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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: MILWAUKEE, WI

Date:

OCT 27 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 APPLICANT:

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 Field Office Director, Milwaukee, Wisconsin revoked approval and denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600.) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600 will be denied.<sup>1</sup>

The petitioner filed the Form I-600 on December 7, 2006. The petitioner is a forty-nine-year old married citizen of the United States. The beneficiary was born in Nigeria on August 1, 1996, and she is presently twelve years old.

The field office director initially approved the Form I-600 on July 24, 2007. A subsequent investigation by the U.S. Consulate in Lagos, Nigeria revealed that the beneficiary continues to live with her natural mother, that her natural mother is employed, and that her natural mother is capable of providing proper care to the beneficiary and her siblings in accordance with the local standards in Nigeria. Based on the consular investigation information, the field office director issued a Notice of Intent to Revoke (NOIR) the approval of the petitioner's Form I-600. In a decision dated April 17, 2008, the field office director determined that 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). The Form I-600 was denied accordingly.

On appeal the petitioner asserts that the beneficiary's natural father is deceased, and that her natural mother is unable to provide for the beneficiary's basic needs in accordance with the local standards of Nigeria. The petitioner indicates that the beneficiary's natural mother's monthly earnings are not enough to support herself and the three children that live with her, and the petitioner asserts that the evidence contained in the record establishes that the beneficiary's natural mother is incapable of providing proper care to the beneficiary, and that the beneficiary therefore qualifies as 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 (emphasis added.)

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<sup>1</sup> It is noted that the field office director included the beneficiary's siblings in the final denial decision ([REDACTED] and [REDACTED]) Although the present AAO decision may apply to all three cases, the record reflects that the petitioner filed only one appeal, for [REDACTED].

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

*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.

*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.

*Foreign-sending country* means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The evidence relating to the beneficiary's status as an orphan consists of the following:

A Nigerian Certificate of Birth reflecting that the beneficiary was born on August 1, 1996 to [REDACTED] (father) and [REDACTED] (mother.)

A Death Certificate reflecting that the beneficiary's natural father died in Lagos, Nigeria on April 24, 2006.

A Nigerian Juvenile Court Final Adoption Order reflecting that the petitioner adopted the beneficiary on March 9, 2007. The Adoption Order reflects that the beneficiary's father is deceased. The Adoption Order states that the beneficiary's natural mother is now the sole provider and legal custodian of her minor children (4), and that by Nigerian standard of living, she is incapable of providing for the care of the children.

A document from the Nigerian Juvenile Court, referring to the March 9, 2007 adoption of the beneficiary and her three siblings, and stating that factors verified and evaluated with regard to the adoption included the fact that: the deceased natural father was the primary care provider for the needs and sustenance of the four children; the natural mother does not have the same kind of financial resources; and the natural mother's earnings from her current employment as a secretary are not sufficient to provide reasonably for her children.

A February 25, 2008, Social Welfare Office (Ministry of Women Affairs, Community Development and Social Welfare) stating it is a follow up to the February 2007 Social Welfare Office finding that the beneficiary's natural mother is not able to provide for the up keep of her four children following the death of her late husband. The letter states that several factors were taken into consideration and analyzed in making the above

determination, including: the natural mother's 73,879.50 Naira (N) monthly salary<sup>2</sup>; her N44,912.41 monthly pay after deductions; her N25,000 monthly housing costs, and that she faces eviction from her deceased husband's employment subsidized housing. The letter states that reasonable housing in Lagos costs approximately N35,000 a month for a three bedroom apartment; that the costs of feeding a family of four is approximately N900 per person; that monthly utility bills for a typical three bedroom apartment are N4,500, and that transportation and other expenses are approximately N27,00 per month. The letter states further that education costs in Lagos are approximately N28,000 per child per month. The letter concludes that the beneficiary's natural mother's monthly expenses to support a family of four in Lagos are N258,000 a month, and that the beneficiary's natural mother's disposable income is not enough to feed, clothe and maintain a home for herself and her family.

A work identification card reflecting that the beneficiary's natural mother (Ms. [REDACTED]) is a principal secretary for the National Television Authority (NTA), and a pay slip reflecting [REDACTED]'s September 2007 pay. The pay slip reflects that Ms. [REDACTED] basic monthly salary is N73,879.50, and that her net monthly pay after deductions is N44,912.41. Deductions include:

- N25,000 - NTA property contribution
- N1846.99 - National Housing Fund
- N5653.39 - Pension contribution
- N4850 - CoThrift contribution
- N1499 - Transport arrears
- N1477.59 - Union dues
- N2497.75 - Weigh-in allowance
- N12,4888.75 - Weigh-in arrears
- N6624.62 - Taxes.

