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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: **JAN 31 2014** 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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director), denied the 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 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 . . . 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.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

* * *

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) (iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country

Facts and Procedural History

The petitioner is a 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 October 17, 2007, when the beneficiary was 7 years old. The petitioner indicated on the Form I-600 that the beneficiary has a surviving parent who is incapable of providing proper care. On April 16, 2008, the director of the Saint Paul, Minnesota Field Office issued a Request for Evidence (RFE) for, among other things: a divorce decree or death certificate for the beneficiary's birth parents; the beneficiary's birth certificate; evidence of the disappearance of, abandonment or desertion by, or separation or loss from both parents; evidence that a sole or surviving parent is incapable of providing for the beneficiary's care; an irrevocable release from the sole or surviving parent; and the petitioner's criminal records. On March 21, 2011, the director of the National Benefits Center denied the Form I-600 with a determination that the petitioner failed to provide: evidence of his legal adoption of the beneficiary; and a valid irrevocable release from the claimed surviving parent (the beneficiary's birth mother).

The director granted a motion to reopen on April 18, 2013. He reviewed the record and determined that it failed to establish that the beneficiary is eligible for classification as an orphan. The director issued an RFE for the petitioner to submit: an explanation of the late registration of the beneficiary's birth with other proof of her identity and age; the beneficiary's birth father's death certificate or secondary evidence of his death; and a certified copy of the beneficiary's adoption decree, or evidence that the petitioner has secured custody of the beneficiary in accordance with the laws of Nigeria. On May 6, 2013, the director issued a Notice of Intent to Deny (NOID) to the petitioner for a new home study. The petitioner responded to the RFE and the NOID with additional evidence, which the director found insufficient to establish eligibility. On July 13, 2013, the director issued another NOID for: secondary evidence of the beneficiary's date of birth and parentage; and evidence of a full and final adoption or evidence of the petitioner's custody of the beneficiary for emigration and adoption in accordance with the laws of Nigeria. The petitioner responded to the second NOID with additional evidence. The director reviewed the additional evidence and found that the petitioner submitted some of the requested documentation, including the beneficiary's birth father's death certificate, secondary evidence of the beneficiary's birth, the beneficiary's birth mother's irrevocable consent, and a new home study. The director determined that the petitioner, however, failed to resolve the issue of his legal custody of the beneficiary because the record did not contain a full and final adoption or legal

guardianship of the beneficiary in accordance with the laws of Nigeria. The director denied the Form I-600 accordingly on August 21, 2013. The petitioner timely appealed.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility to be classified as an orphan.

On appeal, the petitioner asserts that he "has never claimed to have completed a full and final adoption in Nigeria." He contends that the beneficiary can be brought to the United States for adoption. The petitioner states that the beneficiary's birth mother, who is his sister, has legal custody of the beneficiary and is working on his behalf as his "agent." The petitioner states that the "surviving parent" definition does not prohibit a relinquishment for a specific adoption. He claims that the beneficiary's birth mother's irrevocable release of the beneficiary for emigration and adoption abroad supports the approval of the Form I-600.

The petitioner correctly asserts that the "surviving parent" definition does not prohibit a relinquishment for a specific adoption. *See* 8 C.F.R. § 204.3(b). However, the director did not deny the Form I-600 for this reason. The director denied the Form I-600 because the record did not contain evidence of a full and final adoption or legal guardianship of the beneficiary. The beneficiary's birth mother's irrevocable release of the beneficiary for emigration and adoption is only one eligibility requirement. USCIS regulations state that a petitioner must also provide evidence of his or her adoption abroad or custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country, in this case, Nigeria. *See* 8 C.F.R. § 204.3(d)(1)(iv). The petitioner's assertion that his sister has custody of the beneficiary for emigration and adoption on his behalf does not satisfy the regulation at 8 C.F.R. § 204.3(b)(1)(iv), as only Nigeria's adoption authority appoints custodians for children intending to be adopted.

The U.S. Department of State's report on adoption in Nigeria provides that prospective adoptive parents who intend to adopt a specific child must first obtain temporary custody of the child.¹ To initiate this process, the prospective adoptive parent must submit an application to be found eligible to adopt and cooperate with the respective state social welfare offices (usually named the State Ministry of Women's or Family Affairs), which is Nigeria's adoption authority.² The government office that adjudicates local adoptions in Nigeria is the magistrate court of the state where the child is located.³ Adoption decrees from Nigeria must state that they are full and final in order for the U.S. Department of State to issue an immigrant visa to the beneficiary.⁴ The record does not

¹ U.S. Department of State, *Intercountry Adoption, Nigeria*, http://adoption.state.gov/country_information/country_specific_info.php?country-select=nigeria (last visited January 9, 2014).

² *Id.*

³ *Id.*

⁴ *Id.*

indicate that the petitioner contacted the beneficiary's state social welfare office and petitioned to the state magistrate court for the beneficiary's adoption. There is no evidence that the petitioner ever had custody of the beneficiary. Accordingly, the petitioner has not complied with the regulation at 8 C.F.R. § 204.3(d)(1)(iv).

Conclusion

Because the petitioner has failed to provide evidence of his adoption of the beneficiary under the laws of Nigeria, the beneficiary is not eligible for classification as an "orphan" under 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. The petition will remain denied.