



U.S. Department of Justice
Immigration and Naturalization Service

F-1

PUBLIC COPY

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



File: [Redacted] Office: DALLAS, TEXAS Date:

FEB 19 2003

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:



identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Dallas, Texas district office denied the immigrant visa petition and 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) on May 20, 1999. The petitioner is a 43-year-old married citizen of the United States. The beneficiary is 19 years old at the present time and was born in Bangkok, Thailand on December 5, 1983.

The district director denied the petition on August 7, 2002, finding that the petitioner had failed to establish that the beneficiary is an orphan as defined in the Immigration and Nationality Act.

On appeal, counsel for the petitioner submits a brief.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), 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; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence

The evidence is not sufficient to establish abandonment.

The district director denied the petition because the petitioner failed to establish that the beneficiary was abandoned by both parents. On appeal, counsel for the petitioner argues that the beneficiary has been abandoned by both her parents and asserts that the affidavit provided is sufficient evidence of such abandonment.

Abandonment by both parents is a defined term in the regulations. 8 C.F.R. 204.3(b) states, in pertinent part:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

The affidavit provided to the Service was written by the petitioner's parents. The petitioner's parents are also the beneficiary's grandparents, and the beneficiary is the petitioner's niece. The affiants state that the beneficiary was "dumped" on them and that they do not know where the beneficiary's biological parents reside. The affiants do not indicate what efforts, if any, were made to locate the beneficiary's biological parents.

The beneficiary cannot be considered to have been abandoned by both parents as that term is defined in 8 C.F.R. § 204.3(b) because the biological parents did not forsake their parental rights to the beneficiary. The applicable regulation requires the biological parents to forsake their parental rights, obligations, and claims to their child without intending to transfer, or without transferring their rights to any specific person(s). 8 C.F.R. § 204.3(b) (definition of abandonment).

The facts in the record indicate that the petitioner became aware that her niece had been "dumped" on her parents and she and her

spouse offered to adopt the beneficiary.

There is no documentation in the record to show that a third party (e.g., a government agency, a court of competent jurisdiction, an adoption agency or an orphanage) that was authorized under the child welfare laws of Thailand to act in such a capacity ever had custody of the beneficiary because the biological parents relinquished or released their parental rights to such a third party. Nor does the evidence of record establish that the beneficiary's parents gave up their parental rights without entrusting her to a child welfare agency or other third party with authority over child welfare and placement. 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). The evidence presently in the record shows that the biological parents left the beneficiary in the custody of her grandparents. There is no evidence, however, that they did so intending to give up their parental rights. Since there is no such evidence, the petitioner has not established that the beneficiary's parents abandoned her, in the manner required by the applicable regulation.

Even if "dumping" the beneficiary could be said to be a forsaking of parental rights, the petition still could not be approved. The parents entrusted the beneficiary to her grandparents. But surrendering a child to a specific third party is not "abandonment," unless the third party has authority under the child welfare laws of the foreign-sending country over child welfare and placement. 8 C.F.R. § 204.3(b) (definition of abandonment).

The beneficiary has not been deserted.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(b) (definition of desertion). The beneficiary's biological parents cannot be said to have "deserted" her. Although the biological parents have apparently forsaken the beneficiary, the beneficiary has never been and is not currently a ward of a competent authority in Thailand. Therefore, the beneficiary has not been deserted by both parents as that term is defined in the governing regulations.

The beneficiary's parents have not disappeared.

Disappearance of both parents means that both parents

have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. 204.3(b) (definition of disappearance). The beneficiary's biological parents cannot be said to have "disappeared," because there is no evidence on the record that a reasonable effort has been made to locate the beneficiary's parents as determined by a competent authority in accordance with the laws of Thailand.

Conclusion.

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.