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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

25 JUL 2002

File: [redacted] Office: HO CHI MINH CITY, VIETNAM Date:

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]

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 Director, Chicago, Illinois, initially approved the immigrant visa petition. Based upon an investigation conducted by the Officer-in-Charge (OIC), Ho Chi Minh City, Vietnam, the OIC determined that the beneficiary was not eligible for the benefit sought. Accordingly, the OIC served the petitioner with notice of his intent to revoke the petition and the petition was ultimately revoked on June 25, 2001. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on December 20, 2000. The petitioner is a 44-year-old married citizen of the United States. The beneficiary is 4 years old at the present time and was born in Cao Lao, Vietnam on December 2, 1997.

The OIC denied the petition after determining that the beneficiary did not meet the statutory definition of an orphan.

On appeal, counsel submits a brief and evidence already included in the record of proceeding. In part, counsel asserts that the beneficiary is the child of a sole parent who is incapable of providing for the beneficiary's basic needs, consistent with the local standards of Vietnam.

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 a cable indicating the approval of the petitioner's Form I-600A advance processing application, the Form I-600 petition and accompanying documentation, the OIC's Notice of Intent to Revoke, the petitioner's response to the OIC's Notice, the OIC's final revocation notice, and the appeal documents.

In the April 4, 2001 Notice of Intent to Revoke, the OIC informed the petitioner that his office had conducted an investigation into the claims made by the petitioner in the I-600 petition. The petitioner had claimed that the beneficiary was the child of a sole parent (biological mother) who was incapable of providing for the beneficiary's basic needs. According to the OIC, his

investigation uncovered the following:

1. The birth of the beneficiary was registered very late, approximately 3 years after the beneficiary's birth and on the same day that the beneficiary was allegedly relinquished to a welfare center ("the welfare center").
2. The director of the center to which the beneficiary was allegedly relinquished stated that the biological mother never actually relinquished the beneficiary to the center and further stated that the beneficiary had never actually resided at the center. The director stated that the beneficiary had always lived with her parents.
3. A Service investigator reviewed the beneficiary's adoption file, which contained three different birth certificates and two different final adoption decrees.

The OIC determined from the investigation that the beneficiary had two living parents who both registered the beneficiary's birth; therefore, the OIC did not find it plausible that the beneficiary was the illegitimate child of a sole parent. The OIC further concluded that because the beneficiary was not relinquished to the welfare center as the adoption papers indicated, the adoption of the beneficiary by the petitioner was not valid under Vietnamese law. Finally, the OIC asserted that even if the beneficiary had been legitimately relinquished to the welfare center, evidence in the record indicated that the beneficiary was identified for adoption by the adoption facilitator while the beneficiary was still in the custody of her parents. The OIC concluded that the beneficiary was, therefore, taken from the biological parents to be "processed" through the welfare system. The OIC found that this action constituted fraud under United States immigration law.

In response to the OIC's notice, counsel stated that the petitioner did not perpetrate fraud as suggested by the OIC. Counsel stated that the biological mother never relinquished the beneficiary to the welfare center despite attempts by the adoption facilitator to persuade the biological mother to relinquish the beneficiary to the center pending the adoption. Counsel maintained that the beneficiary is the child of a sole parent (biological mother) because the biological father was married to another woman at the time he was married to the biological mother. Counsel calls the Service's attention to a document in the record where a Vietnamese court declared the marriage between the biological parents to be "illegal" and states that this document establishes that the beneficiary is an illegitimate child despite the biological father's name on the beneficiary's birth certificate.

The OIC revoked the petition on June 25, 2001 for the reasons stated in the Notice of Intent to Revoke. The OIC was not

persuaded that the adoption was legitimate since the biological mother never relinquished the beneficiary to the welfare center and because it appeared that the beneficiary was identified for adoption by the facilitator. Regarding the alleged illegality of the marriage between the biological parents, the OIC maintained that the beneficiary's legitimacy is established by the biological father's name on the birth certificate regardless of whether the marriage between the parents was declared illegal or invalid.

On appeal, counsel makes several statements in rebuttal to the OIC's allegations. Each of counsel's statements, and the Service's responses will be separately addressed.

#### I. VALIDITY OF THE ADOPTION

On appeal, counsel maintains that the Service has never provided the petitioner with evidence to support its claim that the beneficiary was never physically relinquished to the welfare center. According to counsel, the Service claims that it interviewed the director of the welfare center, but it has never provided the petitioner with a written report of the director's statements. Counsel maintains that the statements of the director are, therefore, hearsay, and cannot be used to establish that the adoption was illegal because the beneficiary was never in the custody of the welfare center. Regarding the issue of fraud in the preparation of the documents by the welfare center, counsel maintains that the petitioner did not have an intent to deceive the Service and, therefore, should not be considered as a person who has attempted to commit fraud for the purposes of classifying the beneficiary as an orphan.

