

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: DEC 12 2013 OFFICE: ACCRA, GHANA

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

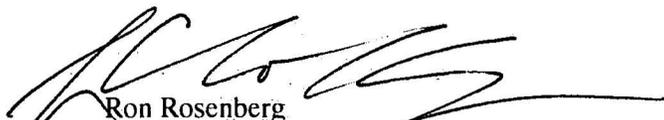
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Accra, Ghana Field Office (the director) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

Applicable Law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf . . . 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(b) states, in pertinent part, the following:

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*.

* * *

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.

Facts and Procedural History

The petitioner is a 65-year-old U.S. citizen who adopted the beneficiary, and another girl relative, K-O-¹, in March 2006 in Nigeria. The petitioner simultaneously submitted the instant Form I-600 as well as a Form I-600 for K-O- to the U.S. Consulate in Lagos, Nigeria; however, U.S. consular personnel did not find the petitions clearly approvable and forwarded them for adjudication to the U.S. Citizenship and Immigration Services (USCIS) office in Accra, Ghana.

In July 2011, the director issued one Notice of Intent to Deny (NOID) relating to both I-600 forms, after determining that the beneficiary and K-O- were siblings.² According to the director, there was insufficient evidence that the two children's surviving mother was incapable of providing them with proper care consistent with the local standards in Nigeria, and he provided the petitioner with 30 days to submit rebuttal evidence. The petitioner failed to respond to the NOID and the director

¹ Name withheld to protect identity.

² The evidence fails to support a conclusion that the beneficiary and K-O- are siblings. Nevertheless, the children's sibling status is not relevant to the adjudication of this petition.

Page 3.

denied both petitions in August 2011. On appeal, the petitioner states that the biological mother is indigent and that the expenses for the beneficiary's "total upkeep" come from her.

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record fails to demonstrate that the biological mother is incapable of providing the beneficiary proper care consistent with the local standards in Nigeria.

In support of the Form I-600, the petitioner submitted a copy of the biological father's death certificate and a *Letter of Consent*, dated November 2, 2006, that was written by the biological mother in support of the adoption and which states, in pertinent part:

My reason for giving [the beneficiary] to adoption is for her to have a better life and training. Since my husband died, life hasn't been easy for me to train my children which resulted to [sic] hindering her academic career. I have tried the best I can but the economic harshness in the country seems to heighten everyday [sic]. So in order to abate my suffering I have to give her ([the beneficiary]) to adoption.

As used in the definition of *Incapable of providing proper care* at 8 C.F.R. § 204.3(b), the term *basic needs* encompasses more than just educational opportunities; it may include, but is not limited to, shelter, food, clothing and emotional and psychological support. The death of the biological father, by itself, is insufficient to demonstrate that the biological mother is incapable of providing the beneficiary with proper care, and the record contains no evidence to demonstrate that the biological mother cannot meet the beneficiary's basic needs, consistent with local standards in Nigeria. Such evidence may consist of, but is not limited to, information about the biological mother's employment, living situation and parental responsibilities since the death of the biological father until the present. Records of the adoption proceedings, particularly any reports and recommendations of the social welfare officer, may also contain probative information about the biological mother's ability to provide proper care. See *Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg. Comm'r 1980) (citing social welfare agency study as evidence of a sole parent's inability to provide proper care). Without further evidence, the petitioner has not demonstrated the beneficiary's eligibility to be classified as an orphan.

Conclusion

As always, in these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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