

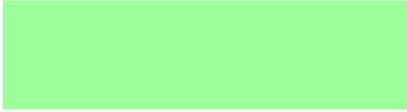
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U.S. Department of Homeland Security

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



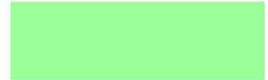
U.S. Citizenship  
and Immigration  
Services



DATE: JUN 18 2013

OFFICE: NATIONAL BENEFITS CENTER

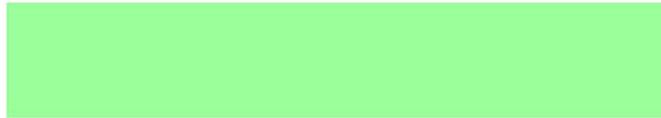
FILE:



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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the National Benefits Center (the director) denied the Form I-600, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

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 provides, in pertinent part, the following definitions at 8 C.F.R. § 204.3(b):

*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.

\* \* \*

*Incapable of providing proper care* means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards 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.

\* \* \*

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

### *Facts and Procedural History*

The petitioner is a 40-year-old married U.S. citizen. She and her U.S. citizen husband adopted the beneficiary in Nigeria in January 2012. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on May 14, 2012, along with a December 2011 Nigerian medical death certificate for [REDACTED], a January 2012 Nigerian adoption order; and a post-adoption Nigerian birth certificate for the beneficiary, issued in January 2012.

On May 28, 2012, the director issued a Request for Evidence (RFE) asking in pertinent part for the beneficiary's registered birth certificate listing the beneficiary's biological parents; the beneficiary's biological mother's registered death certificate; evidence that the beneficiary's surviving parent (biological father) is unable to provide for the beneficiary consistent with local standards in Nigeria, and written proof that he irrevocably released the beneficiary for adoption and emigration; a copy of the Nigerian social welfare office adoption report; and a home study report prepared in accordance with regulations. In response, the petitioner submitted sworn affidavits from family members in Nigeria, a copy of the beneficiary's baptism certificate, and a registered death certificate for [REDACTED].

On July 11, 2012, the director issued a Notice of Intent to Deny (NOID) stating that initial evidence submitted with the Form I-600 was insufficient to establish that the beneficiary was eligible for the benefit sought, and providing the petitioner 30 days to establish why the Form I-600 should not be

denied. In response, the petitioner submitted a birth certificate for the beneficiary issued in March 2012, affidavits and letters from family and members of the community, and evidence that the petitioner had signed a home study contract. After considering the evidence in the record, the director denied the Form I-600 on October 2, 2012, on the basis that the petitioner had failed to submit a home study in compliance with 8 C.F.R. § 204.3(e), and had failed 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 home study report recommending the petitioner and his wife for adoption, and asserts that the evidence establishes that the beneficiary qualifies as an orphan.

### *Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner has submitted a home study report in compliance with 8 C.F.R. § 204.3(e); however, the evidence in the record fails to demonstrate that the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F)(i) of the Act.<sup>1</sup>

The petitioner indicated on the Form I-600 that the beneficiary is an orphan because he has no parents. In an August 5, 2012 letter, [REDACTED] states that the petitioner's sister-in-law, [REDACTED] was the beneficiary's biological mother. Mr. [REDACTED] asserts that although [REDACTED] was married at the time of the beneficiary's birth, the beneficiary's birth certificate does not identify his father because the biological mother separated from her husband in February 2005, and "had an extramarital affair according to her mother, which resulted in the birth of the beneficiary." The letter states that [REDACTED] and her mother, [REDACTED] cared for the beneficiary, and that the beneficiary's biological father abandoned him "by never presenting himself and deserted him by never showing up to contribute to his support. . . ."

[REDACTED] states in a sworn affidavit dated August 2, 2012, that the beneficiary "is the son of her late daughter, [REDACTED]." She does not know the beneficiary's biological father, "as he never presented himself or showed up for even a day." Since her daughter's death in November 2011, she has taken care of the beneficiary.

