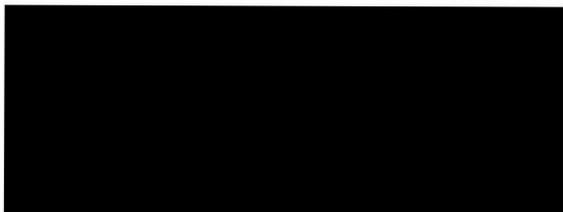


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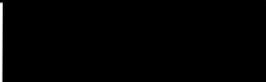
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: ATLANTA, GA

DATE:

NOV 13 2007

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, and the petition will be denied.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on October 20, 2005. The petitioner is a forty-eight year old married citizen of the United States. The beneficiary was born in Nigeria on November 13, 1989, and she is seventeen-years-old.

The district director found 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), based on her failure to comply with repeated requests for evidence establishing that she and her husband had adopted the beneficiary, and been granted legal custody over the beneficiary in accordance with the laws of Nigeria.

On appeal the petitioner submits a Nigerian Adoption Order obtained on October 5, 2006, after the I-600 petition was denied by the district director. The petitioner asserts through counsel, that the new evidence establishes she and her husband have adopted the beneficiary in accordance with the laws in Nigeria. The petitioner asserts further, through counsel, that although she previously submitted a Guardian Consent form signed by [REDACTED], as evidence that she had obtained legal custody over the beneficiary, new documentation clarifies that [REDACTED] simply took care of the beneficiary after her parents' deaths, and that he was not the beneficiary's legal guardian under Nigerian law. The petitioner indicates through counsel, that the new evidence overcomes the grounds of denial set forth in the district director's decision, and she asserts that the beneficiary now meets the definition of 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.

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

(1) [T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

(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 there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, 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 or entity 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

The present record reflects that prior to denying the petitioner's Form I-600 petition, the district director sent two requests for evidence to the petitioner, on October 29, 2005 and January 3, 2006, requesting evidence that the beneficiary was adopted in accordance with the laws in Nigeria, and that she had been irrevocably released for emigration to the United States. The petitioner was subsequently granted additional time to obtain and submit the requested evidence, until May 29, 2006.¹ The petitioner failed, however, to submit the required evidence to the district director.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the present matter, the evidence requested by the district director was necessary to establish whether the beneficiary qualified as an orphan as defined in the Act. The petitioner's failure to submit legal custody and final adoption evidence pursuant to the district director's request thus precluded U.S. Citizenship and Immigration Services (CIS) from examining or pursuing a material line of inquiry.

Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to the deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). See also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The

¹ The record reflects that the petitioner also filed a previous I-600 petition on the beneficiary's behalf on April 1, 2005. The previous I-600 petition was denied by the district director on August 12, 2005, based in part on the petitioner's failure to demonstrate that she and her husband had obtained legal custody over the beneficiary, and that the beneficiary had been adopted in accordance with the laws of Nigeria. The August 2005 denial was not appealed to the AAO.

AAO finds, upon review of the record, that the petitioner was clearly put on notice regarding the deficiency of evidence in her case. Accordingly, the AAO will not now consider the new adoption and legal custody evidence submitted on appeal.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act; 8 U.S.C. § 1361. The AAO finds that in the present matter, the petitioner has failed to overcome the basis of the district director's denial in her case. The appeal will therefore be dismissed and the petition will be denied.

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