



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 15 2015

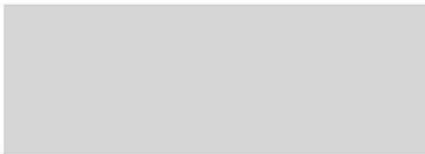
FILE #: [REDACTED]

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 sole or surviving parent is unable to provide for the beneficiary's basic needs consistent with the local standards of Nigeria.

Applicable law

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:

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.

* * *

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*.

* * *

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no

distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

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:
 - (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; or
 - (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 43-year-old married U.S. citizen who seeks to classify the beneficiary, a citizen of Nigeria, as an orphan. The petitioner filed Form I-600, Petition to Classify Orphan as an Immediate Relative, with U.S. Citizenship and Immigration Services (USCIS) on April 1, 2014. The Director issued a Request for Evidence (RFE) on April 24, 2014, for secondary evidence of the beneficiary's age; secondary evidence of the beneficiary's father's death; evidence of the beneficiary's mother's

inability to care for the beneficiary; evidence that the beneficiary's mother has, in writing irrevocably released the beneficiary for emigration and adoption; evidence of compliance with relevant country requirements; and evidence of fulfillment of the three-month fostering requirement. The petitioner responded with an affidavit related to the beneficiary's mother's inability to care for the beneficiary, secondary evidence of the beneficiary's date of birth, secondary evidence of the beneficiary's father's death, evidence that the beneficiary's mother has irrevocably released the beneficiary for emigration and adoption, a letter certifying the adoption process, and the final adoption order. On June 4, 2014 the Director issued a Notice of Intent to Deny (NOID), which noted that the definition of orphan was not met and requested the following be submitted: proof of the beneficiary's mother's inability to care for the beneficiary and the social report from the Ministry of Social Welfare that was provided to the court. The petitioner responded with evidence related to the beneficiary's mother's inability to care for the beneficiary and an investigation report from the Government of Imo State of Nigeria, Ministry of Women Affairs and Social Development.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record demonstrates the beneficiary's eligibility as an orphan. The appeal will be sustained.

Analysis

Ability to provide care for child

The beneficiary's mother states that she lives in a structure without plumbing facilities and she works occasionally as a petty trader when her health permits. The beneficiary states that her mother cannot care for her due to her health problems; her health is highly disturbing to her studies, rest and health; and her mother's sleepless nights keep her awake at night. The beneficiary's mother's brother states that the beneficiary's mother has long suffered from depression and is constantly on medication; she isolates herself from people; she feels awful most of the time; she cannot provide for the beneficiary due to her conditions; she sells groundnut, which "doesn't put food on their table"; and the beneficiary "feels no joy living with her due to her health condition and nature of her business."

The petitioner, through counsel, states that it is impossible for the beneficiary's mother to care for the beneficiary due to her poor health; she has been plagued by cerebral malaria, typhoid encephalitis, meningitis, a stomach ulcer, and a ruptured appendix; she has depression, inability to sleep, anxiety, and a loss of desire to live; she had a drug overdose secondary to depression; she is unable to work due to her physical and mental illnesses; her poor mental health causes her to live in poverty; she cannot provide for the beneficiary's material or emotional needs; and the beneficiary's mother's health has a negative impact on the beneficiary.

The beneficiary's mother's November 8, 2014, medical records reflect that she was admitted to a clinic for meningitis in 2004; she was admitted in 2008 for cerebral malaria and a drug overdose; and she complained at that time of her inability to sleep, feelings of hopelessness and not wanting to live.

Her mental health clinic history records, which cover the years 2010 to 2012, describe her history of symptoms including sleeplessness, fatigue, loss of interest, stomach pain, nail biting, nightmares, aggressiveness, paleness, suicidal talk, feelings of guilt and denial of mental problems.

Her October 14, 2014 medical records reflect that she was admitted to a mental health unit for three weeks in April 2010; she was treated for depression, cerebral malaria and typhoid encephalopathy; she was readmitted to the clinic in March 2012 for depression and drug overdose; and she cannot adequately care for herself due to her mental health condition.

In his October 31, 2014, letter, a psychiatrist states he has diagnosed the beneficiary's mother with major depressive disorder "characterized by periods of depressed moods, agitation, severe anxiety, social isolation, feelings of helplessness/hopelessness, inability to do basic activities of daily living and thoughts of self-harm." The psychiatrist also states that he observed her periods of decompensation, despite adequate medical treatment, in which she isolates, stays in bed all day, and is unable to shop or prepare meals for herself and the beneficiary.

The beneficiary's mother's November 17, 2014, mental health exam reflects that she complained of feelings of hopelessness and worthlessness, fatigue, recurring thoughts of death, sleeplessness and anxiety; and she was diagnosed with major depression and drug overdose.

Upon review, the evidence in the record demonstrates that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Nigeria, as required under 8 C.F.R. § 204.3(b). The petitioner has also established that the beneficiary's other parent is deceased, and the child has not acquired another parent. Accordingly, the petitioner has established that the beneficiary's mother meets the definition of a *surviving parent* as set forth in 8 C.F.R. § 204.3(b).

Conclusion

As set forth in the discussion above, the petitioner has established 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 sustained.

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 been met. The appeal will therefore be sustained.

ORDER: The appeal is sustained. The Director's decision shall be withdrawn and the matter returned to the Director for further processing of the petition.