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U.S. Citizenship
and Immigration
Services

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FILE:



Office: BANGKOK, THAILAND

Date: **AUG 21 2008**

IN RE:

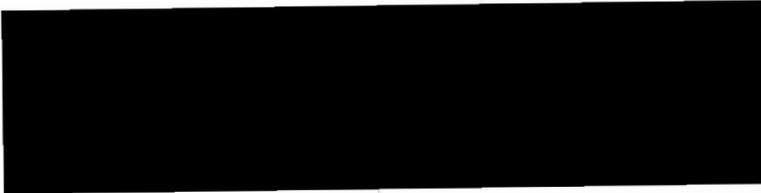
Petitioner:

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Bangkok, Thailand, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600) immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600 petition will be denied.

The petitioner filed the Form I-600 on July 31, 2007. The petitioner is a forty-four-year-old married citizen of the United States. The beneficiary was born in Bhutan on December 31, 2005, and she is two-years old.

The Form I-600 petition was denied on April 1, 2008, based on a finding that the petitioner had failed to establish the beneficiary was “abandoned” as defined in 8 C.F.R. §204.3(b), or that the beneficiary met the definition of an orphan, as set forth 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 and her husband (petitioners) indicate, through counsel, that the beneficiary’s biological parents did not specifically transfer their parental rights to the petitioners, and that they released their parental rights over the beneficiary to the High Court of Bhutan. The petitioners indicate that the High Court of Bhutan then determined that the petitioners could adopt the beneficiary, and transferred parental rights to the petitioners. The petitioners conclude, through counsel, that they therefore established that the beneficiary was abandoned by her biological parents, as set forth in 8 C.F.R. § 204.3(b), and that the beneficiary meets the definition of an orphan for immigration purposes.

Through counsel, the petitioners also request oral argument before the AAO. Under 8 C.F.R. § 103.3(b), the petitioners 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. In the present matter, no cause for oral argument has been shown. The request will therefore be denied.

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.* (Emphasis added.)

The Regulations provide at 8 CFR § 204.3(b) that:

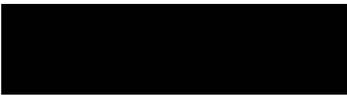
Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, *without intending to transfer, or without transferring, these rights to any specific person(s)*. Abandonment 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 evidence relating to the beneficiary's status as an orphan consists of the following:

A birth certificate, reflecting that the beneficiary was born in Bhutan on December 31, 2005, to [REDACTED] (father) and [REDACTED] (mother.)

Statements signed by [REDACTED] in May 2008, indicating in pertinent part that she interpreted for, and assisted the petitioners in their adoption of the beneficiary. She indicates that the beneficiary's biological parents did not have contact with, or meet the petitioner and her husband prior to their adoption of the beneficiary in court. Ms. [REDACTED] indicates that she has cared for the beneficiary at her home since the child was adopted, and that the petitioners support and pay for all of the beneficiary's expenses. Ms. [REDACTED] indicates that she assisted in the preparation and court filing of the biological parents' relinquishment of their parental rights. She states that two affidavits relinquishing parental rights were prepared. The first affidavit was signed by the beneficiary's biological parents on May 31, 2007, and contained only the beneficiary's and another child to be adopted's names. Ms. [REDACTED] indicates that the first affidavit did not contain the petitioners' names, and did not specify who would adopt the beneficiary. Ms. [REDACTED] indicates that the High Court of Bhutan Registrar asked for the first affidavit to be redone, to include the adoptive parents' names. A second affidavit was prepared with the beneficiary's biological and adoptive parents' names and signatures on June 2, 2007. The second affidavit reflects that the beneficiary's biological parents were releasing their parental rights so that the petitioners could adopt their child. Ms. [REDACTED] indicates that the Court kept both affidavits.

An affidavit signed by [REDACTED] on July 9, 2008, indicating in pertinent part that he arranged for the adoption of the beneficiary by the petitioners after learning of the beneficiary's parents' decision to give their child up for adoption. Mr. [REDACTED] indicates that



his assistant, [REDACTED] helped with the adoption process. He states that the beneficiary's biological parents were given no identifying information about potential adoptive parents when they signed affidavits relinquishing their parental rights, and he states that the beneficiary's biological parents did not intend to transfer their parental rights to a designated person.

