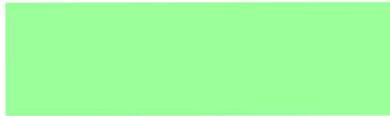


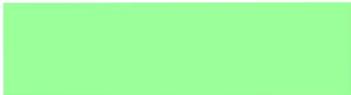


U.S. Citizenship
and Immigration
Services

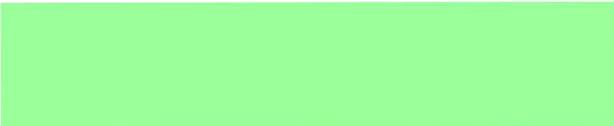
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DATE: **MAR 31 2014** OFFICE: NATIONAL BENEFITS CENTER

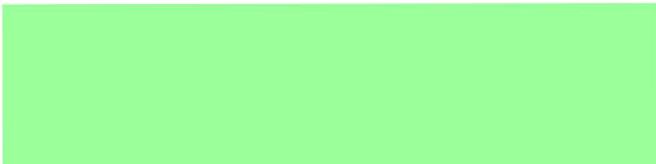


IN RE: Petitioner:
Beneficiary:



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:



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 the petition on the basis that the petitioner had failed to establish that the beneficiary qualifies for classification as an *orphan* as that term is defined at section 101(b)(1)(F)(i) of the Act. Specifically, the director found that the petitioner failed to establish that the beneficiary's birth mother was incapable of providing proper care to the beneficiary consistent with local standards in Nigeria. She therefore did not meet the definition of a *surviving parent* as the term is defined in the regulation at 8 C.F.R. § 204.3(b).

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)(i) of the Act, which 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. . . . *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

* * *

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*.

* * *

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.

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)(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;

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

* * *

(B) The death certificate(s) of the orphan's parent(s), if applicable;

(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has

irrevocably released the orphan for emigration and adoption. . . .

Facts and Procedural History

The petitioner is a 50-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 November 9, 2012. On March 20, 2013, USCIS approved the Form I-600. On October 2, 2013, the U.S. Consulate in Lagos, Nigeria returned the approved Form I-600 to the director because it could not issue a visa to the beneficiary. Based on an interview with the beneficiary's birth mother, the U.S. consular officer determined that the birth mother did not intend to relinquish all parental rights and control over the beneficiary; that material discrepancies existed in evidence relating to the birth mother's education and financial status; and that the beneficiary's birth mother appeared capable of providing proper care to the beneficiary in accordance with local standards in Nigeria.

On November 1, 2013, 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 because evidence in the record failed to establish that the beneficiary's birth mother met the definition of a surviving parent. The director provided the petitioner a period of 33 days in which to respond to the NOIR. Through counsel, the petitioner timely responded to the NOIR, and submitted additional affidavit evidence from the petitioner, the beneficiary's birth mother and the beneficiary's maternal aunt; as well as financial and medical evidence relating to the beneficiary's birth father.

On December 18, 2013, the director concluded that the evidence established that the beneficiary's birth mother intended to relinquish all parental rights and control over the child. The evidence failed, however, to establish that the beneficiary's birth mother was incapable of providing proper care to the beneficiary in accordance with local standards in Nigeria. The beneficiary therefore did not meet the definition of an *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's birth mother is unable to provide for the beneficiary's basic needs, consistent with the local standard of living in Nigeria. The AAO conducts 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. Upon review, the record does not demonstrate the beneficiary's eligibility as an orphan. The appeal will be dismissed.

Analysis

The regulation defines a *surviving parent* in pertinent part, as 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 8 C.F.R. § 204.3(b). The birth parent is incapable of providing proper care when she or he is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country. 8 C.F.R. § 204.3(b). The issue in the present case is whether the evidence in the record establishes that the beneficiary's birth mother is incapable of providing proper care to the beneficiary.

As provided in the NOIR, the beneficiary's birth mother was "surprised" by a March 6, 2013 letter from the [REDACTED] which stated that the church has financially supported the beneficiary's birth mother since her husband's death, and that the church provides her with educational financial assistance so that she can complete her secondary school education. The director noted in the NOIR that the beneficiary's birth mother completed her secondary education in Nigeria in 1997; that she sat for final examinations at [REDACTED]

The record contains a Nigerian senior school certificate and examination statement from [REDACTED] dated December 12, 1997, containing the beneficiary's birth mother's senior high school completion and examination results. The record also contains an undated, partial copy of a Provisional Admission Letter from [REDACTED] reflecting that the beneficiary's birth mother was offered admission into the Senior Secondary School Class II for the 2012-2013 academic session.

With regard to her education, the beneficiary's birth mother states in an affidavit, dated November 22, 2013, that she "completed secondary school in 1997 unsuccessfully" in that she received credits in only three out of eight exam subjects. She states that she is presently enrolled in Senior Secondary Class 2, and that she is trying to rebuild her life by going back to secondary school, so that she can retake the exam.

U.S. Department of State information found at: http://nigeria.usembassy.gov/nigeria_education_profile.html reflects in a section entitled, "Secondary Education" that students in Nigeria:

[A]re required to enter secondary school after spending a minimum of six years of Primary Education The students must spend a minimum period of six years in Secondary School. During this period, students are expected to spend three years in Junior Secondary School and three years in Senior Secondary School.

The section states that, "[t]he Senior Secondary School Exam is taken in the last year of high school." *Id.* A section entitled, "Promotional Examinations" describes Senior Secondary Certificate Examination requirements and clarifies that:

¹ The NOIR additionally noted that the beneficiary's birth mother had a newly obtained Nigerian passport, and was unable to explain what she intended to do with it since she claimed to be struggling to make ends meet. The petitioner states in a letter dated November 26, 2013, that he paid for the passport so that the beneficiary's birth mother would have a form of identification to bring to her U.S. consular interview.

