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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

DATE: **DEC 12 2013**

OFFICE: NATIONAL BENEFITS 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:

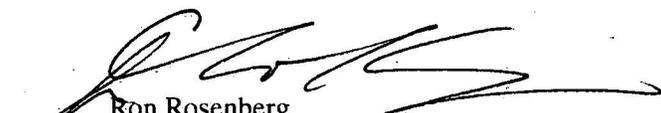
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) initially approved the Petition to Classify Orphan as an Immediate Relative (Form I-600), but ultimately revoked the petition's approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

Applicable Law

Regarding the revocation of approved visa petitions, section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, states, in pertinent part:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition[.]

The regulation at 8 C.F.R. § 205.2 governs the procedures for revoking approved visa petitions on notice, and states, in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

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. . . .

* * *

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.

* * *

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified 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.

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. . . .

Facts and Procedural History

The petitioner is a 50-year-old U.S. citizen who adopted the beneficiary in Nigeria in May 2011. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on July 29, 2011. The Director initially approved the petition in May 2012, and forwarded it to the U.S. Consulate in Lagos, Nigeria. U.S. consular personnel subsequently returned the approved Form I-600 to USCIS after determining that the beneficiary was ineligible for orphan classification. The director subsequently revoked approval of the petition after proper notice, determining that there was insufficient evidence to establish that the beneficiary was an orphan due to the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The director also questioned the validity of the adoption order because neither the petitioner nor her spouse was present at the proceedings in May 2011.

On appeal, the petitioner states that the beneficiary's adoption was in accordance with Nigerian law, and she and her spouse have been and continue to be financially responsible for the beneficiary.

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, the record, as supplemented on appeal, does not demonstrate the beneficiary's eligibility to be classified as an orphan.

The Beneficiary Does Not Meet the Orphan Definition

The evidence in the record does not provide a consistent account of how the beneficiary came into the custody of the Ministry of Gender Affairs and Social Development (the Ministry) of the State of Enugu, Nigeria such that he may be classified as an orphan under section 101(b)(1)(F)(i) of the Act. The record contains a letter, dated January 10, 2012, from the Ministry, which indicates that the beneficiary was "brought to the Social Welfare office on 15th May, 2006, by a young mother who requested that her child be taken over by the State because she [did] not have the resources to take care of the child." However, the *Certificate of Abandonment*, issued by the Ministry and dated June 15, 2006, states that the beneficiary was "abandoned at Enugu Urban Area" and "collected on 15th June, 2006." There is no other evidence in the file from the Ministry describing how and when the beneficiary came into the Ministry's custody. The documents from the Court that heard the adoption proceedings also contain no relevant information about how the beneficiary became known to the Ministry.

In a March 22, 2012 statement, the petitioner asserts that on May 15, 2006, the Ministry fostered the beneficiary to her. The petitioner asserts that she was told by Ministry staff that the biological mother's name was P-O-¹, who had told Ministry staff that her husband, I-O-², had abandoned her. Neither the petitioner nor any documents from the Ministry explains how the beneficiary could have been fostered to the petitioner on the same day that he was allegedly abandoned by his biological mother, particularly in light of the petitioner's permanent residence in the United States, not Nigeria. The *Certificate of Abandonment* also indicates that the petitioner and her husband became the beneficiary's guardians on the same day he was abandoned – June 15, 2006 – but again, in addition to this date being inconsistent with information in the Ministry's January 10, 2012 letter as well as the petitioner's March 22, 2012 statement, there is no explanation of how the petitioner and her husband were identified as suitable guardians on the same day that the beneficiary was allegedly abandoned.

The record also contains a birth certificate for the beneficiary from the [REDACTED] in Enugu State, dated July 20, 2011, that the petitioner claims was obtained after the conclusion of the adoption proceedings, and that the information contained therein is based on "verbal information." This birth certificate lists the biological parents' names as P-O- and I-O- and

¹ Name withheld to protect identity.

