

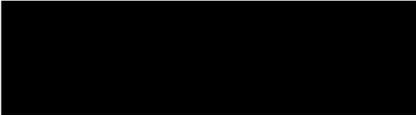


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U.S. Department of Justice  
Immigration and Naturalization Service

**Identifying data deleted to  
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invasion of personal  
privacy.**

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



File: [Redacted] Office: HONOLULU DISTRICT Date: **12 SEP 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 Honolulu, Hawaii 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 July 3, 2001. The petitioner is a 54-year-old married citizen of the United States. The beneficiary is 6 years old at the present time and was born in the Philippines on September 10, 1995. The Philippines Department of Social Welfare and Development (DSWD) has custody of the child. The petitioner and her spouse intend to jointly adopt the orphan in the United States. The petitioner's advance processing application was approved on May 29, 2001.

The director denied the petition because he determined that the petitioner failed to establish that the beneficiary's surviving parent is incapable of providing proper care for the beneficiary and that the beneficiary's mother has irrevocably released the child for adoption and emigration. The director found that because the beneficiary and her biological mother intended to stay in communication with one another, the petitioner failed to prove that the biological mother intended to irrevocably release the child for emigration and adoption.

On appeal, the petitioner submits a letter from a neurologist verifying that the beneficiary's mother most probably suffers from multiple sclerosis. She submits an affidavit signed by the beneficiary's mother irrevocably releasing her child for adoption and emigration, an updated progress report by the Department of Social Welfare and Development, medical documentation showing the beneficiary's grandmother was recently hospitalized, and, receipts for monies sent to the beneficiary's mother to cover the beneficiary's expenses.

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.

In the I-600 petition, the petitioner claimed that the beneficiary was the child of a surviving parent (the biological mother) due to the death of the biological father, Dennis R. Santos. The

biological father died in a car accident in 1997. The petitioner also claimed that the biological mother was unable to provide for the beneficiary's basic needs and indicated that the beneficiary and her mother lived with the beneficiary's grandmother since 1997.

On September 15, 2001, the director requested prior two years tax returns for the beneficiary's mother, an employment letter for the beneficiary's mother, and a letter from the beneficiary's mother's physician explaining her prognosis, medication, and an explanation of her disability, and an updated home study.

The petitioner responded to the request for additional documentation and provided the following: a medical certificate from the beneficiary's mother's neurologist, an affidavit from the beneficiary's mother, and an updated home study from the DSWD. She included a medical certificate verifying that the beneficiary's grandmother has been hospitalized and remittance receipts of monies sent by the petitioner to the beneficiary's mother for the beneficiary's care.

The director denied the petition to classify the beneficiary as an orphan as an immediate relative on January 31, 2002. The director determined that the petitioner had not established that the beneficiary's mother was "incapable of providing proper care" for the child; and that the petitioner failed to prove that the beneficiary's mother had irrevocably released the child for adoption and emigration.

As the record is presently constituted, the petitioner has presented sufficient evidence to overcome the director's objections to the approval of the petition.

When a biological mother is a sole parent, a petitioner must establish that the biological mother is incapable of providing the beneficiary with proper care according to the local standards of the foreign-sending country.

The regulation at 8 C.F.R. 204.3(b) states that:

*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.

*Foreign-sending country* means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption

and/or immigration to the United States.

Information about the biological mother's present situation can be found in the following documents that are in the record:

- A neurologist's medical certificate verifying that the beneficiary's mother has suffered recurrent episodes of partial paralysis and most probably suffers from multiple sclerosis.
- An affidavit from the beneficiary's mother stating she has been suffering from multiple sclerosis since 1999 and has been unemployed for that reason, and that she relied on her mother to help care for the beneficiary but now her mother is unable to provide such assistance.
- An updated assessment by the Department of Social Welfare and Development stating that the beneficiary, her mother and grandmother are dependent on the petitioner for financial support.
- An initial child study report for the Inter-Country Adoption Board that states that the beneficiary's mother stopped working in 1998 due to illness and in 1999, she was diagnosed with multiple sclerosis.
- A deed of voluntary commitment in which the beneficiary's mother stated she is unable to care for her child and that the child's best interest will be served by committing her to the care of the government. The deed also notes that the beneficiary's mother consented to the termination of her legal parent-child relationship, and her consent became irrevocable six months after execution of the document in September 2000.
- An Inter-Country Adoption Board certificate granting placement authority to an adoption agency to entrust the beneficiary to the petitioner and her spouse.

According to the United States Department of State,<sup>1</sup> the government offices responsible for inter-country adoptions in the Philippines are the Department of Social Welfare and Development (DSWD) and the Inter-Country Adoption Board (ICAB). The DSDW recommends for inter-country adoption a child previously committed to the Philippine government.

The biological mother has declared and the Department of Social

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<sup>1</sup> General information on international adoptions as well as country-specific information may be found at the Department of State's website at [www.travel.state.gov/adoption](http://www.travel.state.gov/adoption).

Welfare and Development has verified that the biological mother is *unable to adequately support* the beneficiary. The Inter-Country Adoption Board authorized an adoption agency to entrust the beneficiary to the petitioner and her husband.

The fact that the beneficiary and her mother intend to remain in communication with one another does not vitiate the evidence that the beneficiary's mother has irrevocably consented in writing to terminate her legal parent-child relationship and to the emigration and adoption of her child.

Accordingly, the petitioner has established that the beneficiary is eligible for classification as an orphan because she is the child of a sole parent, who is incapable of providing for her care and has irrevocably released her for emigration and adoption.

**ORDER:** The director's January 31, 2002 decision is withdrawn and the petition is approved.