All Senior Secondary students are required to study English, Mathematics, one science subject and one Nigerian language. All the other subjects are electives and are selected based on the students' interest be it in the Sciences, Social Sciences or the Arts. The Senior Secondary Certificate Examination is one of the requirements for undergraduate admission into a Nigerian University.

Id. The section states further that:

A maximum of nine grades are assigned to each subject ranging from:
A1, A2, A3 or A1, B2, B3, B4, (Equivalent to Distinctions Grade)
C4, C5, C6, or B4, B5, B6, (Equivalent to Credit Grade)
P7, P8 or D7, D8, E (Just Pass Grade)
F9 (Fail Grade)

Credit grades and above is [*sic*] considered academically adequate for entry into any University in Nigeria. In some study programs, many of the universities may require higher grades to get admission.

Id. A review of the beneficiary's birth mother's school certificate examination results fails to establish that she unsuccessfully completed senior secondary school in 1997. Although her examination results reflect that she received a score of nine in Physics, her scores for the other subjects taken were sixes and sevens, which are considered to be passing grades.² Furthermore, country conditions information contained in the record does not reflect the need for credit-level senior secondary school scores, or even senior secondary school completion, in order to obtain employment in Nigeria.

The evidence also fails to establish that the [REDACTED] has financially supported the beneficiary's birth mother, or that the church has provided her with financial help for secondary school education. The March 6, 2013, letter signed by [REDACTED], and submitted by the petitioner in support of the Form I-600 states, in pertinent part, that the church has supported the beneficiary's birth mother financially since her husband's death, and has "given her financial help towards fees to go back to school and complete her secondary school education. . . ." A financial statement, dated March 6, 2013, is attached to the letter indicating that [REDACTED] made educational contributions to the beneficiary's birth mother on June 6, 2010, June 21, 2011, and June 16, 2012. No other evidence of financial support from the church is contained in the record, and the financial statement from [REDACTED] is not corroborated by independent bank statements, payment receipts or other documentary evidence of payments to the beneficiary's birth mother. Moreover, the financial statement indicates that the church made educational contributions to the beneficiary's birth mother in June 2010, June 2011, and June 2012; however, the birth mother's Provisional Admission Letter to [REDACTED] reflects that the she

² No explanation is provided for an asterix (*) listed next to the birth mother's Mathematics score.

was not offered admission into the Senior Secondary School Class II until the 2012-2013 academic session.

The beneficiary's birth mother states in her November 22, 2013 affidavit, that she has not worked; that she lived at home between 1997 and 2002; that she lived with her sister between 2002 and 2007³; and that her husband was the sole provider during her marriage from 2007 to 2010. She states that she has no means of income, and that she is not emotionally, psychologically or financially ready to raise a child. The record lacks documentary evidence to corroborate the assertions regarding the birth mother's emotional and psychological inability to work or take care of her child. The remaining evidence in the record also fails to establish that the beneficiary's birth mother is unable to provide for the beneficiary financially.

A November 18, 2013, medical letter from [REDACTED], establishes that the beneficiary's birth father received medical care at the hospital from September 2006 to March 2009, and that he was managed for recurrent episodes of Sickle Cell crises. The petitioner indicates in a letter dated November 26, 2013, that the beneficiary's birth father required constant medical care, checkups and daily medication; and that the birth father was indebted due to "his health problems, interests on borrowed money and losses incurred from his business." The beneficiary's birth mother states, in pertinent part, in an affidavit dated April 11, 2011, that the petitioner and his wife supported her husband while he was alive. The beneficiary's birth mother states further, in an affidavit dated, January 11, 2013, that, "prior to [her] husband's death and because of his long time illness, [they] exhausted [their] savings and had to rely on other family members for daily survival." She states that "there are debts left from his illness to be paid;" that she cannot afford food or a home; that she "can no longer take care of [her daughter] since [she has] been unemployed even before [her] husband died;" and that the unemployment rate in Nigeria "is very high for college graduates, and even higher for individuals like [her]."

The record contains no documentary evidence to corroborate assertions that the petitioner supported the beneficiary's birth father while he was alive; to establish the frequency or costs of the birth father's medical treatment; or to demonstrate that the family had financial obligations related to his medical treatment. Moreover, the beneficiary's birth mother contradicts statements about her husband's medical debts in her November 22, 2013 affidavit, by stating that her previous claim that, "prior to [her] husband's death and because of his long term illness, [they] exhausted [their] savings . . ." was meant to refer only to their family's business-related financial problems, and that she mentioned her husband's long standing illness only in the context that he was not able to dedicate himself fully to his business due to a Sickle Cell Anemia medical condition. Furthermore, while the record does contain financial evidence pertaining to employment and business-related expenses and debts that the beneficiary's birth father accrued between 2008 and 2009, the evidence indicates that the debts have been settled and that the loans were secured with business assets as collateral. The evidence does not demonstrate that money is still owed, or that the beneficiary's birth mother

³ A November 21, 2013, letter from the birth mother's sister also states that the beneficiary's birth mother lived with her from 2002 to 2007, and that the sister provided food, shelter and material support to the birth mother during that time period.

has been affected or held responsible for repaying any employment or business-related debt owed by the beneficiary's birth father at the time of his death.

The regulation at 8 C.F.R. § 204.3(b) states that the term *incapable of providing proper care* means that the surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country. The evidence in the present matter fails to establish that the beneficiary's birth mother is emotionally, psychologically, or financially incapable of meeting the beneficiary's basic needs consistent with the local standards in Nigeria. Accordingly, the petitioner has not established that the beneficiary's birth mother meets the definition of a *surviving parent* under 8 C.F.R. § 204.3(b). 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.

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.