



U.S. Citizenship
and Immigration
Services

F

[REDACTED]

File: [REDACTED] Office: TAMPA, FLORIDA

Date: OCT 20 2001

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:

SELF-REPRESENTED

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

Identifying data deleted to
prevent disclosure of unarranted
invasion of personal privacy

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DISCUSSION: The District Director of the Citizenship and Immigration Services, Tampa, Florida, sub-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 October 10, 2003. The record does not contain an Application for Advance Processing of Orphan Petition, Form I-600A. As such, the Form I-600 filed by the petitioner is considered a concurrent filing of both the Form I-600A and the Form I-600.¹ The petitioner is a 57-year-old married citizen of the United States. The beneficiary is 2 years old at the present time and was born in Phu Yen, Vietnam on March 19, 2002.

The district director denied the petition because the petitioner failed to establish that the beneficiary qualifies as an orphan. Specifically, the district director found that because the beneficiary's birth parents released custody of the beneficiary directly to the adoptive parents, the beneficiary did not meet the definition of orphan.

The petitioner files 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

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

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

¹ See 8 C.F.R. § 204.3(d)(3).

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.

[Emphasis added.]

The evidence in the record shows the following:

The beneficiary was born in wedlock on March 19, 2002 in Phu Yen, Vietnam to Thom Van Tran and Hien Thi Le.

On November 15, 2002, [REDACTED] the President of People's Court of Tuy Hoa Township, certified that the beneficiary's natural parents "agreed to give [the beneficiary] as adoptive child to [the petitioner and his spouse]." [REDACTED] certification was based upon a statement made by the beneficiary's natural parents in an "Agreement in Giving Child Away for Adoption" in which the natural parents state:

Because of the economic difficulties of my family and the situation in which the father is getting old while his son is still too young, my wife and I talked over thoroughly and came to the decision that we will give [the beneficiary] for adoption to [the petitioner and his spouse].

On May 27, 2003, [REDACTED] the Vice-President of the People's Committee of Binh Kien Village, verified the statement made by the beneficiary's natural parents in a second "Agreement of Giving Child for Adoption" that they are "not able to bring up [the beneficiary] and "have to give him away for adoption to [the petitioner and his spouse]."

It should be noted that identifying information for the beneficiary and his natural father in the two agreements is conflicting; specifically, the date of birth for the father and the beneficiary change from one agreement to the other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On October 20, 2003, the district director issued a notice of intent to deny to the petitioner. In this notice, the district director advised the petitioner that in order to complete an adoption under the laws of Vietnam, a procedure commonly called a "giving and receiving ceremony" is required, accompanied by a document signed by the Ministry of Justice. The district director noted that the petitioner failed to submit any evidence of the "giving and receiving ceremony" or documentation from the Ministry of Justice. Further, the district director notified the petitioner that the beneficiary could not be considered an orphan if the beneficiary's

natural parents designated the petitioner and his spouse as the adoptive parents, rather than abandoning the child to an official, state-run orphanage.”

In response, the petitioner submitted a document entitled, “Child Adoption Ceremony” in which it is stated that the petitioner and his spouse were “granted” the beneficiary by the beneficiary’s natural parents. The petitioner also submitted two documents from the People’s Court of Tuy Hoa Township, both dated December 2, 2003. In the first document the beneficiary’s natural parents again indicate their intent to give custody of the beneficiary directly to the petitioner and his spouse. The second document indicates the Court’s confirmation that the petitioner’s sister is “fully capable . . . in working as wet nurse for [the beneficiary].” The petitioner further submits a document entitled “Request for Child’s Admission to Kindergarten - Nursery.” Finally, the petitioner submitted a document evidencing the beneficiary’s natural mother’s illness and request for waiver of hospital fees and a hospital receipt.

The district director denied the petition stating that while the information contained in the record may have been adequate for fulfilling local requirements for adoption, such information does not establish that the beneficiary is an orphan in accordance with the Act. The district director noted that the beneficiary’s biological parents “designated [the petitioner and his] spouse as the adoptive parents,” and there was no documentation from the Ministry of Justice as is required for an international adoption.

On appeal, the petitioner submits a letter from the Chief Judge of the People’s Court of Tuy Hoa Town, Phu Yen Province. In this letter, the Chief Judge states that the beneficiary’s natural parents “have agreed for the [petitioner and his spouse] to adopt [the beneficiary]” and, therefore, “since July 15, 2002, in reality [the beneficiary’s natural parents] have refused rights, obligations, requirements, controls and ownership of their child who has been adopted.”

We do not find such evidence to overcome the district director’s grounds for denial, though this determination is not based upon the fact that the petitioner failed to submit evidence from the Ministry of Justice, as found, in part, by the district director. The lack of documentation from the Ministry of Justice does not necessarily mean that the beneficiary cannot be considered an orphan. Instead, the determination of whether the child has been abandoned must be made on a case-by-case basis as the adoption process in Vietnam varies from region to region.

In this instance, the beneficiary’s biological parents retained direct control over the beneficiary until the time of the adoption, when the petitioner’s sister was given informal custody as a “wet nurse.” The beneficiary was never surrendered to a state-run orphanage, private orphanage, or other competent authority prior to the adoption proceedings. Given these facts, it is clear that the beneficiary’s natural parents relinquished their rights to the beneficiary for a specific adoption by the petitioner and his spouse. As such, the beneficiary cannot be considered abandoned as defined in 8 C.F.R. § 204.3(b).

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 Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i).



ORDER: The appeal is dismissed.