



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

FL

[REDACTED]

FILE:

OFFICE: BANGKOK, THAILAND

DATE:

AUG 28 2007

IN RE:

PETITIONER:
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

PHOTIC COPY

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, Bangkok, Thailand denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner of the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600 Petition), is a forty-eight-year-old married citizen of the United States. The beneficiary was born in Thailand on January 4, 1993, and she is fourteen years old.

The district director determined that the petitioner had failed to establish that the beneficiary's natural mother was incapable of providing proper care to the beneficiary, as set forth in 8 C.F.R. § 204.3(b). Accordingly, the district director determined that the beneficiary did meet the definition of 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).

On appeal, the petitioner asserts, through her husband, that the beneficiary meets the definition of an *orphan* because: 1) the beneficiary's natural mother and father are alcoholics who have no money, and are incapable of providing parental or proper care to the beneficiary; and 2) the beneficiary's natural mother, with whom the beneficiary presently lives, subjects the beneficiary to verbal and mental abuse. Specifically, the petitioner states, through her husband, that she was physically attacked by the beneficiary's natural mother, while living in her household after the beneficiary's adoption.¹ The petitioner states further that the beneficiary's natural mother subjects the beneficiary "to mental abuse by having a constant stream of men coming in and spending the night" in a house where a sheet is the only room divider between the beneficiary and her natural mother. The petitioner additionally asserts, through her husband, that she recently learned that the beneficiary was raped, and that the beneficiary's natural mother did not file criminal charges against the alleged rapist, and instead accepted payment from the perpetrator's mother to drop the case. The petitioner indicates that she will return to Thailand in August 2007, and that she will travel with the beneficiary to another residence in Raynong, Thailand.

On appeal, the petitioner also requests oral argument before the AAO. Under 8 C.F.R. § 103.3(b), the petitioner must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The AAO finds that in the present matter, cause for oral argument has not been shown. The petitioner's request will therefore be denied.

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 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

¹ The AAO notes that the petitioner is the beneficiary's maternal aunt, and the sister of the beneficiary's natural mother.

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 pre-adoption requirements, if any, of the child's proposed residence. (Emphasis added.)

The regulation provides in pertinent part at 8 CFR 204.3(b) that:

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.²

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

The AAO finds that the *sole* and *surviving parent* definitions contained in 8 C.F.R. § 204.3(b) are not applicable in the present matter. The cumulative evidence in the record reflects that neither of the beneficiary's natural parents is deceased. The evidence additionally reflects that the applicant is the legitimate child of her natural parents. A Thai birth certificate contained in the record reflects that the beneficiary was born to Mrs. [REDACTED] and [REDACTED] on January 4, 1993. Divorce decree information contained in the record reflects further that the beneficiary's natural parents married on December 11, 1997, prior to the beneficiary's birth, and that they obtained a divorce on July 26, 2005, when the beneficiary was twelve years old. The evidence in the record thus establishes that the beneficiary was born in wedlock to her parents, and that she is a legitimate child of her natural parents. Because the evidence fails to demonstrate that the beneficiary's natural mother is a *sole* or *surviving parent*, as defined in 8 C.F.R. § 204.3(b), the AAO finds that it serves no purpose to address the petitioner's claim that the beneficiary's natural mother is *incapable of providing proper care* to the beneficiary in Thailand.

The regulation provides at 8 C.F.R. § 204.3(b) that:

² It is noted that the provisions of Public Law 104-51, which changed the definitions of "child," "parent," and "father" as used in Titles I and II of the Act, replaced the words "legitimate child" with the words "child born in wedlock," and replaced "illegitimate child" with the words "child born out of wedlock" in sections 101(b)(1)(A), 101(b)(1)(D), and 101(b)(2) of the Act. The regulatory definition of "sole parent" contained in 8 C.F.R. § 204.3 has not been amended to conform to these changes.

Disappearance of 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 and obligations must be permanent and unconditional.

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The petitioner failed to establish an involuntary severance by a *competent authority* in Thailand, of the beneficiary from her parents. The petitioner additionally failed to establish that the whereabouts of the beneficiary's natural parents is unknown, or that a *competent authority* in Thailand determined the beneficiary's natural parents' *disappearance*, or *loss*. The petitioner therefore failed to establish the *disappearance*, *loss* or *separation* of the beneficiary from both of her parents.

The regulation provides at 8 C.F.R. § 204.3(b) that:

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a *competent authority* in accordance with the laws of the *foreign-sending country*.

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. . . .

As discussed above, the record contains no evidence to establish that the beneficiary has at any point become a ward of a Thai court or governmental authority, as required by the definition of *desertion by both parents*. The petitioner additionally failed to establish that the beneficiary's natural parents *abandoned* the beneficiary, as defined in 8 C.F.R. § 204.3(b). The record contains:

A July 26, 2005, divorce decree from the Province of [REDACTED] Thailand, specifying that, "the parties have one daughter, [REDACTED] 2 years old that the parties agree to the Wife will have full custody of the children only" [sic].

An affidavit dated October 31, 2006, and signed by the beneficiary's natural mother, stating that she has little money, that she cannot provide for two children, and that she suffers from high blood pressure, causing blackout spells, and severe arthritis in her knees which causes her to be unable to walk for days.

An "Agreement Concerning Parental Power" signed by the beneficiary's natural mother on October 31, 2006, stating that she irrevocably relinquishes all parental power over the beneficiary to the petitioner and the petitioner's husband.

An Adoption Registration from the Ratchathewi District Office in Bangkok, Thailand and a letter from the Office for Protecting and Preventing Trafficking of Woman and Children, Department of Social Development and Welfare, Bangkok, Thailand, reflecting beneficiary's name change and that the petitioner and her husband adopted the beneficiary on October 27, 2006.

The AAO finds that the beneficiary's parents' divorce decree, and other evidence in the record establish that the beneficiary was in the legal and physical custody of her biological mother at the time of her adoption by the petitioner. The AAO notes, however, that the divorce decree evidence contained in the record does not divest the beneficiary's natural father of his parental rights over the beneficiary, and the record contains no evidence to establish that the beneficiary's natural father willfully relinquished all of his parental rights, obligations, and claims over the beneficiary, as well as all control over, and possession of, the beneficiary, as set forth in the definition of *abandonment* contained in 8 C.F.R. § 204.3(b). The evidence in the record demonstrates further that the beneficiary's natural mother specifically intended to transfer her parental rights over the beneficiary to the petitioner and his wife, in violation of the requirements set forth in 8 C.F.R. § 204.3(b). Furthermore, the evidence in the record reflects that, although the beneficiary's natural mother stated in writing that she is unable to care for the beneficiary and that she irrevocably releases her parental rights over the beneficiary, these claims are contradicted by the fact that the beneficiary resided with her natural mother prior to her adoption, and that she continued to live with her natural mother after her adoption by the petitioner and her husband in October 2006.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner has failed to meet her burden of establishing that the beneficiary meets the statutory definition of an *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and the petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.