[REDACTED] states in a June 27, 2012 sworn affidavit that, in 2006 her daughter, [REDACTED] "adopted a son whom she named [REDACTED]." She states that "since the said adoption in 2006" the beneficiary has lived with her, and she has cared for him on behalf of her ill daughter.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F. 3d 683 (9<sup>th</sup> Cir. 2003); *see also, Soltane v. DOJ*, 381 F. 3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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The petitioner's sister-in-law, [REDACTED] states in a June 27, 2012 sworn affidavit that the beneficiary "is the adoptive son, first, of my later sister, Mrs. [REDACTED] and "since January 2012, the adoptive son" of the petitioners.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the letters and affidavits contain material inconsistencies with regard to whether the beneficiary is the biological or adopted son of [REDACTED]. The affidavits therefore have diminished evidentiary weight.

Documentary evidence contained in the record also fails to clarify or establish the beneficiary's parentage. The record lacks evidence to establish that the beneficiary was at any time legally adopted by [REDACTED]. Moreover, although the record contains two birth certificates for the beneficiary, one was registered and issued on January 23, 2012, after the beneficiary's adoption by the petitioners, and lists the petitioner and his wife as the beneficiary's parents. A second birth certificate, registered and issued on March 8, 2012, states that [REDACTED] is the beneficiary's mother, and contains no information with regard to the beneficiary's father.

The Board of Immigration Appeals (Board) addressed the evidentiary weight to be given to a delayed birth certificate in *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978), indicating that the evidentiary value is rebutted by contradictory evidence, but also clarifying that there is no set rule of evidence on the issue and that each case "must be decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birthplace." Here, the second birth certificate contained in the record was registered and issued on March 8, 2012, six years after the beneficiary's birth on June 3, 2006. The certificate was also issued several months after the petitioner and his wife were issued a post-adoption birth certificate for the beneficiary, and the certificate was issued several months after [REDACTED] death. The record contains no evidence or information explaining the basis of the delayed birth certificate issuance, and no evidence explains why the beneficiary was not issued a birth certificate at the time of his birth in 2006. Moreover, affidavit and letter evidence in the record contains contradictory information with regard to whether the beneficiary was the biological or adopted child of [REDACTED].

A baptismal certificate dated September 3, 2006, reflects that the beneficiary was baptized on September 2, 2006 and lists [REDACTED] as his parent. However this evidence fails to establish that the beneficiary was the biological or adopted child of [REDACTED].

Upon review of the entire record, the petitioner has failed to meet her burden of establishing that the beneficiary meets the definition of an orphan as defined in section 101(b)(1)(F)(i) of the Act. The evidence in the record fails to establish that [REDACTED] legally adopted the beneficiary at any time, and fails to demonstrate that she was the beneficiary's biological mother. Moreover, even if the evidence had established that [REDACTED] was the beneficiary's biological mother, the record lacks evidence establishing her marital status at the time of the beneficiary's birth; establishing who the beneficiary's biological father is, or that his father severed parental ties or, in writing, released the

beneficiary for emigration and adoption; or establishing that the beneficiary's biological father is incapable of providing proper care to the beneficiary according to local standards in Nigeria, as required under the definition of *surviving parent* at 8 C.F.R. § 204.3(b).

The record also fails to demonstrate that the beneficiary meets any of the remaining definitions of an orphan at section 101(b)(1)(F)(i) of the Act. There is no evidence that the beneficiary is an orphan because of the death or disappearance of, desertion or abandonment by, or separation or loss from both of his parents.

Because the beneficiary does not meet any of the definitions for an orphan as set forth in section 101(b)(1)(F)(i) of the Act, the AAO finds it unnecessary to analyze whether the evidence establishes that the adoption of the beneficiary was in accordance with the laws of Nigeria, as required by 8 CFR § 204.3(d)(iv).<sup>2</sup>

### *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. The burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal shall therefore be dismissed.

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

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<sup>2</sup> The U.S. Department of State discusses the process of adopting a child in Nigeria at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=nigeria](http://adoption.state.gov/country_information/country_specific_info.php?country-select=nigeria).