



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-B-O

DATE: APR. 25, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE
RELATIVE

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Director, National Benefits Center, denied the petition. The Director concluded that the Petitioner had not provided a complete home study and a birth certificate for the Beneficiary that had been registered at the time of his birth. The Director also found the Petitioner had not complied with New York state law requirements, established the Beneficiary's age at the time the Form I-600 was filed, or shown that the Beneficiary's mother was incapable of providing care. Finally, the Director found that the Petitioner had not established that the Beneficiary's mother irrevocably consented to the Beneficiary's emigration and adoption. We dismissed a subsequent appeal, finding that although the evidence established that New York state law requirements were met, the Petitioner did not overcome the other reasons for denial.

The matter is now before us on a motion to reopen. In the motion, the Petitioner submits an affidavit and asserts that the Director erred in finding that the home study was incomplete. The Petitioner also claims that he had submitted evidence of the Beneficiary's birth and age, the home study requirements were met, and he has established that the Beneficiary's mother is unable to provide care and has irrevocably consented to the Beneficiary's emigration and adoption.

Upon *de novo* review, we will deny the motion.

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. Section 101(b)(1)(F)(i) of the Act provides, in pertinent part:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, 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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the Attorney General [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

8 C.F.R. § 204.3(d)(1) identifies the supporting documentation required to accompany orphan petitions, including:

. . . .

- (ii) The orphan's birth certificate, or if such 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:

. . . .

- (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; and

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

Home study requirements. For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. . . . If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section.

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The regulation at 8 C.F.R. § 204.3(e)(2)(i) states, in pertinent part:

Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. . . . Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

II. ANALYSIS

The Petitioner is filing for the Beneficiary as an orphan who has a surviving parent. The issues in the Petitioner's case are whether the Petitioner has provided reliable evidence of the Beneficiary's birth and his age, whether the home study sufficiently addresses the Petitioner's additional household member, whether he has established that the Beneficiary's mother is incapable of providing proper care in accordance with the local standards in Nigeria, and whether he has provided sufficient evidence showing she has irrevocably consented to the emigration and adoption of the Beneficiary.

The Director sent a request for evidence (RFE) to the Petitioner asking, in part, for an original and complete home study with original signatures; a copy of the Beneficiary's birth certificate; evidence showing that the Beneficiary's surviving parent is unable to provide for his basic needs consistent with local standards in Nigeria; and evidence his surviving parent has irrevocably, in writing, released the Beneficiary for emigration and adoption. In response to the RFE, the Petitioner provided, in part, a new home study, financial documents, a consent to adoption from his adult son, and a certificate of birth for the Beneficiary.

The Director denied the Form I-600, concluding that the home study lacked an assessment of the Petitioner's additional household member, his son; the Petitioner did not provide the Beneficiary's birth certificate that was registered at the time of his birth; the Petitioner did not provide a surrogate court approval, as required in New York; the Petitioner's evidence was insufficient to establish that the Beneficiary's biological mother is incapable of providing proper care to the Beneficiary according to the standards in Nigeria; the Beneficiary's mother has not irrevocably and in writing released him for emigration and adoption; and most of the documents reflect that the Beneficiary was ■ years old when the Form I-600 was filed. Therefore, the Director found that Petitioner did not establish that the Beneficiary qualified for classification as an orphan under section 101(b)(1)(F)(i) of the Act. We dismissed an appeal of the Director's decision, finding that although the New York state law requirements were met, the other reasons for denial were not overcome. .

On motion, the Petitioner asserts that he submitted the best available evidence of the Beneficiary's birth and age, the home study requirements were met, and he has established that the Beneficiary's

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mother is unable to provide care and has irrevocably consented to the Beneficiary's emigration and adoption.

We find that the Petitioner has not overcome the grounds of our dismissal of his appeal, as the record does not include sufficient evidence of the Beneficiary's date of birth, that the home study requirements have been met for his additional family member, and that the Beneficiary's mother is unable to provide care and has irrevocably consented to the Beneficiary's emigration and adoption.

A. Eligibility

As stated above, the Beneficiary has been found ineligible to be classified as an orphan for immediate relative status in accordance with section 101(b)(1)(F)(i) of the Act.

1. Evidence of the Beneficiary's Date of Birth

The Petitioner did not provide the Beneficiary's birth certificate that was registered at the time of his birth, and documents in the record are inconsistent as to whether the Beneficiary was [REDACTED] years old when the Form I-600 was filed. The Petitioner previously provided a certificate of birth, registered on April 25, 2014, which states that the Beneficiary was born on [REDACTED]. On motion, the Petitioner asserts that Nigeria does not have a birth or death registry. He states that district welfare officers collect information, investigate births, and provide the information to the Ministry of Children and Women's Affairs. He further asserts that all vital documents are developed and procured from that ministry and that he has already provided the documents that were produced by the Ministry of Children and Women's Affairs.

According to the Department of State reciprocity schedule, available at <https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/NI.html>, birth certificates in Nigeria are:

Generally available, particularly for events occurring after 1970. Registration of births and deaths is compulsory in [REDACTED]. The National Population Commission issues birth certificates for births and deaths after 1992.

For [REDACTED] records, certified copies of records for dates ending with 1979 can be obtained at the [REDACTED] State Ministry of Health, Old Secretariat, [REDACTED]. For records after 1979, contact the local government that issued the original certificate directly. Most births and deaths outside of [REDACTED] are also registered at the time of the event. Applicants can obtain certified true copies of certificates directly from the local government. Alternatively, acceptable identity/parentage documents are infant baptismal certificates and hospital or maternity clinic records of birth. Home births are rare in Nigeria and medical records are available in most cases. Affidavits may be acceptable as substitutes for documents for those born outside [REDACTED] prior to 1960 or born in the eastern part of Nigeria in the 1960's at the time of the Biafran War, when presented in combination with convincing secondary evidence of relationship.