A February 22, 2008 letter from NYA confirming [REDACTED]'s employment and monthly basic salary, and stating that her late husband's position entitled him to subsidized housing, that he was assigned a two-bedroom apartment in Victoria Island, Lagos, and that N25,000 for housing was payroll deducted from his salary every month. The letter indicates that the payroll deduction was taken from [REDACTED]'s salary after her husband's death, but that as of December 1, 2007, [REDACTED] will no longer be entitled to the subsidized apartment.

A February 22, 2008 letter from the Senior Pastor of [REDACTED]'s church reflecting that members of the church congregation helped [REDACTED] and her family move to a new apartment in Lagos, about 45 minutes from her prior Victoria Island home.

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<sup>2</sup> The exchange rate between Nairas and Dollars is N118 to \$1 (Background Note Profile: Nigeria, July 2008, <http://www.state.gov>.)

A March 1, 2008 letter from a friend, [REDACTED] reflecting that since the death of the beneficiary's father, he has paid the beneficiary's school tuition.

A March 10, 2008 letter from [REDACTED] bank reflecting that her bank account balance is N1,105,707.93.

An October 2, 2006 letter entitled, "Death Benefit" reflecting the attachment of an August 1, 2006 death benefit check of first instance issued to [REDACTED], in the amount of N2,620,260.00. The letter states that, "other benefit shall be paid as soon as relevant document [sic] are sorted out."

June 2006 and March 2007 letters reflecting that [REDACTED]'s eldest son was accepted into a U.S. college and that he obtained international fund financial aid covering all but \$2500. of his educational costs.

November 27, 2006, and March 9, 2007 sworn declarations signed by [REDACTED] stating that she irrevocably releases the beneficiary for adoption and emigration to the petitioner and his wife. She states that her deceased husband was the main provider for her family, and that since his death she has been unable to provide for the care of her children.

The AAO finds, upon review of the totality of the evidence, that the petitioner has failed to establish that the beneficiary's natural mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b). The Nigerian Juvenile Court and Social Ministry Office evidence contained in the record reflect that [REDACTED] is unable to provide for her children's basic needs in accordance with local standards in Lagos, Nigeria. The AAO notes that the letters are based on [REDACTED]'s caring for a family of four. The letters are also based on [REDACTED]'s N44, 912.41 monthly salary, after deductions are taken.

The AAO notes first that [REDACTED] no longer has four children in her household. [REDACTED] eldest child was born on May 10, 1989. He turned eighteen in May 2007, and he is currently attending college in the United States. He is thus not a child being cared for by [REDACTED]. The AAO notes further that the net monthly salary and expense figures used by the Juvenile Court and the Ministry of Social Affairs appear to factor in apartment rental costs twice (the N25,000 housing subsidy is factored in calculating a lower monthly net pay, but then a N35,000 monthly apartment rate is calculated into Ms. [REDACTED]'s monthly housing costs.) Utility costs also appear to have been factored in twice. In addition, it is unclear why the Ministry of Social Welfare Office refers to apartment prices for a three bedroom apartment, when the evidence indicates that [REDACTED] previously lived with her husband and four children in a two bedroom apartment. Several other voluntary pay slip deductions are also not included by the Juvenile Court and Ministry of Social Welfare Office as part of [REDACTED]'s monthly salary. The AAO notes that the Juvenile Court and Ministry of Social Welfare Office also did not calculate the death benefit amounts that [REDACTED] received and/or will receive into the money she has available every month.

[REDACTED]  
(Related: [REDACTED] and [REDACTED])

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It is further noted that a 2006 survey done by the Nigerian government states that under a dollar per day standard for measuring poverty in Nigeria, a person falling below an annualized total expenditure threshold of N21,608 per person is considered poor (<http://www.nigerianstat.gov.ng/nlss/2006/surveyO>.) Ms. [REDACTED]'s annual salary falls well above the threshold discussed in the 2006 Survey. An International Fund for Agricultural Development report indicates further that more than 35% of the population are living below the U.S. \$1 per day, which is the poverty line level in Nigeria. (<http://www.ifad.org/media/press/2001/01-45/htm>.) The AAO additionally notes that the national minimum wage in Nigeria is N5500 per month, many times lower than the salary earned by [REDACTED] (<http://www.nigerianlaw.org>.)

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 AAO finds that in the present matter, the petitioner has failed to establish that the beneficiary's natural mother is unable to provide for the beneficiary's basic needs in accordance with local standards in Nigeria. The beneficiary therefore does not meet the definition of an orphan as set forth in section 101(b)(1)(F) of the Act, and the appeal will be dismissed and the Form I600 petition denied.

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