U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: BALTIMORE, MARYLAND Date: FEB 25 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

IN BEHALF OF APPLICANT:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Baltimore, Maryland district office denied the immigrant visa petition and the Administrative Appeals Office ("AAO") summarily dismissed a subsequent appeal. The AAO now reopens the proceeding on a Service motion. The director's decision is withdrawn. The petition is remanded back to the director for entry of a new decision.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on October 5, 2001. The petitioner is a 51-year-old married citizen of the United States. The beneficiary is 13 years old at the present time and was born in Ghana on August 7, 1989. The record indicates that the petitioner and his spouse adopted the beneficiary under the laws of Ghana on August 1, 2001.

The director denied the petition because the petitioner failed to establish that the beneficiary is an orphan as defined at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act).

The AAO summarily dismissed the petitioner's appeal on November 4, 2002 because the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner had indicated that he would submit additional evidence for the record by June 19, 2002; however, as of November 4, 2002, no additional evidence had been received into the record. On December 3, 2002, counsel submitted evidence to show that the petitioner forwarded the additional evidence to the Baltimore district office on May 13, 2002.[1] For this reason, the AAO reopens the proceeding on a Service motion to consider this evidence.

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

> 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), 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 . . . .

On October 23, 2001, the director issued to the petitioner a Notice of Intent to Deny. In this Notice, the director stated

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[1] While counsel states on motion that the Baltimore district office was negligent in not forwarding the petitioner's additional evidence, 8 C.F.R. § 103.3(a)(2)(viii) provides that, if additional time is needed to submit a brief, the petitioner shall submit the brief directly to the AAO.

that the petitioner submitted the beneficiary's birth certificate, as well as an affidavit for the biological mother's death. The director informed the petitioner that he was not satisfied with the authenticity of the affidavit and he requested the death certificate of the biological mother, stating that the Foreign Affairs Manual indicated that death certificates were readily available in Ghana. Additionally, the director informed the petitioner that the petitioner failed to explain the whereabouts of the biological father or describe the beneficiary's living situation since the death of the biological mother. The director provided the petitioner 12 weeks to submit any additional evidence.

The petitioner responded to the issues raised by the director in the Notice of Intent to Deny. The petitioner submitted a death certificate for the biological mother. The petitioner also explained that the beneficiary was born out-of-wedlock and that the biological father never assumed responsibility for the beneficiary even though his name appeared on the beneficiary's birth certificate. Regarding the living situation of the beneficiary, the petitioner explained that the beneficiary lived at boarding school until September of 1999 at which time she moved in with a friend of the petitioner's and lived there until the summer of 2000. According to the petitioner, in the summer of 2000, the beneficiary moved to Accra, Ghana to live with the petitioner's mother-in-law.

The director denied the petition on March 21, 2002 because the petitioner failed to establish that the beneficiary had been abandoned by both parents. The director stated that:

> You submitted a late-registered death certificate for the biological mother of the beneficiary and a letter regarding the whereabouts of the biological father. You indicated in the letter that the biological father of the beneficiary did not accept responsibility for the pregnancy and birth of the beneficiary.
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> However, as noted, the biological father did recognize the child as his own as his name appears on the child's birth certificate. You state in your letter that the father has abandoned the child. . . . You have not submitted any documentation from a competent government official that the biological father of the child did in fact, surrender his rights to the child after the birth of the child. Therefore, you have not established that the beneficiary is an orphan.

In response to the director's denial, counsel states that the petitioner sustained his burden of proving that the biological father abandoned and deserted the beneficiary, and has disappeared from the beneficiary's life. Counsel also submits a letter from the Western Regional Director, Department of Social Welfare,

Secondi, Ghana. According to counsel, the Department of Social Welfare handled the pre-adoption investigation and provided recommendations to the High Court of Justice during the proceedings to adopt the beneficiary by the petitioner and the petitioner's spouse. Counsel states that this evidence establishes that the biological father abandoned the beneficiary and disappeared from her life.

Pursuant to 8 C.F.R. § 204.3(b):

> *Abandonment by both parents* means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. . . .
>
> *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 term "abandoned" is a defined term within United States immigration law.[2] In order to apply this term to the facts of an orphan petition, there must be a showing that a child has two

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[2] The exact term found in 8 C.F.R. § 204.3(b) is *Abandonment by both parents*

parents[3]. If a child has a surviving or a sole parent, a petitioner need not establish that a child has been abandoned by both parents.

The director's reasons for denying the petition are confused. The director cited to the definition of *abandonment by both parents* found at 8 C.F.R. § 204.3(b); however, a review of the record reveals that the petitioner claims that the biological mother died in June of 1999. Thus, if the evidence of the biological mother's death is authentic, the beneficiary could not have been abandoned by both parents as the regulation defines that term; it only applies when a child has two (living) parents. It is unclear whether the director found the death certificate of the biological mother to be fraudulent or whether he misapplied the law to the facts of this case. For this reason, the director's decision must be withdrawn and he must enter a new decision that discusses the issues outlined below.

