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FILE: [REDACTED] Office: DETROIT, MI

Date: SEP 14 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)

ON 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Detroit, Michigan 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, a 40-year-old married citizen of the United States, filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on July 13, 2005. The beneficiary was born in the Philippines on October 31, 1991 and is now 14 years old.

The Immigrant Visa Branch of the U.S. Embassy in Manila determined that the beneficiary did not meet the definition of “orphan” under section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F), on September 16, 2005, and returned the I-600 petition to the U.S. Citizenship and Immigration Service for reconsideration and, if appropriate, revocation. Evidence obtained by the Embassy indicated that there was some discrepancy regarding whether the beneficiary’s biological mother was married or was in a common-law relationship. In either case, it was determined that, based on the record, the child would not meet the definition of “orphan.” Upon reconsideration, the district director denied the I-600 petition, noting that information from the U.S. Embassy in Manila indicated that the beneficiary’s biological mother had a “common-law” partner, “a seafarer [who] sends money home regularly.” *District Director’s Decision*, April 11, 2006. The decision also referred to the definition of “orphan” at section 101(b)(1)(F) of the Act, noting that transferring rights over a child to a specific person or for a specific adoption is not “abandonment,” and that the record does not support a conclusion that the biological mother “is incapable of providing the proper care” of the beneficiary; concluding that the beneficiary does not meet the definition of “orphan” for immigration purposes. *Id.*

The petitioner asserts on appeal that the beneficiary is an abandoned child. In support of this assertion, petitioner submits (1) a letter from the petitioner describing the circumstances surrounding the birth of the beneficiary, how her biological mother left her with an aunt and uncle and never supported or cared for her, and the current situation of the biological mother as married and living with her husband and their two children; (2) an affidavit from the biological mother confirming that she gave birth to the beneficiary when she was single and gave the child to her aunt and uncle, and stating that “since I am already married and also have two children by my husband, I have no intention now or in the future to take back my child, believing that this is what is best for her and also for my family”; (3) an affidavit from the mother of the biological mother, generally reiterating the statements of her daughter; and (4) a Deed of Voluntary Commitment, signed by the beneficiary’s biological mother, stating that she “voluntarily and unconditionally commit[s] [the beneficiary] to the care and custody of the Department of Social Welfare and Development pursuant to the provisions of . . . the Child and Youth Welfare Code . . . [and] authorize[s] the Department of Social Welfare and Development to release said child [for] adoption or guardianship.” *Notice of Appeal (Form I-290B) and attachments*, received by the Detroit District Office on May 8, 2006.

Section 101(b)(1)(F)(i) of the Act, 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.* (emphasis added).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides definitions of the relevant terms:

*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.

*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.

The record in this case contains conflicting information about the marital status of the beneficiary's biological mother. The U.S. Embassy in Manila reported that the beneficiary's "[g]randmother, present at the interview says that mother's relationship is only common-law, not a legal marriage." *Memorandum to District Director, Detroit, from Chief, Immigrant Visa Branch – Consular Section, U.S. Embassy Manila*, September 16, 2005. The beneficiary's biological mother stated in her affidavit of January 21, 2003 that she was single. On appeal, however, the evidence described above (*Form I-290B, supra*), which is the most recent information in the record, clearly indicates that the beneficiary's biological mother is married. The AAO will base this decision on the understanding that she is married.

The marital status of the mother is an essential element to be established in order to understand the requirements of the "orphan" definition under the Act, as the requirements vary depending on whether there are two parents or a sole parent. To prove "abandonment," it must be "abandonment by both parents." On the other hand, a child can meet the definition of "orphan" if, having a sole parent, that parent cannot provide "proper care."

Under the definition of "sole parent" one of the requirements is that the child "has not acquired a parent within the meaning of section 101(b)(2) of the Act." Section 101(b)(2) of the Act states that the term "parent" includes a relationship that exists by reason of certain circumstances, including a relationship to 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.” *See section 101(b)(1)(B) of the Act.*

In this case, the child has two parents, having acquired a stepfather through her mother’s marriage. Unlike the requirements of the “orphan” definition where there is a “sole parent,” “proper care” is not an issue; and “abandonment” must be by both parents. Abandonment by both parents is a defined term in the regulations, as cited above. There is no evidence in the record of abandonment by the beneficiary’s stepfather. In fact, the record indicates that the stepfather has had no involvement in, and may be unaware of, the adoption process. There is no evidence in the record that the beneficiary is an orphan because of the “death or disappearance of, abandonment or desertion by, or separation or loss from, *both parents*,” as required in this case. Accordingly, the AAO finds that the beneficiary does not meet the definition of “orphan” as set forth in section 101(b)(1)(F) of the Act.

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 in the present matter. The appeal will therefore be dismissed

**ORDER:** The appeal is dismissed.