



U.S. Citizenship
and Immigration
Services

[REDACTED]

File: [REDACTED]

Office: DENVER, COLORADO

Date: OCT 08 2004

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 PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

DISCUSSION: The District Director of U.S. Citizenship and Immigration Services (USCIS) Denver, Colorado District office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on April 18, 2003. The petitioner is a 63-year-old married citizen of the United States. The beneficiary is 16 years old at the present time and was born in Phya Tai District, Bangkok, Thailand, on September 14, 1987.

The director denied the petition on December 17, 2003, based on a determination that the petitioner has two living parents and failed to establish that the beneficiary qualifies as an orphan under the Immigration and Nationality Act (the Act) because of the death or disappearance of, abandonment or desertion by, or separation or loss from her biological parents.

The petitioner, through counsel, submits a timely appeal.

Section 101(b)(1)(F)(i) 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

Section 101(b)(2) of the Act provides in pertinent part:

The term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

Further, the regulation at 8 C.F.R. § 204.3(b) provides the following definitions:

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.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as the term is defined in this section.

According to the facts in the record, the beneficiary is the petitioner's niece. The record contains the beneficiary's birth certificate which lists her mother as [REDACTED] and her father as [REDACTED]. There is no evidence to show that [REDACTED] were ever married. The record further reflects that the beneficiary's birth mother, died on February 10, 2003.

On the Form I-600 submitted by the petitioner, and signed under penalty of perjury as being true and correct, the petitioner indicates that the beneficiary has only one parent who is the sole or surviving parent. The petitioner further indicates that the remaining parent is incapable of providing proper care to the beneficiary and that the remaining parent irrevocably released the beneficiary for emigration and adoption.

The record of proceeding further contains a "Letter of Consent" signed by [REDACTED] on March 31, 2003, in which [REDACTED] acknowledges that the beneficiary is his daughter. [REDACTED] further states:

[He will] allow [the beneficiary] to go abroad with [the petitioner] in order to adopt her and go to the U.S.A. with her. It is agreed that there are no condition [sic] and it is final.

The record also contains a court order dated May 28, 2003, in which the Court of [REDACTED] Province, Department of Juvenile and Family cases granted permission "to replace the consent of the [beneficiary's] parents to [the petitioner] in adopting [the beneficiary] as her adopted child."¹ As part of this order the court indicated the following information as its basis for making the determination:

[The beneficiary] is the child of [REDACTED]. On February 11, 2003 [REDACTED] died. The complainant [petitioner] is an elder sister of the same father with [REDACTED]. The complainant [petitioner] supported [REDACTED] at [REDACTED] by building a house for them. After [REDACTED] died, the complainant [petitioner] worried that [the beneficiary] would have no one to take

¹ In order to be considered an orphan, the Act requires the child to have been adopted abroad by a United States citizen and spouse jointly or to be coming to the United States for adoption by a United States citizen and spouse jointly. In this instance, only the petitioner's spouse is named in the adoption decree. See also 8 C.F.R. § 204.3(f) which lists the regulatory requirements that must be met for a child who is coming to be adopted in the United States. The record does not contain evidence that any of these requirements have been met. As the petition will be denied on other grounds, we note these evidentiary shortcomings for the record but will not discuss them in any further detail in this proceeding.

care since [REDACTED] the [beneficiary's] father, got remarried and has a new family to be responsible for.

Further, the record contains a "House Registration" issued by the Local Administration Department of the Ministry of Interior. The "House Registration," signed by [REDACTED] on November 9, 2001, lists Prayat as the beneficiary's natural father.

Despite the documentary evidence contained in the record that indicates Prayat is the beneficiary's natural father, the petitioner claims that the beneficiary is the product of a rape and that the identity of her actual father is not known. The petitioner further claims that though [REDACTED] is listed on the birth certificate, he only agreed to be listed as the father on the beneficiary's birth certificate in order for [REDACTED] to be eligible to receive benefits from the hospital and had no relationship with the beneficiary or [REDACTED] after the birth. The petitioner also claims that the beneficiary requested to change her name in May 2002 when she learned that Phanbun was not her real father.

To support this claim, the petitioner submits several letters from family and friends in Thailand. In the letters, the authors indicate that the petitioner and his spouse have provided support for the beneficiary and her mother. The letters further state that the beneficiary has "no father" and that [REDACTED] is not the father of [the beneficiary] and cares nothing about the child and is not going to take care of her." The record also contains a letter from the beneficiary in which she indicates that she was told by her mother and the petitioner's spouse that Prayat was not her "real father." Additionally, the beneficiary states that Prayat told her that he "was not [her] father and did not want to support [her] nor take any responsibility in [her]."

The statements made by the beneficiary and the petitioner's family and friends are directly contradicted by the signed statement of [REDACTED] in which he acknowledges the beneficiary is "a daughter of mine." We further note that these statements are not affidavits as they were not sworn to by the declarant before an officer that has confirmed the declarant's identity and administered an oath. *See Black's Law Dictionary* 58 (West 1999).

The petitioner's claim that Prayat is not the father is unsupported by documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). More importantly, the petitioner's claim contradicts the documentary evidence that is contained in the record, including official government and court documents and the petitioner's own statements on the Form I-600. Accordingly, there is insufficient evidence to establish that the beneficiary is an orphan due to the death of her mother and the disappearance, abandonment, and desertion by her father.

On appeal, counsel acknowledges "the confusing nature of the information" contained in the record and states that the only way to conclusively establish that Prayat is not the beneficiary's father and therefore, that the beneficiary is an orphan, is for USCIS to "request or recommend [sic]" a paternity test.

However, even if the results of a paternity test excluded Prayat as the beneficiary's natural father, the record still does not establish the beneficiary is an orphan. The record contains information that the beneficiary may have acquired a stepparent within the meaning of 101(b)(2) of the Act. According to the petitioner's July 15, 2003 home study, the beneficiary "is behind in her education as she was in and out of school because her mother was 'on the run' from an abusive husband." If the beneficiary's mother remarried, then the

beneficiary has acquired a stepfather and cannot be considered an orphan due to 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 beneficiary for emigration and adoption.

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)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i).

ORDER: The appeal is dismissed.