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U.S. Citizenship  
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FILE: [Redacted]

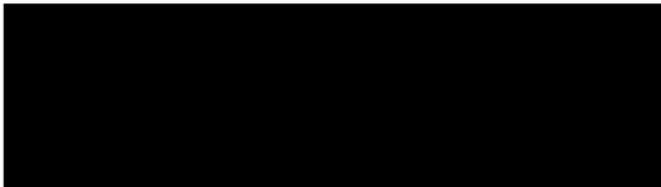
Office: HARTFORD, CT

Date: JAN 04 2008

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, Director  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hartford, Connecticut, 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 sixty-nine-year-old married citizen of the United States, filed the Petition to Classify Orphan as an Immediate Relative (I-600 petition) on May 31, 2007. The beneficiary was born in the Philippines on June 13, 2006, and she is presently one year old.

The field office director denied the I-600 petition, finding that the petitioner failed to establish that the beneficiary met the definition of an orphan under section 101(b)(1)(F) of the Act.

On appeal, counsel states that the beneficiary qualifies as an orphan under section 101(b)(1)(F) of the Act. She states that the court in the Philippines "passed upon the fact that the child is free for adoption; thereby the child at this time has no legal parents." Counsel states that the beneficiary is not yet 16 years old. She states that the home study performed in the Philippines reflects that the biological mother stated that "she does not have the wherewithal to care for the child and the child will be better off in the United States." Counsel states that the beneficiary's parents have stated that they have "great financial difficulty in raising our nine other children" as they are not gainfully employed and are tenant farmers. Counsel states that the adoptive parents have been qualified by a U.S. home study provider to adopt the beneficiary. She states that it is in the child's best interest to be adopted as she is the last of ten children and "will not have the opportunities to be parented and nurtured" as she would by the adopting parents. Counsel states that the beneficiary lives in a house purchased by the adopting parents and that prior to such involvement the family was dire. Counsel states that the adopting parents have formed a bond with the beneficiary. Counsel states that the child should be classified as an immediate relative since she is an unmarried minor child and is an adoptive child and that the competent authority in the Philippines has approved the child's emigration to the United States for the purpose of adoption by the prospective adopting parent or parents. Counsel submits a Form I-130, Petition for Alien Relative.

The AAO notes that although counsel submitted a Form I-130 on appeal, this proceeding will address only the denial of the Form I-600 petition; the Form I-130 petition is not under consideration here as it is not within the jurisdiction of the AAO.

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 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.

The evidence in the record consists of the Joint Affidavit of Consent, signed on July 10, 2006; the Petition, Inter-Country Adoption, dated July 10, 2006; the Verification and Certification of Non-Forum Shopping, dated July 10, 2006; a marriage certificate; birth certificates; a death certificate; a judgment of divorce; a baptismal certificate; an international adoption home study prepared by [REDACTED] LMSW, dated July 8, 2007; a child study report for an inter-country adoption prepared by [REDACTED] Social Welfare Officer II, Office of the Clerk of Court, Tacloban, City, dated April 10, 2007; and other documents.

The beneficiary's birth certificate reflects that [REDACTED] was born to [REDACTED] and [REDACTED] in the Philippines on June 13, 2006.

The Joint Affidavit of Consent conveys that the beneficiary's biological parents have ten children who range in age from a newborn daughter to a 24-year-old son. The Joint Affidavit of Consent states that the beneficiary's biological parents give their consent to the adoption of the beneficiary to [REDACTED] and [REDACTED] who is the sister of [REDACTED] and the biological mother of the beneficiary. The beneficiary's biological parents state that they "have great financial difficulty in raising our other nine (9) children, as we are not gainfully employed. We [are] merely tenants of a [sic] farmland."

The Petition, [REDACTED], states that the "infant is in the care and custody of her natural parents."

The Child Study Report states that:

Angelina has a good relationship/bonding with her birth parents and her other siblings. She preferred to be cuddled by her mother and elder sister most of the time. *(this can be a problem to the child once she will be separated from her birth parents to join her prospective adoptive parents – ADJUSTMENT PROBLEM).*

[I]t is respectfully recommended that the child be legally free for adoption and if the Court finds that the petitioners . . . posses[s] all of the qualification[s] and none of the disqualification[s] to adopt the herein child, based from the Home Study Report on the petitioners through the Inter-[C]ountry Adoption Board, it is further recommended that the petition for adoption of the minor child Angelina Marie Velasco Danday filed by the spouses [REDACTED] GRANTED.

The AAO finds that the Joint Affidavit of Consent, the Petition - Inter-Country Adoption, and the child study report prepared by [REDACTED] fail to overcome the district field director's determination that the beneficiary is not an "orphan," as defined under section 101(b)(1)(F)(i) of the Act. No documentation reflects that the beneficiary qualifies as an orphan "because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents." The beneficiary's parents are alive and she is presently living with them, as shown in the Child Study Report and the Petition, Inter-Country Adoption. Although the record reflects that the beneficiary's parents have consented to her adoption to [REDACTED], this does not constitute abandonment by her biological parents. Abandonment by both parents is defined under the regulation at 8 CFR § 204.3(b), which states:

*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 Joint Affidavit of Consent states that the beneficiary's biological parents give their consent to the adoption of the beneficiary to [REDACTED], who is the sister of [REDACTED] (the beneficiary's biological mother). However, this giving of consent fails to constitute abandonment under 8 CFR § 204.3(b) as the biological parents intend to transfer their parental rights, obligations, and claims to the beneficiary, and control over and possession of her to a specific couple ([REDACTED]). The regulation under 8 CFR § 204.3(b) states that abandonment is "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." Here, the actual act of surrendering rights, obligations, claims, control, and possession of the beneficiary has not occurred as the beneficiary remains under the control and possession of her biological parents and no evidence in the record indicates that a legal custody or a Decree of Adoption was granted by a Regional Trial Court in the Philippines to [REDACTED].

In addition, as 8 CFR § 204.3(b) states that relinquishment or release by the biological parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment, the statement in the Joint Affidavit of Consent that the beneficiary is to be given to the prospective adoptive parents, [REDACTED], does not constitute abandonment under 8 CFR § 204.3(b). 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.

The AAO notes further that general adoption guidance information provided by the U.S. Department of State at <http://travel.state.gov>, reflects a clear adoption process and authority in the Philippines in which the Department of Social Welfare and Development and the Inter-Country Adoption Board or Regional Trial Court are actively involved in the adoption application, approval, placement and transfer of legal custody of a child.

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 petitioner has failed to meet her burden in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.