

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

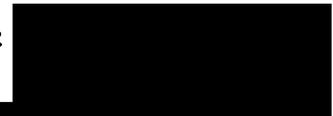
PUBLIC COPY

F₁

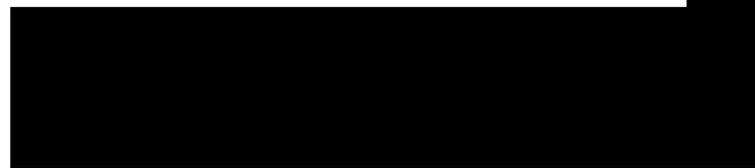


DATE: **SEP 20 2011** OFFICE: NATIONAL BENEFITS CENTER

FILE:



IN RE: Petitioner:
 Beneficiary:



PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 service center director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed in part and withdrawn in part. The appeal will be dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The director denied the petition on the basis of his determination that the petitioner had failed: (1) to submit a valid homestudy; and (2) to establish that the beneficiary qualifies for classification as an orphan as defined at section 101(b)(1)(F)(i) of the Act. On appeal, the petitioner submits a homestudy and an adoption decree.

Applicable Law

Section 101(b)(1)(F)(i) of the Act defines an 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) 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 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[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

The regulation at 8 C.F.R. § 204.3(e) states, in pertinent part, the following:

Home study requirements. . . .

- (1) *Personal interview(s) and home visit(s).* The home study preparer must conduct . . . at least one home visit, with the prospective adoptive couple. . . .

Pertinent Facts and Procedural History

The petitioner is a fifty-three-year-old citizen of the United States. The record indicates that he and his wife adopted the beneficiary in Nigeria on June 16, 2010. The petitioner filed the instant Form I-600 on October 18, 2010. The director issued two subsequent requests for additional evidence, and the petitioner filed timely responses to both requests. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on April 29, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to complete a valid homestudy. However, he has overcome the director's determination that the beneficiary does not qualify for classification as an orphan as defined at section 101(b)(1)(F)(i) of the Act.

The Homestudy Submitted on Appeal Does Not Satisfy 8 C.F.R. § 204.3(e)(1)

The director's first ground for denying the petition was the petitioner's failure to submit a valid homestudy. Although the petitioner does submit a homestudy on appeal, it does not satisfy 8 C.F.R. § 204.3(e)(1), which specifically requires the preparer of the homestudy to conduct at least one home visit with the prospective adoptive couple. Although the homestudy preparer indicated that she met with the petitioner and his wife at the office of her agency on three separate occasions, she conducted only one home visit, and during that home visit she did not meet with the prospective adoptive couple. Instead, she met with the petitioner only. Accordingly, the homestudy does not satisfy 8 C.F.R. § 204.3(e)(1), and the petitioner has not overcome this ground of the director's denial.

The Beneficiary Meets The Definition Of An Orphan

The evidence submitted on appeal demonstrates that the beneficiary meets the definition of an orphan as a result of the disappearance of both parents. On appeal, the petitioner submits a document issued by the Nigerian Ministry of Women's Affairs (MOWA) on January 15, 2011. According to the MOWA document, the beneficiary's birthmother notified the welfare officer who interviewed her that she was herself an indigent orphan, that the birthfather of the beneficiary was unknown because she had been conceived during random sexual encounters, and that she wished to place the beneficiary for adoption. The MOWA document stated further that three days after the beneficiary's birth, the birthmother abandoned the infant at the hospital and the birthmother was never found.

The beneficiary, meets the definition of an orphan as a result of the disappearance of both of her birthparents as defined at 8 C.F.R. § 204.3(e). The record establishes that both birthparents have

unaccountably or inexplicably passed out of the beneficiary's life, that their whereabouts are unknown, and that there is no reasonable hope of their reappearance, and that there has been a reasonable effort to locate them.

The evidence submitted on appeal establishes that the beneficiary meets the definition of an orphan as defined at section 101(b)(1)(F)(i) of the Act and the director's contrary determination is hereby withdrawn.

Conclusion

The petitioner has failed to overcome all the director's grounds for denial of the petition. The petitioner has still failed to submit a valid homestudy showing that the homestudy preparer conducted at least one home visit with both the petitioner and his wife, as required by 8 C.F.R. § 204.3(e)(1).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.