



U.S. Citizenship
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Services

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FILE:

Office: BALTIMORE DISTRICT OFFICE

Date: OCT 10 2006

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:

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, denied the Petition to Classify Orphan as an Immediate Relative. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on June 16, 2004 on behalf of the beneficiary; it was approved on November 3, 2004. The petitioner is a 61-year-old married U.S. citizen; his wife is also a U.S. citizen. The beneficiary is a five-year-old citizen of Nigeria, born in Enugu State, Nigeria on March 5, 2001 and currently residing with the sister of the petitioner's wife in Nigeria. Based on an on-site investigation in Nigeria's Enugu State, the Immigrant Visa Unit of the U.S. Embassy in Lagos informed the petitioner that "the adoption of [the beneficiary] is not valid; no record of it exists with applicable stated authorities in Nigeria, nor with the orphanage from which the child was purportedly adopted," and that revocation of the I-600 Petition had been recommended. *Letter from the Chief, Immigrant Visa Unit*, September 28, 2005. The district director concluded that the adoption order was fraudulent, adding that no record of the adoption could be found in the Magistrate's Court of Enugu or the Court Records of the Red Cross Motherless Babies Home, the orphanage mentioned above, and the adoption of the beneficiary was therefore not valid. The I-600 Petition was revoked accordingly. *District Director Decision*, February 6, 2006.

In response to the September 28, 2005 letter from the Immigrant Visa Unit, *supra*, counsel for the petitioner submitted documentation to U.S. Citizenship and Immigration Services (CIS) in Baltimore on January 23, 2006 to explain the lack of adoption records, claiming that the records did in fact exist but had been misplaced and could not be located when U.S. Embassy officials appeared at the Nigerian records department to request them. *Attorney Inquiry Work Sheet*, dated January 20, 2006; *Letter from* [REDACTED]

[REDACTED] dated October 10, 2005, explaining that they represent [REDACTED] and [REDACTED] and stating that it was their understanding that the Embassy doubted the authenticity of the adoption documents of the beneficiary and they had therefore "petitioned the Assistant Chief Registrar (ACR) Chief Magistrate Court Enugu [and] a [c]opy of the letter of protest was copied to the Embassy and hereby attached." The letter also noted that the court had replied, affirming the authenticity of the documents, and that a copy of the response and certified copies of the adoption documents were attached. Another letter from [REDACTED], which appears to be addressed to the petitioner's wife and is undated, states that when attempting to deliver documents on behalf of the petitioner, certain documents were not accepted by the authentication section of the U.S. Embassy because the case had been revoked and the file sent to the United States. These documents were later submitted to CIS, though there is no indication in the record that they were considered by the District Director before making his decision to revoke the I-600 Petition.

On appeal, counsel resubmits the documents noted above and states that "proof of the lawful adoption is submitted with the documentation and explanations pertaining to all issues in dispute." *Notice of Appeal to the Administrative Appeals Office (AAO)(Form I-290B)*, March 28, 2006. Attached documentation includes (1) a letter from [REDACTED] Chief Magistrate's Court, Enugu, to [REDACTED] dated October 17, 2005, acknowledging receipt of his "Letter of Protest" regarding the beneficiary and affirming that "Master Chikwendu Simon Ezegbunam was adopted by Engineer and [REDACTED] through the due process of Court which was concluded on the 5th day of June, 2001," and explaining that "it is unfortunate that a misrepresentation was made to the American Embassy, probably by two of their Officials who visited this Registry sometimes [sic] ago to investigate the genueness [sic] of some adoption documents"; the letter further explains that the Officials arrived at the Registry office without notice and demanded that certain records be

