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U.S. Citizenship
and Immigration
Services

J,

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FILE:



OFFICE: ATLANTA, GA

DATE: **MAY 30 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed his Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on June 3, 2005. The petitioner is a forty-four-year old married citizen of the United States. The beneficiary was born in Cameroon on July 26, 1999, and she is six years old.

The district director determined that the petitioner had failed to submit reliable evidence establishing that the beneficiary met the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The district director noted that the petitioner had filed a previous I-600 petition in August 2004, and that the petition had been denied on December 20, 2004, for similar reasons. The 2004 denial was not appealed. The district director found that in the present matter, the three birth certificates submitted for the beneficiary contained errors and inconsistencies, and were unreliable and failed to establish the parentage of the beneficiary. The district director found further that the petitioner had failed to establish the reliability of the adoption decrees contained in the record, and the district director found that the record contained conflicting evidence relating to the natural mother's irrevocable release of her parental rights over the beneficiary. The I-600 petition was denied accordingly.

On appeal, counsel asserts that the petitioner has obtained new evidence which establishes that the beneficiary meets the definition of an "orphan" as set forth in the Act. Counsel asserts that the new evidence is reliable and corrects previous discrepancies in the evidence, and counsel asserts that the totality of the evidence establishes that the beneficiary was born illegitimately to a blind, disabled mother, that the beneficiary's natural mother is unable to provide proper care to the beneficiary and has irrevocably released the beneficiary for emigration and adoption, and that the beneficiary meets the definition of an "orphan" for immigration purposes.

Section 101(b)(1)(F)(i) of the Act provides in pertinent part that an "orphan" is:

[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 . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides that:

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since

all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.¹

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*.

The record contains copies of three birth certificates for the beneficiary. One birth certificate, issued (“drawn up”) on April 12, 2005, reflects that it was issued in accordance with an April 6, 2005 High Court of Mezam Judgment [REDACTED]. The April 12, 2005, birth certificate reflects that the beneficiary was born in Cameroon on July 26, 1999, to [REDACTED] (mother) and [REDACTED] (father). The AAO notes that [REDACTED] and [REDACTED] are the petitioner and his wife.

A second birth certificate, issued (drawn up) on November 7, 2002, reflects that it was issued in accordance with an October 17, 2002, High Court of Mezam Judgment [REDACTED]. The November 7, 2002 birth certificate reflects that the beneficiary was born in Cameroon on July 26, 1999, to [REDACTED] (father) and [REDACTED] (mother). As noted above, [REDACTED] is the petitioner. [REDACTED] is the beneficiary’s natural mother. The birth certificate contains an additional notation on the back certifying that the beneficiary is [REDACTED]’s adopted child per a court ruling [REDACTED] made on April 8, 2003.

A third birth certificate, issued (drawn up) on August 13, 1999, reflects that it was issued in accordance with a Manji Health Centre Birth Card. The August 13, 1999, birth certificate reflects that the beneficiary was born on July 26, 1999 to [REDACTED] (mother.) The birth certificate lists no paternal information.

In addition to the three birth certificates discussed above, the record contains copies of two adoption rulings.

A Ruling signed on April 8, 2003 [REDACTED] reflects that the petitioner was [REDACTED] and the Respondents, [REDACTED] and The People. The Ruling grants the petitioner’s adoption of the beneficiary. A January 15, 2003, Affidavit filed in support of the 2003, Adoption Motion indicates that the petitioner is the beneficiary’s natural mother’s older brother, that the beneficiary’s natural mother is blind and unable to provide proper care to the beneficiary, and that the petitioner supports and provides for the beneficiary.²

A second, April 6, 2005, Ruling [REDACTED] reflects that the applicants were [REDACTED] and [REDACTED] and the respondents [REDACTED] and the People of Cameroon. The Ruling permits the adoption of the beneficiary by the applicants.

¹ It is noted that in Cameroon, a child born out of wedlock is not guaranteed the same legal status as a child born in wedlock. The “sole parent” definition contained in 8 C.F.R. § 204.3(b) therefore applies to a child born out of wedlock in Cameroon. *Matter of Atembe*, 19 I&N Dec. 427 (BIA 1986).

² A March 2004 Home Study Report contained in the record reflects that the beneficiary’s older brother was adopted by the petitioner a few years ago, and that he lives with the petitioner and his family in the United States.

As noted in the district director's decision, both the April 8, 2003 and April 6, 2005 rulings were issued by the High Court of Mezam Division, Holdenat, Bamenda, Cameroon. However, the Rulings use very different written formats.

The record contains an August 2, 2005, explanatory statement signed by the petitioner's adoption attorney in Cameroon [REDACTED] stating in pertinent part that the beneficiary's 1999, original birth certificate did not contain paternal information, and that per Cameroon law, the August 4, 2003 adoption ruling in the beneficiary's case is reflected on the beneficiary's subsequent birth certificate. The statement states that "[t]he civil status registrar in the course of endorsing the adoption order behind the birth certificate of [REDACTED] erroneously filled the blank space for father of child with the name of [REDACTED]. The letter states that no new birth certificate was issued after the adoption order, and that only endorsements were made behind the existing birth certificate. The letter states that this explains why the petitioner's and natural mother's names appear on the beneficiary's second birth certificate, and why the 2002 issuance date of the birth certificate precedes the August 4, 2003 final adoption order date. The letter addresses significant format and style differences between the adoption orders by stating that each judge writes his own ruling and that adoption orders do not have a stereotype format.

The record contains no official government explanation regarding the existence of different birth certificates and adoption orders for the beneficiary. Moreover, the birth certificates do not cross-reference each other in any way, and they contain no indication that they have been legally amended, or that government errors have been made or corrected. Similarly, the adoption rulings do not cross-reference one another or indicate in any way that they have been amended. The AAO notes that the record does not contain an October 17, 2002 Adoption Judgment for the beneficiary. The AAO notes further that the record contains no official explanation, correction or amendment relating to the beneficiary's November 7, 2002 birth certificate which lists the petitioner's and natural mother's names as the beneficiary's parents, and states on the front that it was drawn up in accordance with an October 17, 2002 High Court Judgment, and on the back that the petitioner adopted the beneficiary pursuant to an August 2003 adoption order.

The AAO finds that the birth certificate and adoption ruling evidence submitted by the petitioner contains serious and material discrepancies. The AAO finds further that the petitioner has failed to provide official or legally corroborated and reliable evidence to overcome these serious discrepancies. The evidence therefore does not establish that the beneficiary meets 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. *See* section 291 of the Act; 8 U.S.C. 1361. The petitioner has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.