Based on this information, the Petitioner should be able to provide the Beneficiary's birth certificate as they are generally available, but he has not submitted such evidence.

The Form I-600 instructions, available at <http://www.uscis.gov/sites/default/files/files/form/i-600instr.pdf>, state:

You should submit a copy of the orphan's birth certificate, or if such certificate is not available, an explanation together with other proof of age and identity. Such secondary evidence could include medical records, school records, church records, entry in a family Bible, orphanage intake sheets, or affidavits from individuals with first-hand knowledge of the event(s) to which they are testifying.

While the Petitioner has attempted to explain why the Beneficiary does not have a birth certificate registered at the time of his birth, he has not provided secondary evidence of the Beneficiary's date of birth on motion. We find that the Petitioner has not provided sufficient evidence of the Beneficiary's date of birth or other evidence to establish that the Beneficiary was under the age of 16 when the Form I-600 was filed.

2. Evaluation of Adult Member of Prospective Adoptive Parent's Household

The previous home study the Petitioner submitted did not include an assessment of his adult son's physical, mental, and emotional health and how it would affect his ability to care for the Beneficiary as required by 8 C.F.R. § 204.3(e)(2)(i). On motion, the Petitioner states that the home study included an assessment of his son. Although the Petitioner's son was discussed in the home study, the specific requirements of 8 C.F.R. § 204.3(e)(2)(i) were not addressed. The Petitioner has not submitted an updated home study to correct the aforementioned deficiency. Therefore we find that he has not satisfied the requirement of 8 C.F.R. § 204.3(e)(2)(i).

In addition, the Petitioner asserts that his son currently resides at his college, and he therefore is not an adult member of the Petitioner's household. The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part:

Adult member of the prospective adoptive parents' household means an individual, other than a prospective adoptive parent, over the age of 18 whose principal or only residence is the home of the prospective adoptive parents. This definition excludes any child of the prospective adoptive parents, whose principal or only residence is the home of the prospective adoptive parents, who reaches his or her eighteenth birthday after the prospective adoptive parents have filed the advanced processing application (or the advanced processing application concurrently with the orphan petition)

The home study states that the Petitioner's son is attending a university. The record does not include sufficient evidence to establish that his adult son's university has become his son's principal residence. As such, we find that the Petitioner has not shown that his son no longer is an adult

member of the Petitioner's household or that the requirement of 8 C.F.R. § 204.3(e)(2)(i) no longer applies.

3. Evidence Establishing Beneficiary's Surviving Parent is Incapable of Providing Proper Care

The Petitioner asserts that the Beneficiary should be classified as an orphan under section 101(b)(F)(i) of the Act because he is a child whose surviving parent is incapable of providing proper care and has in writing irrevocably released the Beneficiary for emigration and adoption. The regulation at 8 C.F.R. § 204.3(b) provides:

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 regulation at 8 C.F.R. § 204.301 provides further relevant definitions:

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*.

On motion, the Petitioner states that he has been sending money to the Beneficiary's mother, for the Beneficiary's food, clothing, and other items. He states that the Beneficiary's mother has no means to support herself and she resides with her own mother. Furthermore, he states that she does not own any land to farm, she does not have an education, and she lives in a mud house without electricity and running water. He states that the Beneficiary's family cannot afford to buy milk, and the Beneficiary has never had eggs.

Previously, the Beneficiary's mother stated that her spouse left four children for her to care for after he passed away. The Petitioner stated that the Beneficiary's mother has been struggling to raise the children, and to assist her with her children, he has been supporting her financially for a long time.

In reviewing the Petitioner's claims, we find that the record lacks evidence of the expenses involved with caring for the Beneficiary, of the Beneficiary's mother's potential income, and of the financial support she receives. The record also lacks objective documentary evidence to corroborate the Petitioner's claims about conditions where the Beneficiary's mother resides and local standards. 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)).

We find that the Petitioner has not provided sufficient evidence to show that the Beneficiary's mother is incapable of providing for the Beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b).

4. Evidence Establishing Beneficiary's Surviving Parent Has in Writing Irrevocably Released the Beneficiary for Emigration and Adoption

We also find that the record does not include sufficient evidence to establish that she has in writing irrevocably released the Beneficiary for emigration and adoption, as required by 8 C.F.R. § 204.3(d)(1)(iii)(C).

Although the record includes a statement from the Beneficiary's mother in which she "wholeheartedly" releases the Beneficiary to the Petitioner, this statement does not establish that she irrevocably releases the Beneficiary in writing for emigration and adoption. The Petitioner claims that that "wholeheartedly," as used in the adoption proceedings, means the same thing as "irrevocably." However, he has not provided supporting authority to support his claim that these two words are synonymous, and we do not find that they share the same meaning. Therefore, we find that the Petitioner has not established that the Beneficiary's mother has in writing irrevocably released the Beneficiary for emigration and adoption.

III. CONCLUSION

The Petitioner has not provided a home study that meets all of the regulatory requirements and has not established that the Beneficiary's mother meets the definition of a surviving parent who is incapable of providing the proper care and has in writing irrevocably released the Beneficiary for emigration and adoption.

In visa petition proceedings, the petitioner has the burden of establishing 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. The motion to reopen will be denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-B-O-*, ID# 16326 (AAO Apr. 25, 2016)