



U.S. Citizenship
and Immigration
Services

[REDACTED]

F₁

DATE: **OCT 18 2012** Office: NATIONAL BENEFIT CENTER

File: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 National Benefits Center Director (the director) denied 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 petition will remain denied.

Applicable Law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F), which 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 . . . 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[.]

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

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, and adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. . . . A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

* * *

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

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.

* * *

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

The regulation at 8 C.F.R. § 204.3(d)(1)(iv) requires the petitioner to submit, in part: “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[.]”

Facts and Procedural History

The petitioner is a 50-year-old U.S. citizen who claims to have legally adopted the beneficiary, a native of Nigeria, in 2002 the same year that the petitioner stated the beneficiary was smuggled into the United States to live with her and her husband.¹ On November 8, 2005, the petitioner filed an alien relative petition (Form I-130) on the beneficiary’s behalf, which U.S. Citizenship and Immigration Services (USCIS) initially approved. However, after conducting an interview with the petitioner and the beneficiary in 2007 based upon the approved Form I-130, U.S. consular personnel in Lagos, Nigeria returned the approved Form I-130 to USCIS for revocation. USCIS subsequently issued a Notice of Intent to Revoke (NOIR) approval of the Form I-130, and the petitioner withdrew the petition. The approval of the Form I-130 was automatically revoked based upon the petitioner’s withdrawal of the same.

The petitioner filed the Form I-600 on October 13, 2009. The director subsequently issued a request for evidence (RFE) and upon review of the petitioner’s response to the RFE, issued a Notice of Intent to Deny (NOID) the petition on November 29, 2011. On March 9, 2012, the director denied the petition determining that the petitioner had not established that: the beneficiary’s biological parents were separated from the beneficiary and that the beneficiary was made a ward of the state by a competent authority; the beneficiary’s biological parents deserted the beneficiary causing a competent authority to make the beneficiary a ward of the state; or the beneficiary’s biological parents had abandoned the beneficiary. The director denied the petition determining that the beneficiary was not an orphan as described at section 101(b)(1)(F)(i) of the Act. On appeal, counsel submits a brief and copies of documents already included in the record.

¹ The petitioner provided two different versions of how the beneficiary came to be smuggled into the United States. She told U.S. consular personnel in Lagos, Nigeria in 2007 that she smuggled the beneficiary into the United States in approximately March 2002, but stated in a December 2011 affidavit submitted below that a missionary couple she had met smuggled the beneficiary into the United States for her.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility to be classified as an orphan.

The petitioner previously presented two adoption orders allegedly authorizing the petitioner's adoption of the beneficiary. The adoption order, dated January 15, 2002, issued by the High Court of Enugu State of Nigeria was issued three days after the birth of the beneficiary contrary to Nigerian law. The second adoption order, dated July 13, 2005, was issued by the Magistrate's Court of Enugu State of Nigeria.

The petitioner also provided a transcript of the testimony entered on September 10, 2007 before [REDACTED] of the Magistrate's Court of Enugu State of Nigeria in the Enugu Magisterial District Holden at Enugu, in conjunction with the claimed formalization of the beneficiary's adoption by the petitioner and her husband. The petitioner testified that she and her husband applied to the Ministry of Women Affairs and Social Development in April 2001 to adopt a baby and that the beneficiary was fostered to them on January 14, 2002. [REDACTED]

[REDACTED] with the Ministry of Women Affairs and Social Development, Enugu, testified that he had conducted a social investigation on this matter. [REDACTED] indicated that he found that the beneficiary was born on January 12, 2002 at the UZOMA Clinic in Enugu and that after failed efforts to locate her mother, the beneficiary was fostered to the petitioner and her husband on January 14, 2002. [REDACTED] testified that the petitioner and her husband had earlier applied to adopt a child on August 14, 2001 and that he had conducted several home visits at the petitioner's residence in Enugu on January 22, 2003, June 3, 2003, August 15, 2003, and August 30, 2007. [REDACTED] also noted that the petitioner and her husband had notified the Ministry of Women Affairs and Social Development on April 16, 2007 of their intention to apply to the court for an adoption order. Based on the testimony of the petitioner and [REDACTED] the adoption ruling dated September 12, 2007 shows that the Chief Magistrate authorized the petitioner and her husband to adopt the beneficiary.

