The evidence consists of the following:

- A birth certificate of the beneficiary, issued on September 24, 2003 noting that her father, was 45 years old and her mother, Mary Okai, was 40 years of age as of the date of the beneficiary's birth (March 13, 1988).
- A death certificate issued November 27, 2002 of indicating that her date of birth is April 13, 1949.
- A death certificate issued November 27, 2002, of stating that his date of birth was May 4, 1947.
- The beneficiary's birth certificate, issued on January 30, 2004, indicating that her father, was 40 years old and that her mother was 38 years old at the time of her birth.
- The petitioner's statement dated April 7, 2004, explaining that she obtained a corrected birth certificate for the beneficiary, which she presented in original form to the Baltimore district office.

On appeal, counsel for the petitioner submits additional evidence, including numerous detailed affidavits that indicate that the beneficiary's birth parents died in Liberia during the country's civil war.

In review, the evidence is insufficient to establish that the beneficiary is an orphan.

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). The reliability of the beneficiary's birth certificate is critical because it contains vital information that relates to whether the beneficiary is eligible for classification as an orphan.

The petitioner has not established that the beneficiary's parents are deceased. Because the documentary evidence is not credible, the AAO is reluctant to give weight to the affidavits submitted on appeal, in spite of the fact that Liberia is a war-torn country.

It is further noted that the record contains discrepancies regarding the relationship between the petitioner and the beneficiary and the beneficiary's identity. In an affidavit dated February 16, 2004, the petitioner wrote:

> Some time in 2000, I heard that [redacted] had been killed in the war and that their three youngest children, [the beneficiaries] were assigned to internal displacement camps in Liberia. I immediately contacted my youngest sister, Arinic Horace to find the children at all cost and to petition the court for their custody until I could decide how to assist my nieces and nephew.

The petitioner's reference to the beneficiaries as her nieces and nephew is inconsistent with other evidence on the record that states that the beneficiaries are the children of her friends. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This inconsistent evidence calls into question the credibility of the petitioner and casts doubt on whether the beneficiary is an orphan as defined by statute and regulations.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.