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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

[Redacted]

DATE: **AUG 13 2014** 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:
[Redacted]

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 approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

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). The director revoked approval of the Form I-600 on the basis that the petitioner failed to establish, by a preponderance of the evidence, that the beneficiary's biological parents abandoned the beneficiary, as the term is defined in the regulation at 8 C.F.R. § 204.3(b); or that the beneficiary qualifies for classification as an *orphan*, as that term is defined at section 101(b)(1)(F)(i) of the Act.

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) [A]ny 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) [R]evocation 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 Act defines an *orphan*, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . 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[.]

NON-PRECEDENT DECISION

Page 3

The regulation at 8 C.F.R. § 204.3(b) defines the terms *death* or *disappearance of, abandonment* or *desertion by*, or *separation* or *loss from, both parents*, as well as *sole or surviving parent*. A petitioner has the burden of establishing that the beneficiary is an orphan as a result of one of these situations.

The pertinent provisions of 8 C.F.R. § 204.3(d) state the following:

- (d) *Supporting documentation for a petition for an identified orphan . . .* An orphan petition must be accompanied by full documentation as follows:

* * *

(1)(iii) Evidence that the child is an orphan as appropriate to the case:

- (A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section[.]

The *preponderance of the evidence* standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

Facts and Procedural History

The petitioner is a 56-year-old U.S. citizen who seeks to classify the beneficiary, a national of Nigeria, as an orphan. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on March 4, 2013, and on May 1, 2013, USCIS approved the Form I-600. On October 30, 2013, the U.S. Consulate in Lagos, Nigeria returned the approved Form I-600 to the director because the petition was not clearly approvable due to adverse information not available to USCIS at the time of the Form I-600 filing. On January 22, 2014, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, notifying the petitioner that the Form I-600 was approved in error. Through counsel, the petitioner timely responded to the NOIR. On April 8, 2014, the director issued a Notice of Final Revocation of approval, on the basis that the record contained inconsistent evidence regarding the beneficiary's biological mother's relinquishment of parental rights over the beneficiary. Additionally, new evidence reflected that [REDACTED] was closed down by the Imo State Government in Nigeria in May 2013, and the director, [REDACTED] was arrested for child trafficking. The director determined that the petitioner failed to establish, by a preponderance of the evidence, that the beneficiary met the definition of *orphan* under section 101(b)(1)(F)(i) of the Act, and approval of the petition was revoked.

Through counsel, the petitioner filed a timely appeal asserting that the evidence in the record establishes that the beneficiary meets the definition of an orphan, because his biological mother left

NON-PRECEDENT DECISION

Page 4

him at [REDACTED] the Imo State, Nigeria government recognized [REDACTED] as a registered and certified orphanage; the Imo State government adoption authority, the [REDACTED] [REDACTED] was unable to determine the identity or whereabouts of the beneficiary's biological parents, and placed the beneficiary in [REDACTED] care for subsequent adoption; and the beneficiary was properly adopted in accordance with Imo State, Nigeria adoption laws.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Analysis

The record contains a November 3, 2011 letter to the [REDACTED] from [REDACTED] director of [REDACTED], stating in pertinent part, that an unknown person left a baby boy of about a day old in her home; "immediately [she] sighted the baby" and "raised an alarm"; people came to observe the scene and advised her to bring the child to [REDACTED] and she is handing the child over to [REDACTED] "for proper investigation and further necessary action." A November 4, 2011, letter from [REDACTED] acknowledges receipt of the November 3, 2011 [REDACTED] letter, and requests that [REDACTED] "temporarily keep the baby while [they] make efforts to locate the biological parents" of the child. The [REDACTED] states in a November 14, 2011 letter to the director of [REDACTED] that "all efforts made by the Ministry to locate [the] biological parents of the [beneficiary] were unfruitful," and that [REDACTED] is "authorized to release the [beneficiary] to any intending foster parents" and for subsequent adoption.

The record also contains an April 5, 2013 letter from Ms. [REDACTED] stating, in pertinent part, that a young mother, named [REDACTED] from [REDACTED] in Imo State, child of Mr. [REDACTED] and [REDACTED] of the same address, came into her orphanage on November 2, 2011 with a day old baby boy; both the mother and child were admitted into [REDACTED] for immediate medical attention and nourishment; the young mother said that the father of the child abandoned them, and she had no one to take care of her and the baby; and due to her situation, the young mother "consented to the idea of the baby being given out to adoption." She states further that the young mother secretly left [REDACTED] after two days; [REDACTED] tried to "trace" the woman to the address she gave, but the names and addresses did not exist; the matter was reported to [REDACTED] a day after the mother and child came to [REDACTED] and "a follow up detailed report [was] also made to the Ministry."

The assertions and evidence presented by the petitioner fail to overcome the basis of the director's revocation of the Form I-600 petition. In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989).

Here, the letters from Ms. [REDACTED] have diminished evidentiary weight in that they contain material inconsistencies with one another and with other evidence in the record. Ms. [REDACTED] states in her November 3, 2011 letter to [REDACTED] that an unknown person left the beneficiary at [REDACTED] she immediately saw the beneficiary and "raised an alarm," other people that came and

observed the scene advised her to bring the beneficiary to [REDACTED] and she handed the child over to [REDACTED] for investigation and further action. This is materially inconsistent with information contained in her April 5, 2013, letter in which she states that the beneficiary's biological mother brought the beneficiary to [REDACTED] on November 2, 2011, and they were both admitted into [REDACTED] for medical attention and nourishment where the biological mother stayed for two days before secretly leaving. More importantly, according to Ms. [REDACTED] the biological mother identified herself by name, address and lineage, and stated during her stay at [REDACTED] that she consented to the idea of the beneficiary being placed for adoption because the biological father abandoned them and she had no one to take care of her and the beneficiary. According to Ms. [REDACTED] after the biological mother departed, [REDACTED] unsuccessfully tried to find her at the address she had given, and subsequently provided a detailed follow up report to [REDACTED]

It is incumbent upon the applicant 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Here, Ms. [REDACTED] has provided two different versions of how the beneficiary came into [REDACTED]'s care. The record does not contain the follow-up report referred to in Ms. [REDACTED] April 5, 2013 letter, and the information in the April 2013 letter regarding how the beneficiary was allegedly abandoned is not present in the beneficiary's adoption documents contained in the record. Furthermore, evidence in the record, as provided in the director's NOIR and final revocation decisions, reflects that [REDACTED] was arrested for child trafficking, and that [REDACTED] was closed down and demolished in May 2013 by the Imo State Government in Nigeria. The petitioner indicates on appeal that child trafficking arrest information for [REDACTED] is inaccurate; however, the petitioner has provided no objective documentary or evidence to support his assertions. Overall, there is no credible evidence of how the beneficiary came into [REDACTED] care. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner failed to establish, by a preponderance of the evidence, that the beneficiary is an orphan under any of the definitions at 8 C.F.R. § 204.3(b)(defining *desertion by, disappearance of, and loss or separation from, both parents*, as well as *sole or surviving parent*). This deficiency provided the director with good and sufficient cause to revoke approval of the orphan petition.

Conclusion

As set forth in the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an *orphan*, as that term is defined at section 101(b)(1)(F)(i) of the Act. Consequently, the appeal will be dismissed.

(b)(6)

NON-PRECEDENT DECISION

Page 6

In visa petition 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.