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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



File: [Redacted]

Office: BANGKOK, THAILAND

Date: SEP 11 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

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 of the Bangkok, Thailand district office denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the petition will be approved.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on November 6, 2001. The petitioner is a 50-year-old married citizen of the United States. The beneficiary is seven years old at the present time and was born in Thailand on June 23, 1995. The petitioner and his spouse adopted the beneficiary according to the laws of Thailand on October 26, 2001.

The director denied the petition because the petitioner failed to establish that the beneficiary is an orphan as defined at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act). Specifically, the director stated that the biological mother had the ability to provide proper care for the beneficiary. The director also found that the petitioner committed fraud by noting on the Form I-600A¹, Application for Advance Processing of Orphan Petition, that a child had not yet been identified when the evidence indicated that the petitioner had already known that he would be seeking to adopt the beneficiary.

On appeal, the petitioner submits a statement and additional evidence.

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

The record indicates that the petitioner filed the I-600 petition in person at the Bangkok district office on November 6, 2001. That same day, a Service officer interviewed the petitioner and based upon this interview, the director issued a Notice of Intent to Deny the orphan petition.

According to the Notice, the petitioner stated that the biological

¹ It is noted that there is no I-600A application in the record. The district director referred to an I-600A in her Notice of Intent to Deny, and to an I-600 petition in the denial notice.

mother was employed in a family-owned restaurant and that she lived in a family-owned house along with her mother, sister, and two children, one of whom was the beneficiary. The petitioner further claimed that he and his spouse were seeking to adopt the beneficiary so that she could have a better life.

The director concluded from the petitioner's statements that the biological mother was a sole parent; however, the director did not find that the biological mother was unable to provide for the beneficiary's basic needs. According to the director, the beneficiary lives in a "well-established home with an extended family" and the biological mother seemed able to provide the necessary financial support for the beneficiary. The director also stated that the petitioner's reasons for adopting the beneficiary "appear to be economic and are not consistent with the intention of this statute."

Additionally, the director stated that the petitioner misrepresented a material fact when he and his spouse signed the Form I-600A, Application for Advance Processing of Orphan Petition. The director noted in the Notice of Intent to Deny the I-600A that the petitioner claimed that a child had not been identified for adoption when "it appears that your intention was to seek immediate relative classification for [the beneficiary], your spouse's niece." The director concluded that such an alleged misrepresentation was material to the beneficiary's eligibility for orphan classification.

In a November 19, 2001 response to the Notice of Intent to Deny, the petitioner claimed that the biological mother was incapable of providing for the beneficiary's basic needs. According to the petitioner, he and his spouse had been sending the biological mother and her family money for a long period of time because the biological mother did not have sufficient funds to pay for the beneficiary's care. In support of this claim, the petitioner submitted copies of wire transfer receipts to a bank account in Thailand. In addition, the petitioner submitted a copy of a social worker's *Child Study Report* from the Thai Department of Public Welfare that was executed as part of the adoption of the beneficiary by the petitioner. According to the social worker, the biological mother was incapable of providing proper care for the beneficiary. The petitioner stated that this evidence showed that the beneficiary was eligible for orphan classification.

The director denied the I-600 petition on November 27, 2001 citing the following reasons:

. . . deposits were added to the aunt's bank account during the past five months. The deposits do not show in any way that the sole surviving parent is unable to provide for the beneficiary's basic needs, consistent with the local standards of Thailand. You did not

explain how this money was used or why it was sent. At your interview, you stated that the mother of the beneficiary was able to provide for her children up to this time. The beneficiary is now over six years old, your contributions began just five months ago. According to your testimony, the family has been living in the same house for thirty years. The house is also a restaurant that the family has owned and operated for all of that time. A home and business established thirty years ago would tend to indicate some measure of financial stability. . . . It is evident that the beneficiary's sole surviving parent['s] earnings of 4000 baht per month are very much in line with the prevailing wage in this foreign sending country. . . . The District Director notes that you made no attempt to respond to the points raised in the Notice of Intent to Deny regarding your misrepresenting a material fact, and your reasons for petitioning for the beneficiary.

On appeal, the petitioner first addresses the director's finding that the petitioner misrepresented a material fact when stating on the Form I-600A that a child had not been identified. According to the petitioner, he used the Form I-600A because the instructions on the form stated that it should be used if a petitioner and spouse are going abroad to adopt a child, which is what occurred in this case. The petitioner states that there was never any intent to deceive or hide facts.

Regarding the ability of the biological mother to provide for the beneficiary's basic needs, the petitioner submits a new affidavit from the biological mother who attests that she must rely upon the petitioner and the petitioner's spouse for financial assistance to care for the beneficiary. The petitioner also states that the director did not adequately review the evidence that was previously submitted which showed money transfers to Thailand over the last 2-3 years, not just the last five months. Finally, the petitioner again asserts that a social worker for the Thai Department of Public Welfare indicated in the *Child Study Report* that the biological mother was incapable of providing for the beneficiary's basic needs.

