



U.S. Citizenship
and Immigration
Services

FE

[REDACTED]

File: [REDACTED] Office: JACKSONVILLE, FLORIDA

Date: **OCT 20 2006**

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.

to 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 (CIS) Jacksonville, Florida, 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 July 23, 2003. The petitioner is a 56-year-old married citizen of the United States. The beneficiary is 14 years old at the present time and was born in Kopashnevo, Ukraine, on April 11, 1990.¹

The district director denied the petition on March 11, 2004, based on a determination that the beneficiary was not an orphan within the meaning of the Immigration and Nationality Act (the Act) as the beneficiary has two living parents who surrendered their parental rights directly to the petitioner.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), defines an orphan 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 abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an*

¹ The date of birth listed on the beneficiary's birth certificate conflicts with the birth date contained in the adoption decree. As the petition will be denied on other grounds, we note the discrepancy for the record but will not discuss the discrepancy in any further detail in this proceeding.

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.

Desertion by both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights must be permanent and unconditional.

[Emphasis added.]

The record reflects that the beneficiary, who is the petitioner's niece, was born to [REDACTED] [REDACTED]. The record contains a copy of the adoption order, dated October 29, 2002, from the Hust County Court, Zakarpatsk Region, granting the petition for adoption of the beneficiary by the petitioner.

The home study, prepared on June 1, 2003, after several personal interviews with the petitioner and his spouse, states:

Overview of Family/Motivation to Adopt:

The [petitioners] . . . are excited about adding [the beneficiary] to their family. She is thirteen years old, and her parents' rights were terminated in Ukraine, as they could no longer care for her due to poverty and her father's terminal illness. *She was going to be placed in an orphanage if [the petitioner] had not adopted her.*

[Emphasis added.]

The record of proceeding also contains a document entitled, "Proclamation," signed by the beneficiary's parents, in which the beneficiary's parents state that they "relinquish [their] parental rights [of the beneficiary] to [the petitioner]."

In his decision, the district director noted the petitioner's claim that "local authorities were going to take [the beneficiary] away from her parents and that the living conditions in Ukrainian orphanages are horrible." However, as the beneficiary remained living with her parents, the district director determined that the beneficiary was not an orphan, as defined by the Act, because the supporting documentation submitted by the petitioner indicated that the beneficiary's parents "are alive" and "surrendered the rights" of the beneficiary directly to the petitioner.

On appeal, the petitioner, through counsel, alleges that the beneficiary was taken from her parents on February 18, 2003, and placed with an Aunt in the Ukraine. Counsel provides no documentation to support this claim and requests 60 days in which to submit a brief and/or evidence. To date, five months later, the AAO has received no further documentation. The statements of counsel on appeal or on motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The facts demonstrate that the beneficiary was adopted by the petitioner's spouse after a direct relinquishment of parental rights by the beneficiary's parents to the petitioner. The petitioner does not dispute the direct relinquishment of the beneficiary to the petitioner. Further, there is no evidence in the record that the beneficiary was ever in the custody of a third party (e.g., a government agency, a court of competent jurisdiction, an adoption agency or an orphanage) prior to the beneficiary's adoption. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the evidence presently in the record does not constitute an act of abandonment, desertion, separation, or loss from both parents, pursuant to the applicable regulation.

Beyond the decision of the district director is the issue of whether the child has been adopted abroad or will be coming to the United States to be adopted. 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.

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.