A June 11, 2008, "Field Trip Report" prepared by legal advocate, [REDACTED] on behalf of the petitioners and their attorney, finding that the beneficiary presently lives with [REDACTED] and that the petitioners provide for the beneficiary financially. Mr. [REDACTED] states that it is his opinion, based on discussions with the High Court of Bhutan, Court Registrar, that it is impossible for biological parents to transfer their parental right to specific persons in Bhutan, and that the beneficiary's biological parents did not specifically transfer their parental rights to the petitioners.

An affidavit, dated May 31, 2007, signed by the beneficiary's biological father ([REDACTED]) and mother ([REDACTED]), and witnessed by [REDACTED] and [REDACTED]. The affidavit states that effective May 31, 2007, and in order to provide a secure future for their child, they give up all of their parental rights over the beneficiary, and, "consent to the adoption of this child by parents whose name and particulars are not known to us."

An Agreement, dated June 18, 2007, signed by [REDACTED] and [REDACTED] (and the parents of another child being adopted), and signed by the petitioners (referred to as adoptive parents). The Agreement states in pertinent part that the biological and adoptive parents:

[A]gree that the biological parents give up and release their custody, legal and parental rights to the aforementioned two minors and consent to their adoption by parents unknown to them, then the adoptive parents, who had already filed their petition with the High Court of the Kingdom of Bhutan for the court's approval of the adoption of two Bhutanese children upon receiving of the favorable decision of the High Court will immediately assume their full parental and custody rights to the aforementioned minors as their adopted children. . . . Both the biological and the adoptive parents agree that this adoption will serve the best interest of the children. This agreement, after the final ruling of the High Court becomes irreversible and remains binding to both the biological and adoptive parents in a manner to be determined by the acting Judge.

An Agreement, dated June 25, 2007, signed by [REDACTED] and [REDACTED] (and the parents of another child being adopted), and signed by the petitioners (referred to as adoptive parents). The Agreement states in pertinent part that the biological and adoptive parents:

[A]gree that the biological parents give up and release their custody, legal and parental rights to the aforementioned two minors and consent to their adoption by parents unknown to them, then the adoptive parents, who had already filed their petition with the High Court of the Kingdom of Bhutan for the court's approval of the adoption of

two Bhutanese children upon receiving of the favorable decision of the High Court will immediately assume their full parental and custody rights to the aforementioned minors as their adopted children. . . . Both the biological and the adoptive parents agree that this adoption will serve the best interest of the children. This agreement, after the final ruling of the High Court becomes irreversible and remains binding to both the biological and adoptive parents in a manner to be determined by the acting Judge.

A Certificate of Adoption from the High Court, Bhutan, Royal Court of Justice, dated June 27, 2007, reflecting that the petitioners legally adopted the beneficiary.

A letter from the High Court, Bhutan, Royal Court of Justice, dated February 6, 2008. The letter confirms that the petitioners legally adopted the beneficiary, effective June 27, 2007. The High Court states that:

The existence of two Agreements is confirmed, but the earlier one, dated 18th June 2007, was cancelled by the court as the court required both the adoptive parents and biological parents to appear and sign before the court in person. Thus the Agreement of June 18, 2007 stands cancelled and the Agreement of June 25, 2007 is affirmed as valid.

A letter from the High Court, Bhutan, Royal Court of Justice, dated July 10, 2008. The letter states that the petitioner and her husband were granted permission to adopt the beneficiary in a hearing conducted on June 4, 2007, and that a Certificate of Adoption was issued by the High Court to that effect on June 27, 2007. The letter states that the biological parents signed an Affidavit dated 31st May, 2007 (referred to as Exhibit D) "wherein the Registrar of the High Court signed." The letter notes that an undated Affidavit (referred to as Exhibit B) "wherein the Registrar of the High Court did not sign, was not accepted by the Court. Thus, the undated Affidavit "Exhibit B" stands cancelled and Affidavit "Exhibit D" dated May 31, 2007, is affirmed as valid by the Royal Court of Justice, the High Court."

