



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 22 2015 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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
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 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 denied the petitioner's Form I-600, because the petitioner failed to provide sufficient evidence to establish eligibility for the immigration benefit being sought.

Applicable Law

Section 101(b)(1)(F), 8 U.S.C. § 1101(b)(1)(F), of the Act defines an *orphan*, in relevant part, as:

- (i) [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[.]

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.

Facts and Procedural History

The petitioner is a 49-year-old dual citizen of the United States and Nigeria, who seeks to classify the beneficiary, a national of Nigeria, as an orphan. The petitioner filed Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on January 2, 2014. On February 20, 2014, the Director issued a Request for Evidence (RFE), indicating that to complete the adjudication of the petitioner's I-600 petition, the petitioner must provide evidence to establish his U.S. citizenship and his spouse's legal status in the United States and their marriage; a home study; and proof that the beneficiary meets the statutory definition of an orphan. The petitioner timely responded to the RFE and included with his response an undated letter he and his spouse wrote; copies of their U.S. naturalization certificates and marriage certificate; an Affidavit of Age Declaration (Age Declaration); two copies of death certificates for the beneficiary's parents; a copy of an adoption order; a copy of travel itineraries; and partial copies of the petitioner's spouse's passport.

On June 6, 2014, the Director denied Form I-600 without prejudice, because the petitioner failed to provide sufficient evidence in support of his petition, including: a home study with original signatures that was less than six months old, as required under 8 C.F.R. § 204.3; foster placement papers; and documentation showing that he or his U.S. citizen spouse was present during the beneficiary's adoption proceedings in Nigeria.

The petitioner filed a timely appeal on July 7, 2014. In support of his appeal, the petitioner includes: an adoption home study dated May 15, 2014, which identifies its author as a licensed social worker

█ serving in the capacity of Adoption Program Manager for █ in █ Indiana; documents concerning the agency's and social worker's accreditation and licenses; and two letters issued on behalf of the petitioner and his spouse by the Indiana State Police.

With his appeal the petitioner also includes a statement dated July 25, 2014, in which he asserts: he and his spouse met the beneficiary in 2010, and discussed the possibility of his adoption with his mother then; the petitioner and his spouse initiated the adoption process through the court in the █ Nigeria, and hired a local lawyer to represent them; the adoption proceedings were delayed due to various challenges, including civil strife, political unrest, and the death of the beneficiary's mother; the beneficiary was moved from one family member to another until he was settled with an uncle; in mid-August 2013, they were informed of the court proceedings with less than a week's notice and requested a postponement due to employment and educational obligations, which was denied; despite reminding their lawyer that they were legally required to be at the court proceedings, the lawyer responded that "she was acting based on the instructions of the presiding Magistrate and that she could no do contrary [sic]"; and a close family friend represented their interests during the adoption proceedings.

Analysis

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.

8 C.F.R. § 204.3 states, in relevant part:

(c) *Supporting documentation for an advanced processing application.* - The prospective adoptive parents may file an advanced processing application before an orphan is identified in order to secure the necessary clearance to file the orphan petition.

...

(1) *Required supporting documentation that must accompany the advanced processing application.* - The following supporting documentation must accompany an advanced processing application at the time of filing ...

(2) *Home study.* - ...If the home study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application ...

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

(1) *Filing an orphan petition after the advanced processing application has been approved.* - The following supporting documentation must

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accompany an orphan petition filed after approval of the advanced processing application:

...

(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) ...

(iv) Evidence of adoption abroad ... and adoption in accordance with the laws of foreign-sending-country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the ... married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad ...

(3) *Filing an orphan petition concurrently with the advanced processing application.*- ... The following supporting documentation must accompany a petition filed concurrently with the application under this provision:

(i) The supporting documentation for an advanced processing application required in paragraph (c) of this section; and

(ii) The supporting documentation for an orphan petition required in paragraph (d)(1) of this section, except for paragraph (d)(1)(i) of this section.

Pursuant to 8 C.F.R. §§ 204.3(c)(2) and 204.3(e), the petitioner must provide a home study in support of his I-600 petition. As indicated previously, the record reflects the petitioner did not provide the home study in response to the RFE; however, he has provided one with his appeal.

Pursuant to 8 C.F.R. § 204.3(d)(1)(iv), the petitioner also must provide evidence that the beneficiary's adoption overseas was in accordance with the laws of Nigeria. In his decision, the Director refers to the U.S. Department of State's official website, indicating that proxy adoptions are not valid in Nigeria. The Bureau of Consular Affairs, U.S. Department of State, indicates the following concerning interstate adoptions from Nigeria, "Note: Proxy adoptions are not valid in

Nigeria. Adoptive parents who complete adoptions by proxy risk having their I-600 petitions returned to USCIS for revocation.”

The record includes an adoption order issued by the Magistrate’s Court in the [REDACTED] Nigeria, concerning the beneficiary’s proxy adoption on August 16, 2013. Although we recognize the difficulties the petitioner and his spouse faced in attempting to personally appear before the Magistrate’s Court for the beneficiary’s adoption proceedings on very short notice, the record reflects that proxy adoptions are not recognized in Nigeria. The petitioner provides no legal authority to support finding otherwise, stating clearly that he was aware of the requirement of personally attending these proceedings and that he spoke with his attorney in Nigeria specifically about it. Moreover, if Nigeria did recognize proxy adoptions, the petitioner would need to resolve evidence in the record that appears inconsistent. In his July 2014 statement, the petitioner indicates he and his spouse’s proxies included a close family friend. However the adoption order does not include the friend’s name as a proxy. Where there are inconsistencies in the record, it is incumbent upon the petitioner to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Accordingly, the petitioner has failed to establish that the beneficiary’s adoption was in accordance with the laws of Nigeria as required by 8 C.F.R. § 204.3(d)(1)(iv).

We also note the record is unclear concerning the beneficiary’s date of birth. In an Age Declaration with an illegible date, the author is identified as the beneficiary’s paternal uncle and indicates the beneficiary was born on April 25, 2001 and that a birth certificate does not exist because the birth was not registered. However, on Form I-600, the petitioner indicates the beneficiary’s date of birth is April 27, 2001. As mentioned previously, it is incumbent upon the petitioner to resolve material inconsistencies by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-592

Conclusion

As set forth in the previous discussion concerning proxy adoptions, the petitioner has failed to establish that the beneficiary’s adoption is in accordance with the laws of Nigeria as required by 8 C.F.R. § 204.3(d)(1)(iv). Moreover, the record contains inconsistencies concerning the beneficiary’s date of birth. 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.