



U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: NEW ORLEANS, LA (LOU) Date: **DEC 17 2002**

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 APPLICANT:

SELF-REPRESENTED

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director of the New Orleans, Louisiana district office denied the immigrant visa petition. The petitioner appealed the decision and the Associate Commissioner for Examinations through the Administrative Appeals Office (AAO), remanded the matter back to the district director to request additional evidence and render a new decision. The petitioner provided the district director with some of the requested documentation and the district director denied the petition again. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on June 21, 2001. The petitioner is a 51-year-old married citizen of the United States. The beneficiary is presently two years of age and was born on June 30, 2000 in the Philippines.

The district director most recently denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan found at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act).

On appeal, the petitioner submits a letter and asserts that the district director's decision is inconsistent with the prior Administrative Appeals Office decision.

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.

In a decision dated September 11, 2002, the district director informed the petitioner that the I-600 petition was denied because "[the beneficiary] has been lawfully adopted in the Republic of the Philippines. . . . Therefore, [the beneficiary] an adopted child, does not meet the eligibility criteria as an orphan."

In response, the petitioner states: "The decision rendered is completely off the mark and goes directly contrary to what the Appeal Board previously ordered."

The district director's September 11, 2002 decision is without legal foundation. The decision shall be withdrawn. There is

nothing in the language of the Act that indicates that an adopted child cannot fit the definition of an orphan.

In a decision dated May 2, 2002, the AAO determined that "it appears that the beneficiary is the child of a sole parent - the biological mother. However, the record is lacking sufficient evidence to conclusively demonstrate this fact." In response to a request for additional evidence, the petitioner provided the Service with two affidavits from the beneficiary's biological parents that state that they are not married to one another. The petitioner also provided the Service with a copy of the adoption decree that indicates that the beneficiary is an "illegitimate son as his parents did not marry." The petitioner has met his burden of proof in establishing that the beneficiary is the child of a sole parent.

In its May 2, 2002 decision, the AAO also indicated that the petitioner needed to provide the Service with evidence that the sole or surviving parent is incapable of providing the proper care for the beneficiary. In his response to the district director's request for additional evidence, the petitioner provided the Service with a copy of a home study and an adoption decree. In the adoption decree, the court found that the beneficiary's biological parents gave their consent to the adoption of their child because they do not have the financial capability to maintain their son. The home study states that the beneficiary is "living a miserable life. His father is jobless and his mother has left them. Paternal grandmother is having difficulty making both ends meet just to buy the things the minor needs." The petitioner has met his burden of proof of establishing that the sole parent is incapable of providing proper care for the beneficiary.

The petitioner has failed, however, to provide the Service with the written consent of the beneficiary's mother and father to irrevocably release the child for adoption and *emigration*. The May 2, 2002 decision specifically directed the petitioner to present this evidence. Instead of complying with the request, the petitioner wrote: "the consent to adopt specifically states my wife and myself as the adopters. Since my wife is the natural father's aunt and it was well known by all that we live in the United States, the consent to emigrate is not only implied but understood." The petitioner's argument is not persuasive. The law specifically requires that a minor who is the child of a sole parent can be considered an orphan only if the mother has expressly consented in writing to the minor's adoption and emigration. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i). There must also be specific written consent, both to the minor's adoption and to the minor's emigration, from the biological father when, as here, the biological father has had a bona fide parental relationship with the minor. Section 101(b)(2) of the Act, 8 U.S.C. 1101(b)(2). A petitioner's claim

that there was an implicit "understanding" that the minor would emigrate is not sufficient.

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, and has failed to comply with a specific request for essential evidence. It is concluded, therefore, that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F).

ORDER: The appeal is dismissed.