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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

File: [redacted] Office: MIAMI, FLORIDA (TAMPA) Date: OCT 17 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

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 Citizenship and Immigration Services (CIS) 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 District Director, Miami, Florida denied the immigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO) for review. The AAO remanded the matter to the district director for entry of a new decision. On July 2, 2003, the director entered a new decision and certified that decision to the AAO for review. The district director's decision will be affirmed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on July 29, 2002. The petitioner is a 65-year-old married, naturalized citizen of the United States. The beneficiary is 12 years old at the present time and was born in Nigeria on January 19, 1991. The record indicates that the petitioner and his spouse adopted the beneficiary in Nigeria on April 24, 2002.

The district director denied the petition because the petitioner failed to submit requested information including the beneficiary's birth certificate, a full home study, and court records indicating the final disposition of the petitioner's arrests.

The petitioner has provided no statement or additional evidence on notice of certification.

Section 101(b)(1)(F) of the Immigration and Nationality Act (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.

The record of proceeding contains the Form I-600 petition and accompanying documentation, the district director's initial denial notice, an appeal, the AAO's remand to the district director, the district director's subsequent request for additional evidence, the district director's final denial and the notice of certification.

On March 12, 2003, the district director informed the petitioner that he had obtained results of a mandatory, confidential investigation of the petitioner's identity and background. According to the investigation, the petitioner had been arrested. The district director requested the petitioner to provide the police arrest reports and the final court dispositions of all charges filed against him. Additionally, the district director requested that the petitioner submit the beneficiary's birth

certificate, a certified copy of the beneficiary's biological father's death certificate, and a copy of the beneficiary's biological mother's latest marriage certificate. The district director requested that the petitioner submit a home study that conformed to both Florida state law and immigration law. The petitioner failed to directly respond to the request. A member of Senator Graham's Congressional staff forwarded a copy of the beneficiary's biological father's death certificate, which was included in the record.

The district director denied the petition, in part, due to the petitioner's incomplete response to the district director's request for additional information.

As shall be discussed, the petitioner has not presented sufficient evidence to overcome the district director's decision to deny the petition. Therefore, the district director's decision to deny the petition will not be overturned.

DISPOSITION OF ARRESTS

The district director stated in his request for additional evidence that the results of a mandatory, confidential investigation of the petitioner's identity and background showed that the petitioner had been arrested. The district director, therefore, requested the petitioner to provide the police arrest report and the final court disposition of all charges.

Because the investigation of the petitioner's identity and background revealed a prior arrest, the petitioner bears the burden of providing Citizenship and Immigration Services (CIS) with proper documentary evidence of the disposition of such an arrest. Proper documentary evidence consists of originals or certified copies of all final court dispositions, including those that have been dismissed, expunged, diverted, *nolle prosse* and "no papered."

If a court disposition or police record is not available, the petitioner must provide official or certified evidence from the appropriate law enforcement agency or court confirming the unavailability of the record. Additionally, all documentation or evidence of its unavailability must be marked as official or certified copies.

As the petitioner failed to submit any information regarding his arrests, he has not overcome this portion of the district director's objection to the approval of the petition.

HOME STUDY REPORTS

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

> In addition to meeting any State, professional, or

> agency requirements, a home study must include a discussion of . . . [an] assessment of the capabilities of the prospective parents to properly parent the orphan . . . [and] the finances of the prospective adoptive parents . . . . If the petitioner and/or spouse, if married, disclose(s) any *history of abuse and/or violence* . . . the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

It is noted that the record of proceeding contains a one-paragraph home study report that clearly does not meet the requirements in the regulation cited above.

NOT AN ORPHAN.

The record, as it is presently constituted, contains insufficient evidence regarding whether the beneficiary meets the definition of an orphan as outlined in 8 C.F.R. § 204.3(b).

First, the petitioner has not submitted a copy of the beneficiary's birth certificate in order to establish the date and place of the beneficiary's birth, and the name(s) of the beneficiary's parent(s).

Second and finally, on the Form I-600, the petitioner stated that the beneficiary has only one parent who is the sole or surviving parent and who is incapable of providing for the beneficiary's support. However, this statement, by itself, is insufficient evidence in a determination of whether the beneficiary meets the definition of an orphan. As previously stated, an orphan is defined in section 101(b)(1)(F) of the Act 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.

The record does not contain sufficient evidence that the beneficiary is an orphan due to the death, disappearance of, abandonment or desertion by, or separation or loss from, *both parents*. The record also does not contain any evidence that the beneficiary is an orphan because he is the child of a sole or surviving parent who is incapable of providing for the beneficiary's proper care and who has in writing irrevocably released the beneficiary for emigration and adoption. Without such evidence, CIS cannot determine whether the beneficiary can be classified as an orphan.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The district director's decision, dated July 2, 2003, denying the petition is affirmed.