Counsel's statements on appeal are not persuasive evidence that the adoption of the beneficiary was valid under Vietnamese law. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, counsel does not persuasively establish that no fraud was perpetrated by the parties working in behalf of the petitioner to secure the adoption of the beneficiary.

As previously stated, the OIC claims that the adoption is invalid under Vietnamese law because it was based upon findings in two documents that were executed by the welfare center. The OIC contends that the facts in these two documents were false and the falsification of the documents were used to deceive Vietnamese officials and Service officials into believing that the biological parents abandoned the beneficiary to the welfare center. The two documents related to the beneficiary's adoption, which were executed by the welfare center, are as follows:

1. **Decision (on receiving child into the Social Welfare Center) ["Decision"]**.  
This document indicates that on October 26, 2000, the welfare center decided to receive the beneficiary into its center.
2. **Agreement of Director of the Center Raising Orphan, Abandoned or Invalid Children, on Offering Child to Foreigners for Adoption ["Adoption Agreement"]**.  
This document, which is also dated October 26, 2000, states that "she [beneficiary] is being raised at our Center to be adopted by the above mentioned persons." The Agreement also indicates that the beneficiary was received into the center on October 26, 2000.

Additionally, the record contains a document that was utilized in the adoption proceeding, which was executed by the biological parents. This document, called **Agreement** ["Relinquishment Agreement"] is dated September 8, 2000 and indicates that on September 8, 2000, both the biological father and the biological mother agreed to offer the beneficiary to the welfare center.

According to the Service's investigative report, the director of the welfare center, Mr. Hung, told Service investigators that the biological parents had never actually relinquished the beneficiary to the welfare center; the welfare center had simply been utilized to process the beneficiary's adoption documents. The OIC disclosed this information to the petitioner in his Notice of Intent to Revoke, and in May of 2000, counsel provided evidence in rebuttal to the OIC's notice.

In this rebuttal, counsel never alleged that the welfare center director's statement was either hearsay or inaccurate, as counsel now claims on appeal. Rather, counsel confirmed the director's statement that the beneficiary was never a ward of the welfare center as the adoption documents claimed. Counsel simply maintained that despite a failure of the biological parents to relinquish the beneficiary, no intent to deceive or to perpetrate fraud was ever done by the petitioner, the adoption agency, or the adoption facilitator.

Regarding the relinquishment of the beneficiary by the biological parents to the welfare center, counsel stated that:

. . . However, the birth mother still could not overcome her fear that her child might be made a slave. Just a few days later, the birth mother, once again, backed out of her promise to put the child in the orphanage, as reflected in AHO's Janice Moore's telephone conversation with petitioner [REDACTED] on November 2, 2000:

Per Mary - *He is not physically in orphanage.  
Her mom finally signed the paperwork, but will not let  
her physically go to orphanage.*

. . . Thus, when the petitioner finally traveled to Vietnam in February, 2001, the beneficiary had not been placed in the orphanage, despite the best efforts of all involved.

Both the welfare center director and counsel affirmed the OIC's conclusion that the beneficiary was never relinquished to the welfare center as the adoption documents indicated. Thus, it is clear that the Decision, the Adoption Agreement, and the Relinquishment Agreement contain false, inaccurate and misleading information.

A statement, or claim, or document is "fraudulent" if it was falsely made, or caused to be made, with the intent to deceive. To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979).

The beneficiary was never relinquished to the welfare center either on September 8, 2000, the date the biological parents signed the Relinquishment Agreement, on October 26, 2000, the date the welfare center executed the Decision and the Adoption Agreement, or anytime thereafter. Therefore, the only conclusion that can be made is that the documents were executed with a specific intent to deceive both Vietnamese and Service officials into believing that the beneficiary was abandoned by both of her parents in order to facilitate an adoption of the beneficiary by the petitioner.

It is interesting to note the sequence of events regarding the alleged willingness of the biological parents to forsake their parental rights over the beneficiary. Although both biological parents signed the September 8, 2000 Relinquishment Agreement in which they stated that they were voluntarily giving the beneficiary to the welfare center, such a transfer of custody never occurred. In fact, evidence in the record clearly indicates that the adoption facilitator made numerous attempts to persuade the biological parents to turn custody of the beneficiary over to the welfare center and that the biological parents did not actually relinquish the beneficiary until the petitioner traveled to Vietnam in February 2001 for the official "giving and receiving" ceremony.

