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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 12 2013 OFFICE: ACCRA, GHANA 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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Accra, Ghana Field Office (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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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), which defines an orphan as, in pertinent part: "a child . . . who is an orphan because of the death . . . of 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 petitioner is a 65-year-old U.S. citizen who adopted the beneficiary, and another girl relative, P-O-[1], in March 2006 in Nigeria. The petitioner simultaneously submitted the instant Form I-600 as well as a Form I-600 for P-O- to the U.S. Consulate in Lagos, Nigeria; however, U.S. consular personnel did not find the petitions clearly approvable and forwarded them for adjudication to the U.S. Citizenship and Immigration Services (USCIS) office in Accra, Ghana.

In July 2011, the director issued one Notice of Intent to Deny (NOID) relating to both I-600 forms, in which he referenced a November 2006 letter from the biological mother of P-O- wherein she consented to the petitioner's adoption of P-O-. The director erroneously assumed that the beneficiary and P-O- were siblings and determined there was insufficient evidence that the two children's surviving mother was incapable of providing them with proper care consistent with the local standards in Nigeria. The director provided the petitioner with 30 days to submit rebuttal evidence. The petitioner failed to respond to the NOID and the director denied both petitions in August 2011. On appeal, the petitioner states that the director's denial is erroneous because she submitted evidence that the beneficiary's biological parents were both deceased.

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 does not support the director's conclusion that the beneficiary was the child of a surviving parent. In support of the Form I-600, the petitioner submitted copies of death certificates for the beneficiary's purported biological parents; however, the director did not address this evidence or the petitioner's claim that the beneficiary was an orphan due to the death of both parents. As the director did not properly address the evidence that both of the beneficiary's biological parents were deceased, we withdraw his decision and remand the matter for further consideration and issuance of a new decision.

In accordance with the regulation at 8 C.F.R. § 204.3(k)(1), the circumstances surrounding the beneficiary's eligibility to be classified as an orphan must be investigated. Any investigation should include, but not be limited to, verifying the authenticity of relevant documents, in this case, the biological parents' death certificates as well as the beneficiary's birth affidavit.

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[1] Name withheld to protect identity.

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).

ORDER: The director's August 22, 2011 decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.