

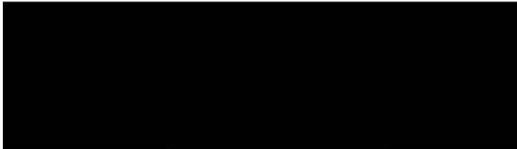
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

F1



FILE:

Office: BALTIMORE, MD

Date: JAN 07 2008

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, Baltimore, MD, revoked the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner's Form I-600A, "Application for Advanced Processing of Orphan Petition," filed on March 22, 2005, was approved on April 7, 2005. On September 21, 2006, the petitioner filed a Form I-600, "Petition to Classify Orphan as an Immediate Relative." The I-600 petition was approved on October 5, 2006. However, an investigation by the U.S. Consulate General Office in Lagos, Nigeria, revealed information that was not available to U.S. Citizenship and Immigration Services (CIS) at the time the I-600 petition was approved. The consular officer noted that the beneficiary's adoption was not legally completed, that the child's origin is unknown, and that the petitioner provided misinformation regarding the location of the beneficiary's caretaker.

Based on the information obtained from the consular investigation, the district director issued a "Notice of Intent to Revoke" approval of the petitioner's I-600 and I-600A petitions on October 12, 2006. The petitioner responded to the district director's notice. On May 17, 2007, the district director revoked the I-600 petition, finding that the petitioner had failed to overcome the concerns raised by the consulate. This appeal followed.

On appeal, petitioner's counsel claims that the district director did not provide sufficient opportunity to the petitioner to address the concerns raised. *See* Petitioner's Appellate Brief. The petitioner further states that the district director erroneously referred to a mistaken case number and filing date. *Id.* The appeal is accompanied by two affidavits.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), 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....

The petitioner is a 47-year old married U.S. citizen. The beneficiary was born in Nigeria on June 20, 2005. The record contains, in relevant part, an Adoption Order issued by the Aba North Magisterial District on July 25, 2005. The petitioner's appellate brief, as well as his affidavit, outline in detail the steps he and his wife took to proceed with the beneficiary's adoption.

The AAO finds that the record does not contain sufficient evidence to establish that the beneficiary's adoption was legally completed. The AAO notes that the petitioner relied on his family in Nigeria and the help of a

local farmer, [REDACTED], to go through the adoption process. Nevertheless, the AAO concludes that the petitioner has failed to overcome the consular investigation's finding that the beneficiary's adoption was not complete. As noted by the consular official, the Aba North local government has no record of the adoption and document's signature and suit number are unknown or unrelated. The AAO must therefore conclude that the beneficiary has not "been adopted abroad" as required by the Act.

The AAO further finds that the petitioner has failed to address the concerns raised by the consular officer regarding the identity of the beneficiary's mother or the beneficiary's caretakers in Nigeria. In this regard, the AAO notes that counsel's statements are not considered evidence and, in any event, do not provide an adequate explanation as to why the name and address of the beneficiary's caretaker could not be verified by the consular investigation.<sup>1</sup>

The AAO therefore finds that the petitioner has failed to establish that the beneficiary "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 Act provides that, in visa petition proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the petitioner has not met his burden to establish that the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> With respect to the petitioner's claim that the district director referred to a mistaken case number and filing date, the AAO notes that the petitioner filed a Form I600A (BAL-05-114-50004) on March 22, 2005 and the Form I-600 (BAL-06-232-50016) on September 21, 2006. The AAO finds that the district director correctly referred to the petitions and, in any event, any such error would not be grounds for overturning the revocation.