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

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

File: [REDACTED] Office: SAN FRANCISCO Date:

MAR 17 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

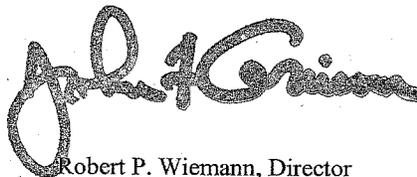
INSTRUCTIONS:

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 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 District Director of the San Francisco district office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on March 5, 2001. The petitioner is a 30-year-old married naturalized citizen of the United States. The beneficiary is seven years old at the present time and was born in Vietnam on May 19, 1995. The beneficiary's birth parents are unknown. The beneficiary was adopted by relatives of the petitioner's spouse in 1996.

The district director issued a notice of intent to deny the petition. The petitioner responded to the notice of intent to deny. The district director noted that the beneficiary resided in the custody of his parents in Vietnam. The district director denied the petition on July 24, 2002, finding that the beneficiary had not been abandoned by both of his parents and 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 additional documentation.

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 regulations at 8 C.F.R. § 204.3(b) state, 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.

On appeal, the petitioner provided a statement from a Vietnamese orphanage that states that the beneficiary was transferred to the orphanage on August 13, 2002.

The evidence on the record shows the following:

The beneficiary was born on May 19, 1995 in Ho Chi Minh City.

Within one year of his birth, the beneficiary's parents adopted the beneficiary.

The petitioner's spouse is related to the beneficiary's adoptive parents.

The beneficiary's parents signed an agreement offering the beneficiary for adoption by the petitioner and his wife.

According to the petition, the beneficiary remained in the custody of his adoptive parents as of the date of filing the petition.

The evidence indicates that the beneficiary's parents placed the beneficiary in the custody of an orphanage in anticipation of placing the beneficiary with the petitioner. Hence, 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).

The beneficiary's parents placed the beneficiary in an orphanage well after the filing date of the petition. A petition must be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the petition was filed. 8 C.F.R. § 103.2(b)(12).

Beyond the decision of the district director, the petitioner has not provided the Bureau with an adequate home study report. According to the regulations, a home study report must demonstrate that all adult members of the petitioner's household have been screened for a record of child abuse and criminal history. 8 C.F.R. § 204.3(e). In the instant case, the home study report fails to state that the preparer screened all adult members of the petitioner's household as required. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

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.