A letter addressed to the CIS office in Bangkok, from the First Secretary of the Royal Bhutanese Embassy, Bangkok, dated October 12, 2007. The letter authenticates the beneficiary's adoption documents and confirms that the beneficiary's adoption took place as per the Law of the Kingdom of Bhutan. The letter states that, "the adoption documents clearly mentions [*sic*] the intention of the biological parents to give their children for adoption to the couple from US and the adoptive parents on their intention to adopt the two children." The Bhutanese letter includes the following authenticated documents relating to the beneficiary's adoption:

A letter written by the petitioners on May 7, 2007, and submitted to the High Court of Bhutan, stating in pertinent part the petitioners "are writing to apply for the adoption of two children from Bhutan, who have been identified as [REDACTED] i [the

beneficiary] (born December 31, 2005) an [a second adopted child]
(January 30, 2004).

An undated Affidavit signed by the beneficiary's biological parents and witnessed by [REDACTED] and [REDACTED]. The affidavit states in pertinent part that the beneficiary's biological parents give up their parental rights over the beneficiary, and "consent to the adoption of this child by parents whose name and particulars are not known to us."

The June 18, 2007, Agreement signed by the beneficiary's biological parents and the petitioner and her husband, discussed above.

The AAO finds, upon review of the totality of the evidence, that the legal conclusions made in the "Field Report" submitted on appeal are unsupported by the evidence, and that the petitioner has failed to establish that the beneficiary was abandoned by her biological parents as set forth in 8 C.F.R. § 204.3(b.) The petitioner's May 7, 2007, adoption petition to the Court of Bhutan names the beneficiary as the child the petitioners wish to adopt, and the May 31, 2007, affidavit accepted as properly filed by the High Court of Bhutan contains the biological and adoptive parents' signatures and specifically reflects that parental rights are being surrendered so that the petitioner and her husband may adopt the beneficiary. Furthermore, the High Court of Bhutan and Embassy of Bhutan evidence contained in the record clearly reflects that the beneficiary's biological parents surrendered their parental rights over the beneficiary in affidavit form, and in court, with the specific intent of transferring those rights to the petitioners for adoption purposes.

The AAO notes further that the fact that an initial affidavit not containing the petitioner's names may have been signed by the beneficiary's biological parents does not change the finding that the beneficiary does not meet the abandonment definition contained in the 8 C.F.R. § 204.3(b). The High Court of Bhutan letters and the Embassy of Bhutan letter clearly demonstrate that the initial affidavit lacking the petitioners' names was invalid for High Court filing and adoption proceedings purposes. The signing of the initial affidavit therefore did not serve as a legal relinquishment of parental rights over the beneficiary.

Moreover, merely demonstrating that the beneficiary's biological parents did not anticipate that the petitioners would adopt their child is not enough to establish that the beneficiary's parents abandoned her. If parents entrust a minor to a third party in anticipation of the minor's adoption *by anyone*, this act is an abandonment only if the record shows that the third party had the legal authority to act in this capacity. In the present matter, the petitioners failed to demonstrate that prior to the beneficiary's adoption, she was under the legal custody or control of a governmental agency, adoption agency, orphanage or individual authorized under Bhutanese laws to have legal custody or control over an orphan. The petitioner indicates on appeal that the beneficiary's biological parents relinquished their parental rights over the beneficiary to the High Court of Bhutan. The AAO finds this assertion to be unconvincing. While the High Court of Bhutan that issued the adoption order in the beneficiary's case clearly had legal jurisdictional authority over matters relating to the beneficiary's adoption process, the evidence does not establish that the High Court of Bhutan was authorized under Bhutanese law to have legal custody or control over the beneficiary, or that the High Court in fact had legal custody or control over the beneficiary prior to her adoption by the petitioner. Accordingly, the AAO

finds that the beneficiary was not abandoned by her biological parents, as set forth in 8 C.F.R. § 204.3(b). She therefore does not meet the definition of an 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. *See* Section 291 of the Act, 8 U.S.C. 1361. The petitioners have not met their burden in the present matter. The appeal will therefore be dismissed and the Form I-600 petition will be denied.

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