These events, combined with the falsification of the documents, indicate that the biological parents did not willfully abandon the

beneficiary, which, therefore, required the welfare center to execute false documentation to show that the beneficiary was abandoned by both parents. Since the alleged events described in the September 8, 2000, "Agreement," the October 26, 2000, "Adoption Agreement," and the October 26, 2000, "Decision" did not in fact take place as alleged in these documents, it is concluded that these documents are entitled to no evidentiary weight.

The petitioner has not, therefore, met her burden of establishing that the adoption is valid under Vietnamese law. As previously stated, it is evident that the documents prepared by the biological parents and the welfare center inaccurately depicted the events that transpired regarding the transfer of custody of the beneficiary from her parents to the welfare center. Yet, the petitioner has never presented any creditable evidence from the Vietnamese authorities to establish the validity of the adoption, notwithstanding the fraudulent documents. Specifically, the petitioner has never presented a citation from Vietnamese law or regulation, or affidavits from the appropriate Vietnamese officials, that the documents from the biological parents and the welfare center, which contain obvious inaccuracies, are sufficient to support an international adoption. In immigration proceedings, the law of a foreign country is a question of fact that must be proven by the petitioner if she relies on it to establish eligibility for an immigration benefit. Matter of Annang, 14 I&N Dec. 502 (BIA 1973). In particular, a petitioner must show that a foreign adoption is valid under the law of the foreign country. Mila v. INS, 678 F.2d 123 (10<sup>th</sup> Cir. 1982) cert. denied 459 U.S. 1104; Matter of Khatoon, 19 I&N Dec. 153 (BIA 1984); Matter of Mendoza, 18 I&N Dec. 66 (BIA 1981). As previously noted, the petitioner carries the burden of proving that the adoption satisfies all foreign legal requirements. Mila v. INS. In the present case, the petitioner has not satisfied this burden.

## II. LEGITIMACY OF THE BENEFICIARY

On appeal, counsel also maintains that the beneficiary was born out-of-wedlock because the biological father was already married to another woman at the time he was married to the biological mother. Counsel maintains that because a Vietnamese court declared that the marriage between the biological parents was illegal, the beneficiary is illegitimate:

Here, the child was born out of wedlock, because the birth father had already been married before he purportedly married the beneficiary's mother. The marriage was thus illegal from the outset, and so the beneficiary was born illegitimately. . . .

The record does not contain the biological parents' marriage certificate; however, the record does contain an *Excerpt of the*

**Civil Sentence** ("Excerpt"), dated August 29<sup>th</sup>, 2000, which states, in pertinent part:

The Civil Court of Cao Loc - Lang Son decides:

1 - Canceled the illegal marriage between [REDACTED] and [REDACTED] because they trespassed the provision No.5, and provision No.8 of the marital and familial law.

2 - About their children: Ms. [REDACTED] as the right to take care of the child named [REDACTED] 3 years old, and Mr. [REDACTED] was delivered to take care of the child named [REDACTED] 7 years old. Both of them have the right to visit their children.

Subsequent to the court's declaration, however, the biological parents registered the beneficiary's birth on September 8, 2000, placing the biological father's name on the birth certificate. In his denial notice, the OIC stated the following concerning legitimation laws in Vietnam:

According to Vietnamese family law, as confirmed by Ministry of Justice officials, a natural father is permitted to legitimize his child through the act of registering the child's birth and entering his name as the father, even though the parents have not registered their marriage. Thus a father can legitimize a child born out of wedlock, or even born of an adulterous affair . . . .

On appeal, counsel contends that the OIC did not provide any citation to Vietnamese law to substantiate his assertion that the biological father legitimated the beneficiary. Counsel further contends that even if the OIC was correct in finding that the biological father legitimated the beneficiary under Vietnamese law, such legitimation would not be recognized under United States immigration law because the beneficiary was not in the legal custody of the biological father at the time of the legitimation, as required by section 101(b)(1)(C) of the Act. Finally, counsel notes that the definition of sole parent that is found at 8 C.F.R. 204.3(b) allows a child to be considered the child of a sole parent if the father has severed all parental ties and has, in writing, irrevocably released the child for emigration and adoption. Counsel states that the biological father severed all parental ties to the beneficiary by living apart from the biological mother and the beneficiary. Counsel also states that the biological father's signature on the Relinquishment Agreement indicates that he has, in writing, irrevocably released the beneficiary for emigration and adoption.

