

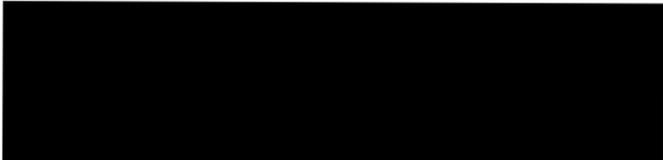


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MILWAUKEE, WI

Date: DEC 27 2007

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:



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 Field Office Director, Milwaukee, Wisconsin, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-600, "Petition to Classify Orphan as an Immediate Relative" (I-600 petition) on November 8, 2005. The petitioner is a 42-year-old citizen of the United States. The beneficiary is [REDACTED] a child born in the Philippines on December 6, 1992. The petitioner adopted the beneficiary on February 5, 2005 in the Philippines.

The filed office director denied the petition finding that the beneficiary's parents were married, and that he is not the child of a sole or surviving parent who is unable to care for him.

On appeal, petitioner claims that the beneficiary's parents were never legally married. The petitioner further claims that the beneficiary's mother suffered from tuberculosis in 2001 and 2002 and is therefore unable to provide for the child, and that his father abandoned him. The appeal is accompanied by a certification issued by court in Olangapo City, Philippines dated August 2, 2007 stating that charges of violation of a support order by beneficiary's father were dismissed provisionally. The petitioner also submits documents relating to a 1994 complaint by the beneficiary's natural mother against his father relating to abandonment and non-support and a certificate issued by the Office of the Civil Registrar General in the Philippines stating that there is no record of the beneficiary's parents' marriage.

Section 101(b)(1)(F) 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

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides in pertinent part 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.

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.¹

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*.

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.

The record contains, in relevant part, the beneficiary's birth certificate indicating that he is the son of [REDACTED] and [REDACTED]. The birth certificate indicates that the beneficiary's parents were married on January 15, 1990 in Candelaria, Zambales. The record also contains an adoption decision issued on February 4, 2005, indicating that the beneficiary is the petitioner's nephew. The adoption decision further indicates that the beneficiary was illegitimate and that his father's whereabouts are unknown. The decision indicates that the beneficiary's biological mother consented to the adoption. The record contains a home study report prepared by the Office of the Clerk of Court in Olangapo City, Philippines. The record also contains the petitioner's Certificate of Naturalization, dated February 19, 2004. Additionally, the record contains an Intake Evaluation Report prepared by a psychiatrist from the Dean East Clinic as well as a Report to the Court, Dane County, Wisconsin relating to an adoption home screening of the petitioner. Notably, the Dane County Report indicates that the beneficiary's father "passed away" and that his mother is unable to care for him due to "a deteriorating lung disease." See Report to the Court, Dane County, Wisconsin.

The AAO finds that the petitioner has failed to establish that the beneficiary "is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents." The AAO notes that the beneficiary's birth certificate indicates that his parents were legally married. The AAO further notes the 1994 abandonment and support complaint by the beneficiary's natural mother. The AAO has reviewed the certificate issued by the Office of the Civil Registrar General in the Philippines stating that there is no record of the beneficiary's parents' marriage. The AAO notes that the certificate, issued on August 2, 2007, specifically states that "[f]urther verification may be made from the Local Civil Registry Office of [REDACTED]." The evidence, including the contemporaneous birth certificate and the 1994 documents relating to the abandonment and support complaint, therefore indicates that the beneficiary's parents were married at the time of his birth. The

¹ 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.

AAO therefore finds that the beneficiary's natural mother is not the *sole parent* or that the beneficiary has been abandoned or deserted by, or separated or lost from, both parents.

The AAO notes that, even if the beneficiary's natural mother was the *sole parent*, the record does not sufficiently establish that she "is incapable of providing the proper care." In this regard, the AAO notes that petitioner claims that the beneficiary's natural mother had tuberculosis in 2001 and 2002, but that there is no evidence of her current health status or ability to care for the beneficiary. The AAO notes that the beneficiary appears to be living with his natural mother in the Philippines. The petitioner provides them with financial assistance, but the record does not suggest that the beneficiary's natural mother is otherwise incapable of providing proper care.

The Act provides that, in visa petition proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the petitioner has not met his burden to establish that the beneficiary meets the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.