



**F1**

U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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

Date:

**2 JUL 1972**



File: OSANNA (E58)

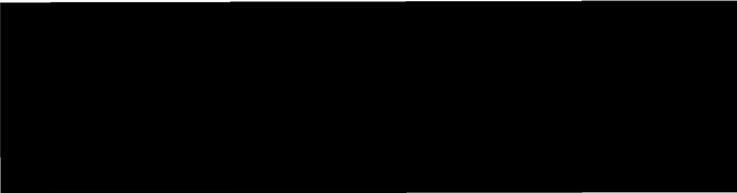
Office: San Francisco, California (SAC)

IN RE: Petitioner:



Application: Application for Advance Processing of Orphan Petition 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:



**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 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 Officer-in-Charge (OIC), Sacramento, California, denied the application and the matter is now before the Associate Commissioner for Examinations on appeal. The decision of the OIC will be withdrawn and the application will be remanded for a new decision.

The petitioner filed the Application For Advance Processing of Orphan Petition (Form I-600A) with the OIC on August 2, 2000. The applicant is a 32-year-old married citizen of the United States. The record indicates that the petitioner has identified a child in the Philippines that she and her spouse wish to adopt.

The OIC denied the application after determining that the prospective beneficiary did not qualify as an orphan, as defined by section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F).

On appeal, counsel asserts that the OIC's decision was improper as it was not based on evidence contained in the record of proceeding.

Section 101(b)(1)(F) of the Act 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.

Title 8, Code of Federal Regulations, section 204.3(h)(2) states:

*Director's responsibility to make an independent decision in an advanced processing application. No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan. If the director has reason to believe that a favorable home study, or update, or both are based on an inadequate or erroneous evaluation of all the facts, he or she shall attempt to resolve the issue with the home study preparer, the agency making the recommendation pursuant to paragraph (e)(8) of this section, if any, and the prospective adoptive parents.*

As noted in the regulation regarding the advance processing application, the proper focus of the adjudication is whether the record establishes that the prospective adoptive parents will provide proper care for the orphan. In the present matter, the OIC focused instead on whether the prospective beneficiary qualifies as an orphan pursuant to section 101(b)(1)(f) of the Act. This question, however, should be addressed at the time the Petition to Classify Orphan as Immediate Relative (Form I-600) is adjudicated. As the decision was not based on the proper law and failed to address whether proper care would be provided to an orphan, the decision of the OIC will be withdrawn and the matter will be remanded for a new decision.

Although the decision will be withdrawn, it is noted that the OIC raised a significant issue when he noted that a Service investigation revealed that the natural mother of the child being considered for adoption is living and gainfully employed in the United States. This issue must be addressed at the time that the Form I-600 is adjudicated.

The decision of the OIC will be withdrawn and the matter will be remanded so that the director may enter a new decision in accordance with the proper law and considerations. After completion of the review, if the OIC finds that the prospective adoptive parents have not established that they will provide proper care for an orphan, the OIC shall enter a new decision which will be certified to the Associate Commissioner for review, in accordance with 8 C.F.R. 103.4.

**ORDER:** The OIC's decision dated August 24, 2001 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 Associate Commissioner for review.