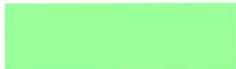


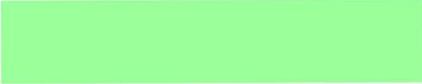
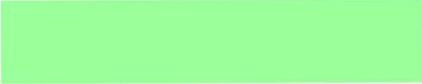


U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 13 2013** Office: NATIONAL BENEFIT 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 (AAO) 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. 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,


Ron Rosenberg
Acting 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The prior decision dismissing the appeal will be affirmed and 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 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.

(b)(6)

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

As the facts and procedural history were documented in our October 18, 2012 decision, incorporated here by reference, we shall restate certain facts only as necessary here. The director determined that the beneficiary was not an orphan as described at section 101(b)(1)(F)(i) of the Act, in part, because the [REDACTED] where the beneficiary was born was not an authorized orphanage or adoption facility under Nigerian law. In our appellate decision, we concurred with the director regarding the evidence concerning the [REDACTED]. While counsel claimed that the [REDACTED] legitimacy was established by a January 14, 2002 letter approving the petitioner to take custody of the beneficiary from the [REDACTED], we reiterated that the author of that letter had been convicted of child trafficking. We also noted further deficiencies with the probation officer’s report that was submitted in connection with the petitioner’s adoption of the beneficiary in Nigeria in 2007.

On motion, the petitioner submits the same arguments submitted below and adds that under Nigerian law, the beneficiary has been found to be an orphan. For the first time on motion, the petitioner submits a photocopy of a declaration allegedly prepared by the biological mother, and requests oral argument to clarify any discrepancies or inconsistencies in the record. The record in this case adequately addresses the pertinent facts and legal issues. The petitioner’s request for oral argument is therefore denied pursuant to 8 C.F.R. § 103.3(b)(2).

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence submitted on motion is insufficient to overturn our prior decision.

The petitioner previously submitted a letter, dated October 2, 2007, from Probation Officer, [REDACTED], who stated that the beneficiary was “abandoned by her unknown mother.” On motion, the petitioner submits a declaration, dated January 1, 2002 (the date of the beneficiary’s birth), from A-O-,² acknowledging her voluntary relinquishment of her soon-to-be-born child. The petitioner provided no information about where she obtained this declaration, or evidence that the person who signed this declaration is the beneficiary’s birth mother. The submission of this evidence is in conflict with [REDACTED] 2007 letter in which he stated that the beneficiary was born to an unknown mother. 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).

Here, the petitioner has introduced further inconsistencies into the record rather than clarifying those inconsistencies that were discussed in our prior decision. On motion, the petitioner has still failed to credibly establish the circumstances of the beneficiary’s birth or the circumstances of the beneficiary’s biological parents. The beneficiary may not be classified as an orphan under section 101(b)(1)(F)(i) of the Act because 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 died or disappeared, or that her sole or surviving parent was incapable of providing her with proper care.

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. Although the petitioner requests oral argument pursuant to the regulation at 8 C.F.R. § 103.3(b)(1), the request is denied, as the facts and legal issues in this matter may be adequately documented in writing.

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 motion is granted. The AAO’s prior decision dismissing the appeal, dated October 18, 2012, is affirmed. The petition remains denied.

¹ In the documents relating to the beneficiary’s adoption, he is referred to as [REDACTED].”

² Name withheld to protect identity.