produced; although they were able to produce some, they could not immediately locate those of the beneficiary and requested additional time to search for them; although “[t]he Assistant Chief Registrar incharge opted to Certify the document as being genuine,” they refused; and, finally the Registry office explained that they would no longer abandon other official duties to look for files without enough notice, and the embassy officials agreed to return in two days, but never showed up; the letter then refers to attached certified true copies of the “processes filed during the process of the adoption and . . . [the] record of proceedings.”; (2) the referenced “Letter of Protest,” dated October 13, 2005, from [REDACTED] on behalf of the petitioners to the A.C.R., Chief Magistrate Court, noting that the petitioners adopted the beneficiary through due process of the court on June 5, 2001 and protesting misrepresentation to the contrary that led the U.S. Embassy to conclude that the adoption papers were fake; (3) the “certified true copies” of documents acquired during the adoption process, including (a) the order of adoption by the Magistrate’s Court of Enugu State granting the petitioner and his wife the adoption of the beneficiary on June 5, 2001; (b) a letter from the Government of Enugu State Ministry of Women Affairs and Social Development to [REDACTED] dated March 7, 2001, stating that “Approval has been conveyed to you for the collection and custody of an abandoned day old baby boy picked up by a good spirited individual on 5th March, 2001 and deposited with the Red Cross Motherless Babies Home, Ogui, Enugu,” signed by [REDACTED] (Social Welfare).”; (c) an Application for Adoption Order by the petitioner, dated May 7, 2001; (d) a Probation Officer’s Investigation Report on the Proposed Adoption of the beneficiary by the petitioner and his wife, dated June 5, 2001, recommending approval of the adoption; it includes a description of how the beneficiary was “picked [up] by a good Nigerian on 5th March 2001 with the cord and the placenta not disengaged from the baby. The good Nigerian according to information is a woman and a hawker. The baby was picked [up] around 8:00 am and was taken to Red Cross Motherless Babies Home Enugu who later referred the case to the Social Welfare Department for necessary action”; the report provides the name and address of the woman who picked up the baby, but states that the “Probation Officer made every effort to trace the accurate name and address [but] according to inhabitants is not in existence [sic]. Consequently, the child was fostered to the first applicant . . . on 7th March 2001 and to stay in their custody pending the processing of the Adoption papers for court order.”; (e) a Court Order from the Magistrate’s Court of Enugu State, dated June 5, 2001, regarding the “re-adoption” of the beneficiary, containing a statement by the probation officer in the case, [REDACTED] with the Social Development Department of the Enugu State Ministry of Women Affairs and Social Development, recommending approval, and the Chief Magistrate’s order granting the adoption. The entire record was reviewed and considered in rendering this decision.

Section 101(b)(1)(F) 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).

In this case, the petitioner claims to have adopted the beneficiary in Nigeria, and offers numerous documents as proof. The U.S. Consulate General in Lagos requires that all adoptions be investigated in person in the state where the adoption took place to verify the authenticity of the information provided in the adoption decrees and I-600 Petitions. The required investigation in this case revealed that there was no record of the adoption order in the Enugu State Magistrate court; that the named source of the adopted child was fraudulent; that the Red Cross Motherless Babies Home, the orphanage from which the child was purportedly adopted, had no record of the petitioner; and it also concluded that the Probation/Child Welfare Officer in this case had tried to avoid the investigators and that he was subsequently charged with child trafficking. Although the petitioner submitted a letter of explanation regarding the temporary unavailability of the court record (purportedly from the Chief Magistrate's Court, but lacking official letterhead) of the adoption order and provided certified copies of an adoption order and a "re-adoption" order, these documents, even if deemed reliable, would not overcome the conclusion that the adoption is invalid based on the on-site investigation into the case.

Upon review of the documents submitted on appeal, the AAO notes that there are some discrepancies with prior submissions. There are currently two versions in the record of the document purported to be a "certified true copy" of the order of adoption by the Magistrate's Court of Enugu State granting the petitioner and his wife the adoption of the beneficiary on June 5, 2001, both of which contain the same language and the same certification stamp from the Chief Magistrate's Court dated June 5, 2001. The differences in the document are obvious, including the type face and the dates underneath the signature of the Chief Magistrate. Moreover, there is no statement or document in the record from the Red Cross Motherless Babies Home, the orphanage from which the beneficiary was purportedly adopted, regarding knowledge of or involvement in the adoption to rebut the finding of the investigation that the orphanage had no record of the beneficiary.

These inconsistencies along with the conclusions of the investigation into this case raise serious doubts regarding the validity of the adoption. 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 adoption of the beneficiary is deemed to be not valid. The AAO therefore finds that the beneficiary does not meet the definition of "orphan" under section 101(b)(1)(F) of the Act. 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 his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.