



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

FA

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

Date:

JUL 20 2001

File: [REDACTED] Office: New York, New York

IN RE: Petitioner: [REDACTED]  
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 PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, denied the visa petition to classify the beneficiary as an immediate relative, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reopen or reconsider. We will grant the motion, but affirm the previous decisions of the director and the Associate Commissioner.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on October 28, 1997. The petitioner is a 50 year-old citizen of the United States, who is presently divorced. The beneficiary, who at this time is 12 years old, is said to be born in Villa Vasquez, Dominican Republic, on September 28, 1988. The beneficiary's biological mother and biological father are unknown. The English translation of a document entitled "Judicial Service" indicates that the petitioner was awarded legal custody of the beneficiary on June 18, 1998.

The district director denied the petition after determining that the petitioner had not established that the beneficiary was an orphan due to the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The district director also determined that the petitioner had not submitted a birth document to establish the beneficiary's biological parentage. The Associate Commissioner affirmed the director's decisions on these issues.

On motion, counsel reiterates that the beneficiary's biological parents abandoned her when she was 1-day old, at which time the petitioner began to care for her. According to counsel, there is no formal documentation to show the parentage of the beneficiary's parents and by requesting such documentation, the Service is not taking into consideration the difficulty of securing documents from "third world" countries. Counsel states that the circumstances in this case are unique, and warrant favorable action by the Associate Commissioner.

Although the circumstances in this case are compelling, we conclude that the petitioner has not sustained her burden of proving that the biological parents deserted the beneficiary or have disappeared as those terms are defined in the regulations.

Counsel has maintained throughout the processing of this petition that the biological parents abandoned the beneficiary at birth by their desertion and disappearance.

According to 8 C.F.R. 204.3(b):

*Desertion by both parents* means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and

that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

AND

*Disappearance of both parents* means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Concerning whether the biological parents deserted the beneficiary, the petitioner has never demonstrated that the beneficiary was ever a ward of a competent authority pursuant to the laws of the Dominican Republic. Concerning whether the biological parents disappeared, the petitioner has never demonstrated that a competent authority in the Dominican Republic has decided that a reasonable effort was undertaken to locate the biological parents.

The petitioner has submitted a custody determination from the Judicial Service in the Dominican Republic. The only conclusion made by the tribunal was that the tribunal "has conducted a previous study of the documents submitted and of the statement of the Mother... ." The tribunal does not state for the record the documents that it reviewed, so that we may conclude, with a degree of certainty, that a reasonable effort was made to locate the biological parents and their whereabouts are unknown. The tribunal also failed to state whether the beneficiary was a ward of a competent authority as a result of the biological parents' desertion of her. Without this information, we cannot find that the beneficiary qualifies for classification as an orphan.

The burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, we will not disturb the decisions of the district director and the Associate Commissioner.

**ORDER:** The previous decisions of the director and the Associate Commissioner are affirmed.