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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

DATE: NOV 24 2014 OFFICE: NATIONAL BENEFIT 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:

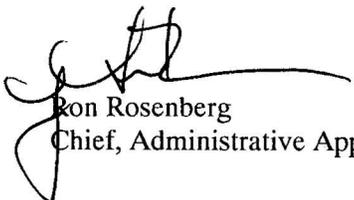
SELF-REPRESENTED

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. 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 Benefit 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 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 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[.]

\* \* \*

*Facts and Procedural History*

The petitioner is a 46-year-old single U.S. citizen. She adopted the beneficiary in Nigeria on October 24, 2013. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) on January 10, 2014, along with an October 24, 2013 Nigerian adoption order.

On May 19, 2014, the director issued a Request for Evidence (RFE) asking in pertinent part for a detailed report as to the circumstances of the beneficiary's abandonment; whether there were witnesses, and if so, their statements or testimony; what efforts were made to locate the biological parents; and whether the police were involved. Following the receipt of the petitioner's response, the director on May 23, 2014 sent a Notice of Intent to Deny (NOID), and requested the petitioner to submit the biological mother's irrevocable release of the beneficiary to the orphanage or government authority; the beneficiary's registered birth certificate listing the beneficiary's biological parent(s); if a father's name is on the birth certificate, efforts to locate the biological

father and obtain a release from him; and that the petitioner was present for the adoption as required in Nigeria.

The record includes a report of the Director of the Social Development Department, Nigeria, dated October 8, 2013, indicating that the beneficiary's biological mother gave birth to the beneficiary on June out of wedlock, in hiding and homeless. The biological mother brought the child to the seeking to give the child up for adoption to any family. According to the report, the biological mother stated that she did not know who the father was.<sup>1</sup> The report stated that the police were not notified, as the relinquishment was voluntary. The author of the report noted that the department considered the baby to be deserted and abandoned.

The director requested the petitioner to submit an original birth certificate naming the biological parents, and if none was available, to explain why, and to submit alternate proof of the beneficiary's age and identity. In response, the petitioner submitted a statement from the dated June 16, 2014, stating as follows, in pertinent part:

The Birth Certificate issued to born on , has been documented in our office. The only birth certificate accepted and recognized in Nigeria is that given by National Population Commission.

Since the certificate is issued once, I hereby state, that offices abide by that instruction only.

The petitioner submitted two copies of the beneficiary's original birth certificate, one dated October volume the pre-adoption certificate, and the second, the post-adoption certificate, dated November Volume <sup>2</sup> Both of these certificates list the petitioner as the mother, with no father listed. The pre-adoption certificate names the child's birthplace as <sup>3</sup> the post-adoption certificate registers the beneficiary's birthplace as Ugwunagbo Town. The pre-adoption birth certificate names the petitioner as the beneficiary's mother prior to the final adoption order of October 24, 2013.

The petitioner also submitted a statement from the biological mother, sworn at the Chief Magistrate Court Registry dated June 21, 2013, and from the director of the dated June 27, 2013. The biological mother states that the child was born out of wedlock, that she "could not lay

<sup>1</sup> This statement is inconsistent with the biological mother's June 21, 2013 affidavit that she executed before the Chief Magistrate Court of wherein she stated that she "was impregnated by someone [she] could not lay hold on"; thus, indicating that she could not locate, rather than not identify, the biological father.

<sup>2</sup> The adoption process began in Abia State and on October 8, 2013 the local authorities transferred the case to at the petitioner's request. The Abia State birth certificate is dated after the transfer of the adoption case from

<sup>3</sup> The evidence reflects that the petitioner is from Local Government Area,

hold on” the father, and that as she could not care for the child, she released her to the government through the [REDACTED] director states that the mother came to her with the newborn on June [REDACTED], and stated that she could not care for her and wanted to give her up for adoption.

After considering the evidence in the record, the director denied the Form I-600 on July 23, 2014, on the basis that the petitioner had failed to submit a letter from the [REDACTED] of the availability of the birth certificate listing the biological parents; that the petitioner had therefore not established proof of the child’s identity and age; and thus 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 statement along with previously submitted evidence.

*Analysis*

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the beneficiary’s eligibility for orphan classification. The petitioner’s claims and the evidence submitted on appeal do not overcome the director’s ground for denials and the appeal will be dismissed for the following reasons.

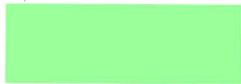
The petitioner has failed to submit a credible birth certificate as required by the regulation at 8 C.F.R. § 204.3(d)(1)(ii). The petitioner did not submit a statement from the [REDACTED] stating that no birth certificate existed naming the biological parents, even though the name of the biological mother was known and she provided a sworn affidavit before the Chief Magistrate Court of [REDACTED] Nigeria. No evidence of record explains how the petitioner obtained a birth certificate naming herself as the mother of the beneficiary before the adoption was finalized; nor does the record explain why the two birth certificates name different birth places. 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. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As the record does not contain a birth certificate naming the biological parents, or an explanation from [REDACTED] stating why such a certificate was not issued, we cannot conclude that the beneficiary is eligible to be classified as an orphan and affirm the director’s similar findings.

*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. In visa petition proceedings, it is the petitioner’s

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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. The petition remains denied.