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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



F₁

Date: OCT 19 2011

Office: NATIONAL BENEFITS CENTER

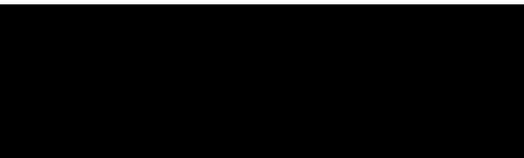
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IN RE: Petitioner:
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, revoked approval of the Petition to Classify Orphan as an Immediate Relative (Form I-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

The petitioner seeks to classify the beneficiary as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1). The petitioner filed the instant Form I-600 on July 27, 2006, when the beneficiary was 13 years old. *See Form I-600*. U.S. Citizenship and Immigration Services (USCIS) approved the Form I-600 on September 24, 2007. *Id.* On March 17, 2010, the director issued a Notice of Intent to Revoke the approvals of the Forms I-600 filed on behalf of the beneficiary and her three siblings. *See Notice of Intent to Revoke*, dated Mar. 17, 2010. The director determined that the petitioner failed to establish the actual dates of birth of the children because, among other things, some of the documentation in the record contained altered dates of birth. The petitioner, through counsel, submitted responsive documentation on March 31, 2010. On September 24, 2010, the director issued an Amended Notice of Intent to Revoke the approvals of the four petitions to better describe the altered documentation in the record, and to provide service on the petitioner's attorney. The petitioner submitted responsive documentation on October 22, 2010.

On February 23, 2011, the director revoked approval of the beneficiary's Form I-600. *See Notice of Final Revocation*, dated Feb. 23, 2011. The director also revoked the Form I-600 approvals for the beneficiary's other sibling.¹ *Id.* The director determined that the petitioner's responses failed to establish the actual dates of birth of the children. The director also determined that the petitioner failed to comply with the marriage and age requirements for adoptions in Ghana. *Id.* On appeal, the petitioner contends through counsel that the director erred in revoking the beneficiary's approved Form I-600. *See Form I-290B, Notice of Appeal*, filed Mar. 9, 2011; *Letter and Documentation in Support of Appeal*, filed Apr. 20, 2011. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicable Law

Section 101(b)(1)(F) of the Act defines an orphan, in pertinent part, as:

- (i) 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) of this title, 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

¹The beneficiary is one of four siblings. The director listed two of the siblings' alien-registration numbers on the denial notice. As only one set of petition filing and fingerprinting fees is required when more than one Form I-600 is submitted by the same petitioner for beneficiaries who are siblings, only one Form I-290B, Notice of Appeal, with fee, is required to appeal the director's adverse decisions on the siblings' petitions. The beneficiary's sibling is being issued an appellate decision under separate cover.

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; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]

Analysis

The director determined that the petitioner failed to establish the exact dates of birth of the beneficiary and her siblings. Specifically, the director found that the beneficiary's siblings presented documentation which contained altered dates of birth. Here, the record contains the beneficiary's delayed birth certificate, a delayed baptism certificate, and adoption records showing her date of birth to be August 23, 1989. The director also determined that the petitioner failed to comply with the adoption requirements in Ghana because the petitioner's wife did not adopt the beneficiary, and because she was less than 25 years older than the beneficiary. The petitioner contends that the director erred in revoking the approved petition based on a ground that was not discussed in the two Notices of Intent to Revoke, and that the adoption complied with the laws of Ghana.²

The record reflects that the petitioner is a 52-year old native of Ghana and citizen of the United States. The petitioner and his spouse married on December 15, 2003. According to his death certificate, the beneficiary's birth father died on March 4, 1998. *See Death Certificate of* [REDACTED]. On June 1, 2006, the Superior Court of Judicature in the High Court of Justice, Sekondi, Ghana, issued an adoption order indicating that the beneficiary was the lawful child of the petitioner. *See Adoption Order, supra*. The Report issued by the Director of Social Welfare in support of the adoption indicated that the petitioner was married and that his wife consented to the adoption, that the beneficiary's biological father had died in 1995, and that the beneficiary's biological mother had stopped farming four years before the report was issued due to illness. *See Report of the Director of Social Welfare*.

Although the petitioner and his spouse did not jointly adopt the beneficiary, the evidence does not support the director's conclusion that the Adoption Order did not comply with the laws of Ghana. The

² Here, the director failed to provide the petitioner with notice and an opportunity to offer evidence in support of the petition and in opposition to this ground of revocation, as required by 8 C.F.R. § 205.2(b). However, because the petitioner has now had full notice and an opportunity to provide evidence on appeal, the director's error has been rendered harmless.

Adoption Order also provides evidence that the petitioner has secured custody of the beneficiary in accordance with the laws of Ghana. *See* 8 C.F.R. § 204.3(d)(1)(iv). Accordingly, the director's determination that the petitioner failed to comply with the laws of the foreign-sending country will be withdrawn.

We affirm, however, the director's findings regarding the authenticity of the documents submitted to support the age of the beneficiary.

To establish the beneficiary's date of birth, the petitioner submitted birth and baptismal certificates. As noted by the director, the Department of State confirmed that the date of birth on the birth certificate had been altered. In addition, the beneficiary's birth was registered nearly 16 years after its alleged occurrence and the baptismal certificate was registered over 14 years after the alleged date of birth. The record contains no additional evidence, such as school records, to support the beneficiary's age as stated in the delayed certificates, one of which has been altered.³ We also note The Report issued by the Director of Social Welfare. In this report, the Director, although stating that the beneficiary was born on August 23, 1989, also states that her biological father died in 1995. The biological father's death certificate, however, lists his date of death as March 4, 1998. The Director also states that the biological father was "attacked with a strange disease" that precipitated his death; however, the death certificate lists no cause of death and there is no signature of a qualified medical professional certifying the cause of death. In addition, the Director noted that the beneficiary's biological mother stopped farming four years prior to the Report, which was filed with the court in May 2006. However, in her declaration, dated January 2007, the biological mother declared that she stopped farming two years ago, or in 2005. When viewed in its totality, the evidence that the petitioner has submitted to establish the factual events surrounding the beneficiary's adoption, including her date of birth, contains material inconsistencies and deficiencies that greatly diminish its reliability and credibility. Based upon the evidence currently in the record, we cannot conclude that the beneficiary's date of birth is August 23, 1989 and that she was under the age of 18 at the time this petition was filed, as required to classify her as an orphan under section 101(b)(1)(F)(i) of the Act.

Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met his burden of establishing that the beneficiary was under the age of 18 at the time this petition was filed, as required to classify her as an orphan under section 101(b)(1)(F)(i) of the Act. Accordingly, the appeal is dismissed and the petition's approval remains revoked.

ORDER: The appeal is dismissed.

³ The beneficiary's file contains school records for two of her siblings and a "J. Class Achievement Record" without the corresponding student's name, but no records of the beneficiary's own school attendance.