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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

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



MAR 11 2003

File: [Redacted] Office: BALTIMORE, MARYLAND

Date:

IN RE: Petitioner:
Beneficiary:



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

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

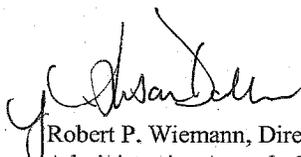
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Baltimore, Maryland district office initially approved the immigrant visa petition. Based upon an investigation conducted by the American Institute in Taiwan, the district director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the district director served the petitioner with notice of his intent to revoke approval of the petition and the petition was ultimately revoked on September 23, 2002. 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 March 20, 2002. The petitioner is a 48-year-old married citizen of the United States. The beneficiary is 3 years old at the present time and was born in Taichung, Taiwan, Republic of China on July 28, 1999.

The district director revoked approval of the petition, finding that the petitioner had failed to establish that the beneficiary is an orphan as defined in the Immigration and Nationality Act.

On appeal, the petitioner submits a statement.

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

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 record of proceeding contains a cable indicating approval of the petitioner's Form I-600 petition, the Form I-600 petition and supporting documentation, the district director's notice of intent to revoke, the petitioner's response to the district director's notice, an investigative report, the district director's final revocation notice, and the appeal documents.

In the Notice of Intent to Revoke, the district director informed the petitioner that the Immigration and Naturalization Service (now the Bureau of Citizenship and Immigration Services) had conducted an investigation into the claims made by the petitioner in the I-600 petition. The petitioner had claimed that the beneficiary was not a relative and that the beneficiary resided in an orphanage. According to the district director, the investigation uncovered the following:

1. The beneficiary's birth father is the prospective adoptive mother's brother, so the beneficiary is the petitioner's nephew.
2. The beneficiary has never lived in, or been the ward of an orphanage. Instead, the birth father arranged for the beneficiary to live with his mother and he pays for the child's living expenses.
3. Although the beneficiary was born out of wedlock, the

beneficiary's birth father acknowledged the child as his own and has had control over the child, so the beneficiary cannot be considered to be the child of a sole parent.

4. The beneficiary's birth parents released the child to an adoption agency for a specific adoption by the petitioner and his spouse.

In response to the district director's notice, the petitioner stated that since the beneficiary was born out of wedlock, he was not sure of the legal status of the birth father so he did not indicate his own kinship to the child. The petitioner indicated further that the beneficiary had been abandoned by both parents because the birth parents irrevocably released the beneficiary to an orphanage. The petitioner stated that the birth father had not been paying for the beneficiary's expenses as he was incapable of doing so. The petitioner said that the beneficiary was not moved into the orphanage immediately after the birth parents' release because the orphanage was overcrowded. The petitioner stated that as of July 23, 2002, the beneficiary moved into the orphanage. The petitioner wrote: "we believe the child is both physically and legally abandoned by both his birth parents." The petitioner also argues that the birth mother abandoned the beneficiary so the birth father became the beneficiary's sole and surviving parent and he is financially incapable of providing for the child. The petitioner argues in the alternative, the birth mother could qualify as the sole parent since the birth father gave up his parental rights and cannot care for the child.

The district director revoked the petition on September 23, 2002, for the reasons stated in the Notice of Intent to Revoke.

On appeal, the petitioner makes several assertions in rebuttal to the district director's determinations. The petitioner submits court documents showing that the birth father is indebted and asserts that the birth father is unable to support the beneficiary. The petitioner argues that because the adoption decree indicates that the birth parents gave up the beneficiary for adoption and because the beneficiary is currently staying at the orphanage, the beneficiary should be considered an orphan.

Each of the petitioner's assertions will be separately addressed.

The petitioner stated that because he was unsure of the beneficiary's birth father's legal status vis-à-vis the beneficiary, the petitioner declined to indicate that the petitioner was related to the beneficiary on the I-600 petition. The fact that the petitioner was less than candid about his kinship to the beneficiary is a sufficient reason to consider all of his assertions with skepticism. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of

the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner argues that the beneficiary was abandoned by both parents because they "irrevocably released the beneficiary to an orphanage." The petitioner provided the Service with two signed release forms: one signed by the birth parents releasing the beneficiary for adoption and immigration to an orphanage dated July 7, 2001; and another signed by the orphanage director releasing the beneficiary for adoption and immigration to the beneficiary and his wife dated July 9, 2001. The petitioner provided the Service with a translated copy of the adoption decree dated May 24, 2002, that indicates that the petitioner and his wife contracted with the birth parents to adopt the beneficiary and that the adoptee's intention was expressed by his statutory representatives on July 1, 2001, prior to the birth parents' release for adoption.

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 beneficiary did not begin to reside at the orphanage until July of 2002, one year after the beneficiary's birth parents signed a release for immigration and adoption. Instead, the beneficiary resided with the birth father and paternal grandmother. Furthermore, the birth parents released the child to a third party in anticipation of transferring their rights to a specific person (i.e. the petitioner); therefore, the beneficiary cannot be considered to have been abandoned by both parents.

The petitioner asserts that either birth parent can be considered the beneficiary's *sole parent* who is financially incapable of providing for the child. The term *sole parent* is defined in the regulations. 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.¹

¹ 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 petitioner's argument is not persuasive. The mere statement - either parent could be the sole parent - serves to disprove the claim. The plain meaning of the term sole parent is a single parent. The petitioner's assertion that the birth father is unable to provide for the beneficiary is moot given that he is not a *sole parent* as defined in the regulations.

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 Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.

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.