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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted]

Office: MIAMI DISTRICT OFFICE

Date: MAY - 9 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Application: 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]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

Public Copy

INSTRUCTIONS:

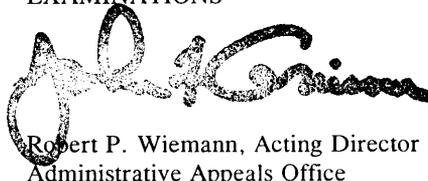
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the District Director, Miami, Florida. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on March 22, 2000. The petitioner is a 49 year-old married citizen of the United States. The beneficiary, who at this time is 12 years old, was born in Esperanza, Dominican Republic, on November 19, 1988. The beneficiary's biological mother, [REDACTED], has been identified in the record of proceeding, and is living. The beneficiary's biological father, [REDACTED], has been identified in the record of proceeding, and is living. He is the brother of the petitioner.

The district director denied the petition after determining that the beneficiary did not meet the statutory definition of "orphan" because the submitted evidence failed to establish that the beneficiary had been abandoned by both parents.

On appeal, counsel states that the Service erred in looking at the adoption decree because under Dominican law, both parents must consent to an adoption. Counsel maintains that even though the biological mother consented to the adoption, she had previously forsaken any of her parental rights. Counsel also argues that the care of the beneficiary by the petitioner's sister does not establish that the biological father relinquished the beneficiary to a specific person pending the adoption. Counsel requests an additional 90 days from September 18, 2000 to submit additional evidence.

The appeal was filed on September 18, 2000. As of this date, counsel has not submitted the additional evidence that he stated would be forwarded to the Administrative Appeals Office (AAO) within 90 days. Accordingly, the record is considered complete.

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 indicates that both of the beneficiary's biological parents are still living. Therefore, in order for the beneficiary



to be considered an orphan, the petitioner must establish that the beneficiary was abandoned by both of her parents within the meaning of the regulation.

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

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)**. . . . Similarly, the relinquishment or release of the child by the parents to **a third party for custodial care in anticipation of, or preparation for adoption does not constitute abandonment** unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. [emphasis added]

The director denied the petition because the adoption decree indicated that the biological parents agreed to the adoption of the beneficiary by the petitioner and the petitioner's husband. The director considered this to be a "direct adoption," whereby the biological parents transferred their rights to a specific person (petitioner). The director also found that the care of the beneficiary by the petitioner's sister, who is also the sister of the biological father, showed that the biological parents relinquished the beneficiary for custodial care in anticipation of an adoption by a specific person (petitioner). The director concluded that these two actions showed that the beneficiary was not abandoned within the meaning of the regulation.

On appeal, counsel does not present any specific argument or evidence in rebuttal. Counsel only states that the director "erred" in reaching his conclusions.

Based upon a review of the record, the director's findings were reasonable given the evidence in the record. The record of proceeding contains a statement by the petitioner and the petitioner's husband, which states that:

My sister heard about this problem with this child [beneficiary], and called me, and asked me if I could take care of [redacted] [beneficiary]. I went to Santo Domingo and talked to her father, and he decided that I could have her in order to adopt her. I found her mother, and talked to her about [redacted] adoption. She [sic] agreed to sign the papers for the adoption. She told me that she was not able to take care of [redacted]

This statement establishes that the petitioner arranged the adoption of the beneficiary directly with the biological parents. Prior to the petitioner's visit with the biological parents, the biological parents had not relinquished their parental rights for an adoption of their child. It is clear from this statement that the beneficiary's biological parents gave her up for adoption to a specific person, who in this case is the petitioner. As cited in the regulation, a child is not considered abandoned if his or her parents transfer their parental right to a specific person.

Additionally, the beneficiary was being cared for by the biological father's sister, who is also the sister of the petitioner. The biological father permitted his sister to care for the beneficiary pending resolution of the beneficiary's adoption by the petitioner. This type of arrangement is also prohibited by the regulation, which precludes a parent from relinquishing his or her rights to a third party for custodial care in anticipation of, or preparation for adoption, unless the third party is authorized to act in such a capacity.

Accordingly, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act. For this reason, the petition may not be approved.

As always in these proceedings, 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 met that burden.

ORDER: The appeal is dismissed.