

FI

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

MAY 07 2003

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:

[Redacted]

PUBLIC COPY

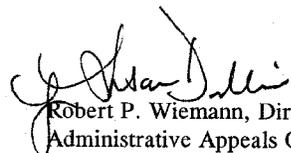
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director of the San Francisco, California district office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) 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 district director on February 21, 2002. The petitioner is a 51-year-old married citizen of the United States. The beneficiary is 6 years old at the present time and was born in Addis Ababa, Ethiopia on May 14, 1996.

The director denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan found at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act).

On appeal, counsel for the petitioner submits a brief and documentary evidence to show that the beneficiary was abandoned by both parents and subsequently qualifies as an orphan.

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.

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.

In the I-600 petition, the petitioner claimed that the beneficiary had no parents. The petitioner also provided the Bureau with an adoption agreement between the beneficiary's biological parents and the petitioner and his wife. The district director determined that the adoption agreement confirmed that "the beneficiary has two biological parents who willfully gave the beneficiary to [the petitioner and his] spouse for the purpose of adoption."

On appeal, counsel for the petitioner provides the Bureau with several items of evidence, including a sworn affidavit made by the petitioner detailing the three-year process of adoption that he and his wife went through to secure the beneficiary as their child. The petitioner explained that his wife found the beneficiary abandoned in the streets of Addis Ababa, living with an 80-year old woman in a dilapidated shack, his mother nowhere to be found. The second item of evidence is a translated copy of a newspaper ad authorized by the Ethiopian Ministry of Labor and Social Affairs in an attempt to see if anyone would claim the beneficiary as their son. The third item is a letter dated August 28, 2001, written by an official of the Ethiopian Ministry of Labor and Social Affairs stating the following:

It provides:

[T]he Ministry of Labor and Social Affairs is a governmental agency, entrusted with the responsibility by the government to raise children, who owing to various reasons have lost their parents, by gathering them in orphanages and to provide an adoption services [sic].

Accordingly, the [the beneficiary's] parents are destitute, in addition to this his mother is ill and she has not been [sic] raised him, up until now he has been assisted by the adoption seekers.

On appeal, the petitioner submits evidence that children are routinely abandoned to the streets rather than placed in orphanages in Ethiopia.

Counsel for the petitioner provided the Bureau with a second letter from an official of the Ministry of Labor and Social Affairs certifying that the beneficiary was abandoned.

Counsel for the petitioner argues that the beneficiary was

abandoned by his birth parents. She asserts that a competent government authority, the Ministry of Labor and Social Affairs, verified that the beneficiary's parents are destitute and have not cared for him; rather, they abandoned him to the streets. Counsel further asserts that the beneficiary's biological parents did not specifically release the beneficiary to the petitioner for a specific adoption, rather, the petitioner sought to comply with Ethiopian law by searching for the beneficiary's birth parents and securing their permission for adoption. On the record of this particular case, therefore, it is clear that the parents actually had abandoned the minor long before the petitioner searched for and located them to obtain formal consent to the adoption. This fact distinguishes this case from a case in which the birth parents still had custody of the minor, and the petitioner obtained custody directly from them. Since the parents no longer had custody of the minor, this is not a case involving "relinquishment or release by the parents to the prospective adoptive parents." 8 C.F.R. § 204.3(b) (definition of abandonment).

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

According to the United States Department of State,¹ the government office responsible for adoptions in Ethiopia is the Children, Youth and Family Affairs Department (CYFAD), which is under the Ministry of Labor and Social Affairs. An Adoption Committee at CYFAD either approves or rejects an adoption based on Ethiopian guidelines for intercountry adoptions. Once a case is approved, a child is identified for the prospective parents to adopt. Next, a contract of adoption is signed between the CYFAD and the adoptive parents' legal representative. A court date is set. Next, a notice for publication is published in the local press stating the child's name and the name of the adopting parents. Ultimately, the CYFAD must validate the adoption.

In the instant case, the Ethiopian court took the beneficiary's biological parents' circumstances into account and the court deemed that it was in the beneficiary's best interest that he be adopted. The beneficiary was abandoned by his biological parents in that they have willfully forsaken all parental rights, obligations and claims to the child, as well as all control over and possession of the child. The Ministry of Labor and Social Affairs, as a competent government agency that is authorized under the child welfare laws of the foreign-sending country to act in such a capacity, gained constructive custody of the beneficiary when it

¹ General information on international adoptions as well as country-specific information may be found at the Department of State's website at www.state.gov.

attempted to locate the beneficiary's biological parents; therefore, the beneficiary was abandoned by both parents as that term is defined at 8 C.F.R. § 204.3(b).

ORDER: The district director's October 18, 2002 decision is withdrawn and the petition is approved.