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.²

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.

According to the record, the beneficiary was born out of wedlock in Thailand. Thus, whether the beneficiary is illegitimate is determined according to the law of Thailand. Matter of Rodriguez, 18 I&N Dec. 9, 10 (INS 1980) (legitimacy of alleged orphan determined by law of place of birth).

Thailand has not eliminated all legal distinctions between "legitimate" and "illegitimate." Legitimation matters in Thailand are governed by section 1546 through 1584/1 Chapters I and II of Title II, "Parents and child" of the amended Book V (the Book of the Family) of the 1935 Civil Commercial Code (CCC) of Thailand. Section 1547 indicates that a biological father may legitimate a child by (1) marrying the biological mother, (2) registering his legitimation of the child, or (3) obtaining a judgment of the court allowing the registration of a legitimation action. There is no evidence in the record that the biological father legitimated the beneficiary under Thai law. Therefore, the beneficiary is considered illegitimate pursuant to the laws of Thailand.

A child that is born out of wedlock in a country that has not eliminated all legal distinctions between "legitimate" and "illegitimate," and who has not been legitimated under the laws of the child's or the biological father's residence or domicile, has a sole parent - - his or her biological mother - - unless the child has or had a bona fide relationship with the biological father. If the child has or had a bona fide relationship with his or her biological father, the child may be considered to have a sole parent - - his or her biological mother - - only if the father has disappeared, abandoned, deserted, or in writing has

² It is noted that the provisions of Public Law 104-51, which changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, replaced the words "legitimate child" with the words "child born in wedlock," and replaced "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The Service has not amended the regulatory definition of *sole parent* to conform to the statutory changes.

irrevocably released the child for emigration and adoption.³ 8 C.F.R. 204.3(b).

According to the Child Study Report, "the [beneficiary's] father visits her occasionally but has not assumed any responsibility for the [beneficiary's] care." This statement indicates that the biological father and the beneficiary have had a bona fide relationship since the beneficiary's birth. Nevertheless, the biological father executed an April 11, 2000 consent to the adoption of the beneficiary, which may be considered an irrevocable release for emigration and adoption. Therefore, the beneficiary is considered the child of a sole parent.

The primary issue on appeal is whether the petitioner has established that the sole parent (biological mother) is able to provide for the beneficiary's basic needs. According to the director, the biological mother's 4000 baht per month salary is "very much in line with the prevailing wage," while the petitioner contends that the biological mother's salary is insufficient.⁴

The record contains a May 29, 2000 *Child Study Report for Adoption* that a social worker completed as part of the adoption process. According to the social worker, the biological mother's monthly salary of 4000 baht per month is considered meager, relative to the cost of living in Bangkok. The social worker stated that the biological mother's salary and her insecure job situation make her incapable of providing for the beneficiary's needs.

The report by the social worker, which the Thai Department of Public Welfare considered in the adoption process, is sufficient evidence that the biological mother is unable to provide for the beneficiary's basic needs. The social worker's verification is sufficient evidence. See Matter of Rodriguez at 11. Therefore, the petitioner has established that the biological mother cannot provide proper care for the beneficiary. Accordingly, this

³ According to section 101(b)(2) of the Act, a parent "does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has irrevocably released the child for emigration and adoption."

⁴ It must be emphasized that, while 8 CFR 204.3 requires a showing that the sole parent cannot meet the beneficiary's basic needs "consistent with the local standards of the foreign sending country," the regulation does not limit the inquiry solely, or even chiefly, to economic or financial standards. Nevertheless, in this particular case, the chief focus is on the sole parent's ability to meet the beneficiary's economic needs. It is not necessary to consider, therefore, what other needs the beneficiary's sole parent may not be able to meet "consistent with the local standards of the foreign sending country."

portion of the director's objections has been overcome.

The director also denied the petition because the petitioner allegedly misrepresented a material fact in completing the I-600A Application. According to the director, the petitioner stated on the I-600A Application that a child had not been identified for adoption, when the petitioner had been planning on adopting his spouse's niece for some time. The director further noted that the petitioner's reasons for wanting the beneficiary to come to the United States "appear to be economic and are not consistent with the intention of this statute." The petitioner claims that he did not intend to conceal the fact that he was seeking to adopt the beneficiary and he used the I-600A because he and his spouse were adopting the beneficiary abroad.

The record of proceeding does not contain the I-600A Application. Nevertheless, even if the petitioner did not identify the child on the application, such an omission is not material to the beneficiary's eligibility for classification as an orphan; neither is the petitioner's admission that he wanted to adopt the beneficiary so that she could have a better life. The director is reminded that observations that are conclusory, speculative, equivocal, or irrelevant to an individual's eligibility for a benefit will not suffice to deny a petition. See. Cf. Matter of Arias, 19 I&N Dec. 568 (BIA 1988).

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is approved.