Although not explicitly stated in the denial letter, the director concluded that the biological father legitimated the beneficiary because "the biological father did recognize the child as his name appears on the child's birth certificate." According to the U.S. Department of State Foreign Affairs Manual Volume 9 (9 FAM Visas):

> Ghanaian birth documents do not indicate the marital status of the parents, and the appearance of a man's name on a birth document should not be taken as prima facie evidence of legitimate birth or subsequent legitimation.

Legitimacy is determined according to the law of the child's place of birth. *Matter of Rodriguez*, 18 I&N Dec. 9, 10 (INS 1980). The director cannot assume that the biological father legitimated the beneficiary simply because the biological father's name appears on the beneficiary's birth certificate. The Department of State specifically warns against making such an assumption. It is incumbent on the director to request evidence from the petitioner regarding the legitimacy laws of the country of the child's birth before determining whether a child has been legitimated.

More importantly, however, evidence of the biological mother's death and of the beneficiary's birth raises questions concerning the authenticity of the documents.

Regarding the biological mother's death certificate, the director referred to this document as "late-registered." A review of the certificate reveals that the biological mother's death was registered on December 22, 1999 more than six months after the event occurred on June 8, 1999. While this fact, by itself, does not make the document fraudulent, it does raise questions of its authenticity when viewed along with an accompanying affidavit from

[3] The term "parent" is defined at section 101(b)(2) of the Act.

who, on August 13, 2001, attested before the High Court in Sekondi that the biological mother's death was never registered. Other troubling aspects of the death certificate are that the death certificate does not indicate either the cause of death or the name of the medical practitioner who certified the cause of death. Additionally, the death certificate indicates that the biological mother died at her home when the affiant stated that the biological mother died from drowning and that her body was not discovered for several days after her death. The petitioner must explain the inconsistencies between information on the affidavit and the death certificate.

Regarding the beneficiary's birth certificate, it gives the date of the birth registration as June 18, 2001; the beneficiary was born on August 7, 1989. The name of the person registering the information (the informant) is (mother)." If the biological mother died on June 8, 1999, she would have been unable to register the beneficiary's birth more than two years after her alleged death. Furthermore, there is no explanation for why the beneficiary's birth was registered more than 11 years after the event. Again, these inconsistencies must be explained.

The Service should be satisfied with the authenticity of any foreign document that it relies upon to establish eligibility for a benefit. *Matter of Richard*, 18 I&N Dec. 208 (BIA 1983). Here, the authenticity of the death certificate and the beneficiary's birth certificate are in doubt. 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 upon 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, 591-92 (BIA 1988).

The beneficiary's birth certificate indicates that the beneficiary has an identified biological mother and father. The documents attesting to the death of the beneficiary's biological mother and to the birth of the beneficiary appear to be forgeries. This evidence will not be deemed probative absent independent and objective evidence that would clearly explain and rebut the disputed evidence. *Id.* Accordingly, the evidence will not be accepted to establish the death of the biological mother or the birth of the beneficiary. Upon review, the petitioner has not established that the beneficiary meets the definition of an orphan pursuant to section 101(b)(1)(F) of the Act, as the petitioner has not established whether the beneficiary has two living parents, whether she is the child of a living sole parent (biological mother), or whether she is the child of a surviving parent (biological father). The AAO notes that the petitioner submitted a letter from the Director of the Department of Social Welfare to the Service regarding the Department's pre-adoption investigation.

While this letter contains useful information, the petitioner should endeavor to obtain a copy of the report that the Social Welfare Director submitted to the High Court in Sekondi for the adoption of the beneficiary by the petitioner and his spouse. For example, the Director of the Social Welfare Department does not identify the evidence that he relied upon to conclude that the biological mother died in 1999, or to find that the biological father never provided support to the beneficiary.

The Service may not enter a final decision in this matter until the petitioner has been afforded an opportunity to present evidence to clarify these issues. Accordingly, the decision of the director will be withdrawn and the matter will be remanded to the director for a new decision. Within 60 days of the date of this decision, the petitioner must submit to the director any additional evidence concerning whether the beneficiary qualifies as an orphan that the petitioner may wish to submit for the director's consideration. Upon review of any additional evidence, the director shall enter a new decision.

Section 204(b) of the Act states:

> After an investigation of the facts in each case . . . the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State.

Upon reviewing the petitioner's response to this remand, the director must, therefore, deny the petition if the director determines, on the basis of the evidence of record, that the facts stated in the petition are not true.

Accordingly, the decision of the director will be withdrawn and the matter will be remanded for further proceedings consistent with this decision.

ORDER: The decision of the district director is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision, which if adverse to the applicant, is to be certified to the AAO for review.