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U.S. Citizenship  
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Services

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FILE:



Office: BANGKOK, THAILAND

Date: JUL 19 2005

IN RE: Petitioner:  
Beneficiary:



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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, Bangkok, Thailand denied the immigrant visa petition and the matter has been certified to the Administrative Appeals Office (AAO) for review. The district director's decision will be affirmed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) in September 2004. The petitioner is a 34-year-old married citizen of the United States. The beneficiary was born in Samoa on July 7, 2004.

The district director issued a Notice of Intent to Deny the I-600 petition on January 12, 2005. The I-600 petition was subsequently denied based on a finding that the petitioner had failed to establish the beneficiary was an orphan, as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F), because the child's natural parents had released their parental rights for purposes of a specific adoption by the petitioners. The matter was certified to the AAO for review on March 24, 2005.

On certification, counsel asserts that the beneficiary meets the definition of an "orphan" for immigration purposes. In support of his assertion counsel states that the petitioner had no knowledge of the beneficiary's parents before he arrived in Samoa and learned that they wanted to put their newborn up for adoption. Counsel states further that the petitioner complied with Samoan adoption regulations.

Section 101(b)(1)(F) of the Act defines an "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

Abandonment by both parents is a defined term in the Federal Code of Regulations. 8 CFR 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.

The evidence in the record relating to the beneficiary's status as an orphan consists of the following:

The beneficiary's Samoan birth certificate issued on August 10, 2004, reflecting that [REDACTED] was born in [REDACTED] on July 7, 2004, to [REDACTED] (mother) and [REDACTED] (father).

A notarized affidavit signed for adoption proceeding purposes by the petitioner, [REDACTED] and his wife, [REDACTED] on August 10, 2004, stating in pertinent part that they met the beneficiary's natural parents after their arrival in Samoa, and that the natural parents consented in writing to the petitioner's application to adopt the beneficiary and released the child to the petitioners.

A notarized affidavit signed for adoption proceeding purposes by the beneficiary's natural parents on August 9, 2004, stating in pertinent part that they were approached by the applicants with the wish to adopt their newborn baby, and that they consented to the adoption and have released the child to the applicants.

A second notarized affidavit signed by the beneficiary's natural parents on August 9, 2004, stating that they consent to the petitioner's application to adopt their daughter, and that they release their parental rights.

An Order of Adoption signed by the Judge of the District Court in Samoa on August 20, 2004.

A notarized affidavit signed by the beneficiary's natural parents on September 3, 2004, stating that they wanted to give the beneficiary up for adoption prior to meeting the petitioners, and that the petitioners did not influence their decision to do so.

A notarized affidavit signed by [REDACTED] on September 1, 2004, stating that she and the beneficiary's natural parents are close friends and that she knew of the natural parent's plan to give their child up for adoption prior to meeting the petitioners. She was later involved in introducing the beneficiary's natural parents and the petitioners to one another.

A notarized affidavit signed by petitioner, [REDACTED] on January 27, 2005, stating in pertinent part that he and his wife did not know about the beneficiary and her natural parents before arriving in Samoa and that they did not influence the beneficiary's natural parents' decision to abandon the beneficiary. The petitioner states that "[t]here are no orphanages in

Western Samoa. There are no social service agencies that take custody of orphaned children. The process for adoption of orphaned children in Western Samoa is the process we followed.”

A review of all of the evidence establishes that the beneficiary’s natural parents maintained all parental rights, obligations and claims to the beneficiary prior to the petitioner’s August 20, 2004, adoption order. A review of the evidence establishes further that in surrendering their parental rights over the beneficiary in August 2004, the beneficiary’s natural parents intended to transfer and did transfer their parental rights specifically to the petitioner. The AAO finds that the petitioner has therefore failed to establish that the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F).

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 his burden. The district director’s decision will therefore be affirmed.

**ORDER:** The district director’s decision is affirmed.