The record further included a December 15, 2011 letter signed by [REDACTED] of the Chief Registrar, Judiciary High Court of Justice, P.M.B. 10101, Enugu. [REDACTED] indicated that the "Honorable Chief Judge" had appointed [REDACTED] the responsibility of handling international adoption proceedings and that the [REDACTED] is still in that capacity to date. [REDACTED] acknowledged the orders made by different courts in Enugu State dated January 15, 2002, July 13, 2005, and September 12, 2007. [REDACTED] stated that the authentic order is the order made on September 12, 2007 signed by [REDACTED]

On appeal, counsel for the petitioner acknowledges that some of the documents previously submitted in this matter were fraudulent but asserts that the petitioner had no knowledge the documents were fake. Counsel contends that once the petitioner became aware of the fraudulent documents, she remedied the situation by appearing before the proper authorities in September 2007 where she obtained the September 12, 2007 adoption ruling. Counsel contends that the statements provided by the UZOMA Clinic that the child was abandoned should be believed.

Counsel alleges that in 2002 there were no officially designated adoption facilities in Nigeria but that hospitals and motherless babies' homes were typically considered designated adoption facilities. Counsel avers that the January 14, 2002 letter advising the petitioner to pick up the baby at the UZOMA Clinic establishes that the government recognized the clinic as a legitimate adoption agency. Counsel requests that the humanitarian aspect of this matter be considered with compassion.

The director in this matter set out the deficiencies in the record and neither counsel nor the petitioner has provided probative evidence sufficient to overcome the director's decision. The record does not establish that the UZOMA Clinic is an orphanage, a government agency, or an adoption agency authorized under the child welfare laws of Nigeria to provide custodial care in anticipation of, or preparation for, an adoption. Counsel provides no legal authority for his claim that in 2002 there were no officially designated adoption facilities in Nigeria so hospitals and motherless babies' homes were typically considered adoption facilities. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, when the petitioner relies on a foreign law to establish eligibility for the beneficiary, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). In this matter, the petitioner has not provided pertinent sections of the 2002 Nigerian Family Code or any other Nigerian law governing custodial care of abandoned children or of the laws relating to adoption. Further, the January 14, 2002 letter advising the petitioner to pick up the baby at the UZOMA Clinic does not establish that a Nigerian government agency recognized the clinic as a legitimate adoption agency. As the petitioner and counsel were previously informed, the individual who signed the January 14, 2002 letter, [REDACTED] was arrested and convicted of child trafficking. Accordingly, any documentation signed by [REDACTED] has little probative value in establishing UZOMA clinic as a legitimate adoption agency recognized by the Nigerian government.

Counsel's claim that the petitioner remedied the situation of the beneficiary's status by appearing before the proper authorities in September 2007 is not persuasive. Although [REDACTED] a probation officer with the Ministry of Women Affairs and Social Development in Enugu State, testified that he conducted an investigation into this matter, he does not reveal the basis of his finding that the beneficiary was born on January 12, 2002, at the UZOMA Clinic in Enugu and that efforts were made to locate the beneficiary's mother. [REDACTED] does not indicate what records, if any, he reviewed and he does not identify the individuals he interviewed regarding the beneficiary's birth and alleged abandonment. Neither does [REDACTED] describe the circumstances of fostering the beneficiary to the petitioner and her husband a few days after the beneficiary's birth. Moreover, [REDACTED] testimony that he conducted several home visits to the petitioner's residence in Enugu in 2003, does not lend credence to his testimony, as the petitioner testified that she resided with the beneficiary in the United States in 2003. The September 12, 2007 adoption order is not based on credible testimony establishing the circumstances of the beneficiary's birth or the circumstances of the beneficiary's biological parents. There is no probative evidence of the beneficiary's biological parents' actual act of surrendering their rights, obligations, claims, control, and possession of the

beneficiary to a third party. Nor is there probative evidence that the beneficiary became a ward of a competent authority in Nigeria upon the desertion, disappearance, or separation from her parents. Accordingly, as the record does not provide credible evidence that the beneficiary was abandoned, or was separated from or deserted by her parents, or that her parents disappeared, the beneficiary may not be classified as an orphan under section 101(b)(1)(F)(i) of the Act.

Conclusion

The record lacks sufficient evidence to establish that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has not been met.

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