



U.S. Citizenship  
and Immigration  
Services

FI

[Redacted]

File: [Redacted]

Office: BANGKOK, THAILAND

Date: SEP 13 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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The District Director of Bangkok, Thailand 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 behalf of the beneficiary seeking to classify her as an orphan pursuant to section 201(b)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2). The petitioner is a 41-year-old married citizen of the United States. The beneficiary is seven years old at the present time and was born in Bangkok, Thailand on April 16, 1997.

The district director denied the petition on February 23, 2004, after finding that the petitioner had failed to establish that the beneficiary was "abandoned" as defined by regulation. The district director noted the fact that the beneficiary lived with her mother and stepfather and directly released the beneficiary to the petitioner for adoption.

The petitioner, through counsel, 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 . . . .

Section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2), states:

The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set for in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock describes in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father or 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.

One of the circumstances described in the section cited immediately above refers to the stepchild/stepparent relationship. Section 101(b) states:

(1) The term "child" means an unmarried person under twenty-one years of age who is –

\* \* \*

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

On appeal, counsel argues that Citizenship and Immigration Services (CIS) should consider this case under a definition other than "abandoned." In support of this argument counsel submits an affidavit from a law firm in Thailand citing portions of the Thai Civil and Commercial Code. The affidavit is submitted to rebut the determination made by the district director that the beneficiary has a stepfather and to support counsel's argument that CIS should "look to the law of the foreign country to determine how the INA should apply to the factual circumstances" of this case.

In section 1568 of the Thai law as cited in the affidavit, the law states "where a person who already has a child marries another person, the parental power over such child is exercised by the former person." Section 1567 further provides that:

A person exercising parental power has the right:

- (1) to determine the child's place of residence;
- (2) to punish the child in a reasonable manner for disciplinary purposes;
- (3) to require the child to do such work as may be reasonable to his ability and condition in life; and,
- (4) to demand the return of the child from any person who lawfully detains him.

The record reflects that after the beneficiary's natural father died, the beneficiary's natural mother remarried. The marriage between the beneficiary's natural mother, [REDACTED] and [REDACTED] occurred on January 25, 2001. As the beneficiary was three years old at the time of the marriage, the stepchild/stepparent relationship was created at that time. The fact that Thai law does not impose parental responsibilities on a stepparent does not mean that the relationship does not exist. Under the Act, the fact that a legal and real marriage exists between Thida Polkaew and Chainarong Polkaew sufficiently establishes that the beneficiary has obtained a stepparent. *See Matter of Awwal*, 19 I&N Dec. 617 (BIA 1988). As it has been determined that the beneficiary has two living parents, counsel's argument that we should make a determination of whether the beneficiary's natural mother is a surviving parent is moot.

The remaining issue to be determined is whether the beneficiary can be considered abandoned by her parents. 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. 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 record contains a document signed by Wanlop Phloytabtim, the Director - General of the Department of Social Development and Welfare in Bangkok, Thailand. This document states that the beneficiary's mother has "given her consent in writing on August 18, 2003 at Child Adoption Center for the purpose of relinquish [sic] her child . . . for adoption by [the petitioner and his spouse]."

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 applicable regulation requires the biological parents to forsake their parental rights, obligations, and claims to their child without intending to transfer, or without transferring their rights to any specific person or persons. As the relinquishment of the beneficiary was given directly to the prospective adoptive parents for a specific adoption, such relinquishment does not constitute abandonment.

Finally, counsel submits what he purports to be evidence of approval of petition similar to the instant case involving a stepfather. We, however, do not find this evidence to be relevant to the instant case. First, the purported approval submitted by counsel deals with the law of Romania, not Thailand. Second, there is no evidence that the facts of the Romanian case are the same as the facts of this case.

Moreover, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Accordingly, counsel's submission of an unrelated approval of a visa petition has no effect on our determination.

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 Act, 8 U.S.C. § 1101(b)(1)(F).

**ORDER:** The appeal is dismissed.