While counsel contends that the beneficiary is illegitimate despite the biological father's name on the birth certificate, the petitioner has not presented sufficient evidence to overcome the OIC's conclusions on this issue.<sup>1</sup>

On appeal, counsel claims that the OIC did not support his allegation that the beneficiary was legitimated under Vietnamese law. However, in the Notice of Intent to Revoke, the OIC informed the petitioner that the evidence indicated that the beneficiary had two parents. As section 291 of the Act states that the burden of proof rests solely with the petitioner in visa petition proceedings, the petitioner bears the burden of establishing through credible documentary evidence that the biological father never legitimated the beneficiary by placing his name on the beneficiary's birth certificate.

For example, the petitioner has not provided any citation from Vietnamese family law or a legal opinion regarding the issue of legitimation of children in Vietnam. If the petitioner alleges that the OIC is relying on incorrect information about the laws of legitimation in Vietnam, it is the petitioner's burden, not the Service's, to present persuasive evidence to show that the OIC's conclusions were in error. Absent objective evidence, there is no reason to believe that the information regarding Vietnamese legitimation laws, which was cited by the OIC and confirmed by a Ministry of Justice official, was not credible. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel also claims that even if the beneficiary had been legitimated by the biological father, such legitimation would not be recognized under section 101(b)(1)(C) of the Act because the beneficiary was not in the legal custody of the biological father at the time of the legitimation. It is settled, however, that a father who has legitimated a child is presumed to have legal custody of the child. Matter of Rivers, 17 I&N Dec. 419 (BIA 1980). This presumption continues unless there is affirmative evidence that the father's legal custody has been terminated by law. *Id.* Counsel states that the August 29, 2000 Excerpt, in which the court declared the marriage between the biological mother and father illegal, indicates that the biological mother was granted "full custody" of the beneficiary. Therefore, counsel alleges that as of the date of the beneficiary's birth registration on September 8, 2000, the beneficiary was not in the custody of the biological father.

<sup>1</sup> The Law Library of Congress, citing Vietnam's Marriage and Family Law of January 1987, supports the OIC's conclusion that registering the father's name in the birth record legitimates the child.

Section 101(b)(1)(C) of the Act defines a "child" as:

a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation . . . .

According to counsel, the court in its August 29, 2000 decision granted full custody of the beneficiary to the birth mother, not the birth father. A review of the language in the Excerpt, however, does not support counsel's conclusions. The August 29, 2000 Excerpt states that:

Ms. [redacted] [the biological mother] **has the right to take care of the child named [redacted] [the beneficiary], 3 years old, and Mr. [redacted] [the biological father] was delivered to take care of the child named [redacted] 7 years old. Both of them have the right to visit their children.**

(Emphasis added.) There is nothing in the Excerpt to indicate that the beneficiary was not in the legal custody of the biological father at the time of legitimation. Although the court granted the biological mother "the right to take care of" the beneficiary, the court also granted the biological father visitation rights. Clearly, the father continues to enjoy at least some parental rights. Again, the petitioner has not presented any citation from Vietnamese law or a legal opinion regarding custody issues in Vietnam to show that the court's declaration stripped the biological father of any type of legal custody over the beneficiary. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, *id.* This requirement is particularly noteworthy in light of Matter of Rivers, *supra*, because, under that case, the Service must presume that the father had legal custody of the child absent proof that this custody has actually been terminated by law.

Finally, counsel notes that the definition of sole parent that is found at 8 C.F.R. 204.3(b) allows a child to be considered the child of a sole parent if the father has severed all parental ties and has, in writing, irrevocably released the child for emigration and adoption. 8 C.F.R. 204.3(b) states, in pertinent part:

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.

Here, the petitioner has not sufficiently established that the beneficiary is illegitimate and has not acquired another parent. Therefore, the biological father's written relinquishment of his parental rights, by itself, is not sufficient to establish that the beneficiary is the child of a sole parent. Moreover, as stated above, the September 8, 2000, "Agreement" is not entitled to any evidentiary weight. Even if the petitioner had established the child's claimed illegitimacy, the September 8, 2000, "Agreement" would not constitute a valid relinquishment.

### III. CONCLUSIONS

As the record of proceeding is presently constituted, there is insufficient evidence to conclude that the beneficiary is the child of a sole parent or that both parents abandoned the beneficiary. The documents submitted in support of the petition, which include the Decision, the Adoption Agreement, and the Relinquish Agreement, all appear to have been fraudulently made in order to facilitate this particular adoption, and accordingly have no evidentiary weight. Therefore, there is insufficient evidence to find that the adoption of the beneficiary was valid under Vietnamese law or that the beneficiary is the child of a sole parent.

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. It is concluded 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 Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F).

**ORDER:** The appeal is dismissed.