² Name also withheld to protect identity.

states that the beneficiary was born in [REDACTED]. The petitioner presents a letter from the [REDACTED] dated April 16, 2013, declaring the July 2011 birth certificate invalid because it was “done twice with wrong name of mother” However, this explanation fails to address why the first birth certificate was issued if it had no basis in fact. In addition, the [REDACTED] letter does not identify the source of the information that was relied upon to issue the birth certificate regarding the beneficiary’s parentage, as well as his date and location of birth. The beneficiary’s immunization record lists P-O- and I-O- as his biological parents as well, but there is no information about who filled out the record on the beneficiary’s behalf.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record contains evidence that the petitioner has two biological parents and may have been born in wedlock. The record lacks consistent and reliable evidence of how the beneficiary came into the custody of the Ministry and, therefore, USCIS cannot determine whether the beneficiary is an orphan as the child of a sole parent, or whether he is an orphan because of the death or disappearance of, desertion or abandonment by, or separation or loss from both of his parents, as those terms are defined at 8 C.F.R. § 204.3(b).

The Petitioner Has Not Established the Validity of the Adoption

In his revocation of the approved Form I-600, the director found the May 2011 adoption order deficient because neither the petitioner nor her spouse was present during the proceeding.

The record contains a May 27, 2011 order from the Chief Magistrate’s Court of Enugu State, Nigeria, authorizing the petitioner and her spouse to adopt the beneficiary. In a letter, dated September 1, 2011, the Chief Magistrate states that this May 2011 order is the final adoption order.

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)).

The Chief Magistrate’s letter fails to explain the petitioner and her spouse’s lack of presence at the adoption proceedings that resulted in the May 2011 adoption order. The director did not question whether the May 2011 order was final, but whether it conformed to Nigerian adoption law because neither adopting parent was present at the proceedings.

As noted by the director, the adoption does not appear to conform to Nigeria’s lawful adoption process. According to the Department of State (DOS):

For at least three consecutive months immediately preceding an adoption order, the child must have been in the physical care and legal custody of the applicant parents in Nigeria. An

applicant cannot have the child reside with another family member in lieu of living with the applicant, even if a Power of Attorney is in effect.

The social welfare officer visits the home of the adoptive parents until the officer is satisfied that the juvenile is settled and the prospective adoptive parents are capable of looking after him or her. Then, the social welfare officer submits a positive recommendation in writing to the court. The magistrate will meet the adoptive parents in court to confirm their suitability and will issue or deny the adoption order.³

According to the record, the beneficiary has been living in Nigeria with the petitioner's sister since he was a baby. Although the petitioner claims to have provided all financial support for the beneficiary, there is no evidence that the beneficiary was in the petitioner's physical care for at least three months prior to the adoption. As noted above: "An applicant cannot have the child reside with another family member in lieu of living with the applicant, even if a Power of Attorney is in effect." In addition, as the petitioner resides in the United States, it is unclear whether the social welfare officer paid the required home visit to the petitioner, or what information the social welfare officer's recommendation to the court contained about the beneficiary's living arrangements. Finally, the petitioner's failure to be present at the May 2011 proceedings does not conform to the requirement, noted above, that "the magistrate will meet the adoptive parents in court to confirm their suitability."

The petitioner has cited no provision of Nigerian law that would excuse her from the requirements of living with the beneficiary prior to the adoption and appearing in court before the magistrate to establish her eligibility to adopt the beneficiary. Accordingly, the petitioner has not demonstrated that the May 2011 adoption order is valid under the laws of Nigeria.

Conclusion

The AAO's *de novo* review of the record demonstrates that, based upon the evidence before him, the director had good and sufficient cause to revoke approval of the petition. The record as presently constituted lacks sufficient evidence to establish that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act or that his adoption is valid under the laws of Nigeria. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.

³ See http://adoption.state.gov/country_information/country_specific_info.php?country-select=nigeria (last accessed Dec. 10, 2013).