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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CLEVELAND (COLUMBUS), OH

Date: **SEP 21 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:

SELF-REPRESENTED

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, Cleveland, Ohio 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.¹

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600 Petition) on July 31, 2006. The petitioner is a twenty-six-year-old naturalized U.S. citizen. The record reflects that the beneficiary was born in Liberia on November 16, 1995, and that she is presently eleven years old.

The district director found that the petitioner had failed to establish the beneficiary's biological father had relinquished control and custody over the beneficiary, or that the beneficiary had been abandoned by her father. Accordingly, the district director determined that the beneficiary did meet the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), and the Form I-600 petition was denied.

On appeal, the petitioner submits affidavits and a death certificate stating that the beneficiary's father is deceased. The petitioner indicates that the beneficiary's mother is also deceased, and the petitioner indicates that the evidence contained in the record establishes that the beneficiary meets the definition of an orphan, as defined in the Act.

Section 101(b)(1)(F)(i) 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 pre-adoption requirements, if any, of the child's proposed residence. (Emphasis added.)

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

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

....

(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation

¹ The petitioner has filed Form I-600's for three separate beneficiaries. A single fee was paid on appeal, therefore there will be only one appellate decision.

together with other proof of identity and age;

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable . . . and

(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.

(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.

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

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. . . .

In the present matter, the petitioner claims that the beneficiary's mother and father are deceased. The parental relinquishment of custody and control provisions contained in the abandonment definition set forth in

8 C.F.R. § 204.3(b) are thus not applicable to the determination of whether the beneficiary qualifies as an orphan.

The record contains the following evidence relating to the beneficiary's parents and their deaths:

An affidavit dated April 2, 2007, and signed by [REDACTED] stating in pertinent part that the beneficiary's mother and the petitioner were sisters, and that his wife is their cousin. [REDACTED] states that he was born in Liberia in 1962, and that he has resided in the United States since August 6, 1989. He states that he visited Liberia again in May 1993, and that he stayed overnight at the beneficiary's parents' home ([REDACTED] and [REDACTED]). He states that [REDACTED] was pregnant at the time with the beneficiary's brother, [REDACTED]. He also states that [REDACTED] informed him about who the father of her older child, [REDACTED] was. [REDACTED] indicates that he returned to the United States shortly thereafter, and that he revisited Liberia in December 1998 at which time he learned that [REDACTED] had died at the Phebe Hospital of a stomach condition. [REDACTED] states that he visited Liberia in August 2001, at which time he spoke to [REDACTED] death. He states that [REDACTED] died in 2003 in Liberia.

A Liberian death certificate filed and issued on March 26, 2007, reflecting that Moses Kromah died on May 5, 1998 from a diarrhea condition.

An unsigned affidavit notarized on March 23, 2007, reflecting that [REDACTED] cousin, [REDACTED] confirmed [REDACTED] death from diarrhea in 1998. (It appears that this affidavit was used as the basis for issuing [REDACTED] death certificate.)

A letter written by the petitioner and received by the district director, Cleveland Ohio on November 6, 2006, stating in pertinent part that the beneficiary's father, "[i]s unknown since 1996. Liberia civil was [sic] has played a major role of human life, parent-leaving children when my sister dies leaving her beloved children I decided to support the kids and the Guardian"

The petitioner's February 2006, Liberian adoption petition, submitted through her attorney in Liberia, stating in pertinent part that the beneficiary is the child of "the [REDACTED] [REDACTED]"

A February 23, 2006, Court Decree of Adoption from the Probate Court in Montserrado County in Liberia, decreeing the beneficiary as the petitioner's legal and adopted child, and stating that the beneficiary is now known as Princes Kudie.

A Liberian birth certificate filed on February 27, 2006, and issued on March 2, 2006, reflecting that the beneficiary, [REDACTED] was born in Montserrado County, Monrovia on November 16, 1995, and that her parents are [REDACTED]

A July 19, 2006, letter from the petitioner stating that she did not see or observe the beneficiary during her adoption proceeding in Liberia, and that she plans to readopt the beneficiary after she arrives in the U.S.

The AAO finds, upon review of the record, that the petitioner has failed to present reliable evidence to establish [REDACTED]'s death. The death certificate for [REDACTED] indicates that [REDACTED] died on May 5, 1998, and is submitted for the first time on appeal. The death certificate was registered and issued on March 26, 2007, eight years after [REDACTED] alleged death, based on an affidavit statement made by Mr. [REDACTED] cousin. The record lacks evidence to corroborate the claim that [REDACTED] died of a medical condition. The petitioner does not explain why [REDACTED] death certificate was registered, issued and submitted only after the denial of the beneficiary's Form I-600 petition. The petitioner also does not address or explain why in her November 6, 2006, response to the district directors' request for evidence regarding the beneficiary's father, the petitioner does not state that the beneficiary's father is deceased, and instead states that the beneficiary's father has been unknown since 1996. Moreover, the April 20, 2007, affidavit signed by [REDACTED] (also submitted for the first time on appeal) also lacks probative value as to Mr. [REDACTED] death, as the author refers only to vague statements he heard from others about the occurrence. He has no personal knowledge of the death, and no other evidence is provided.

The evidence in the record additionally fails to establish that the beneficiary's mother is deceased, as the record contains no death certificate for [REDACTED]ie, and the April 20, 2007 affidavit from [REDACTED]u lacks probative value because the author has no personal knowledge of [REDACTED]'s death.

Furthermore, the AAO finds that the evidence in the record fails to establish that [REDACTED] are the applicant's parents. It is noted that the beneficiary's birth certificate, contained in the record, was registered and issued on February 27, 2006, four days after she was adopted by the petitioner. The birth certificate appears to be based on the petitioner's written adoption petition statements regarding the beneficiary's parentage and birth date. The record reflects that the petitioner was not present at the beneficiary's adoption proceeding. The petitioner was thus not questioned by the judge about the statements made in her petition. It is further noted that although the beneficiary was adopted by the petitioner on February 23, 2006, the post adoption birth certificate does not contain the petitioner's name as the beneficiary's mother. Rather, the document states that [REDACTED] is the beneficiary's mother and [REDACTED] is the beneficiary's father. The record does not contain a previously registered birth certificate reflecting the beneficiary's birth or who her natural parents are. Nor do any of the adoption court documents refer to a previously registered birth certificate or other documentation establishing who the beneficiary's parents are. Instead, the record contains the affidavit signed on April 20, 2007 by [REDACTED] stating that [REDACTED] are the beneficiary's parents. The AAO finds that the affidavit does not constitute probative evidence of the beneficiary's parentage. The author's knowledge of the beneficiary's birth is instead based on statements he heard. The author was not in Liberia at the time of the beneficiary's birth in 1995, and he has no personal knowledge of the beneficiary's birth to [REDACTED]

In addition to the above factors, the petitioner concedes in her July 16, 2006 letter that she did not see the beneficiary at the adoption proceeding, and the record contains no evidence to indicate that the petitioner saw the beneficiary prior to her adoption. The AAO thus finds that the petitioner also failed to establish that she

personally saw and observed the beneficiary prior to or during the adoption proceeding as required by section 101(b)(1)(F)(i) 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. In the present matter, the petitioner has failed to meet her burden of establishing that the beneficiary is an orphan, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and the petition will be denied.

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