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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

NOV 07 2003

File: [REDACTED] Office: NEW DELHI, INDIA Date:

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 APPLICANT:

SELF-REPRESENTED

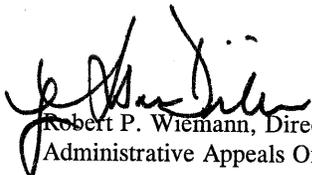
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC) of the New Delhi, India office 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 filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on May 17, 2001. The petitioner is a 37-year-old married citizen of the United States. The beneficiary is 3 years old at the present time and was born in Bangladesh on August 14, 2000.

The OIC denied the petition because the petitioner failed to establish that the beneficiary was abandoned by both parents.

On appeal, the petitioner submits a statement.

The OIC issue a notice of intent to deny on October 31, 2001 because it appeared that the beneficiary had been relinquished to a third party (the petitioner's parents-in-law) in anticipation of the adoption by the petitioner and the petitioner's spouse. The petitioner submitted a rebuttal. The OIC determined that the petitioner's rebuttal was insufficient to overcome the basis for denial. The OIC denied the petition.

In a sworn statement, the petitioner outlined the events that led to the guardianship of the beneficiary by the petitioner and her spouse. The petitioner explained that she learned about the beneficiary through her parents-in-law who reside in Bangladesh. According to the attestation, the beneficiary was abandoned at the hospital by her parents who said that they could not care for the beneficiary and expressed their willingness give her up to another family. The beneficiary's parents delivered the beneficiary to the petitioner's father-in-law.

The record contains an affidavit of the beneficiary's biological parents attesting that the beneficiary was born in their wedlock and that due to their poverty, they are giving up the beneficiary to Dr. [REDACTED] the petitioner's father-in-law, for adoption by the petitioner and her husband who reside in the United States.

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

According to the facts in the record, the petitioner and her spouse gained guardianship of the beneficiary on April 30, 2001 pursuant to the laws of Bangladesh.

The petitioner has failed to establish that the beneficiary has been abandoned by both parents. On this issue, 8 C.F.R. § 204.3(b) states, in pertinent part:

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 petitioner had previously submitted documentary evidence into the record to show the relinquishment of the beneficiary by the biological parents. Such documentary

evidence is an August 18, 2000 affidavit by the beneficiary's biological parents that states, in pertinent part:

[D]ue to our poverty and financial inability we do hereby giving up the guardianship of our new born female child to Dr. [REDACTED] for adoption by Mrs. [REDACTED] wife of Dr. [REDACTED] . . .

That Dr. [REDACTED] . . . is now custodian of our new born daughter [REDACTED] and he will look after her, maintain the baby [REDACTED] by providing food, clothes and necessary nursing etc. until she is adopted by Mrs. [REDACTED] and Dr. [REDACTED]

That we are giving up the child forever . . . at our free will . . . for the welfare of our newborn baby for adoption for a better future.

The above-quoted affidavit was referred to by the Bangladesh court that authorized the guardianship.

Based upon the evidence in the record, it is clearly established that the biological parents relinquished or released their parental rights specifically to the petitioner's father-in-law for eventual adoption by the petitioner and her spouse. This act, therefore, does not constitute abandonment by both parents as that term is defined in the regulations.

The beneficiary cannot be considered to have been abandoned by both parents as that term is defined in 8 C.F.R. § 204.3(b) because the biological parents intended to, and did in fact, transfer their parental rights to specific persons, who are the petitioner and her spouse. The applicable regulation requires the biological parents to forsake their parental rights, obligations, and claims to their child without intending to transfer, or without transferring their rights to any specific person(s).

Although the petitioner claims on appeal that "the judicial family court of the People's Republic of Bangladesh took responsibility of the baby. Civil Affairs Office of the local government played an equivalent role as the *third party* who temporarily held the child . . . ;" there is no evidence to support this assertion.

There is no documentation in the record to show that a third party (e.g., a government agency, a court of competent jurisdiction, an adoption agency or an orphanage) that was authorized under the child welfare laws of Bangladesh to act in such a capacity ever had custody of the beneficiary because the biological parents relinquished or released their parental rights to such a third party. Furthermore, the petitioner does not adequately explain the role she claims that the Civil Affairs Office had in the adoption proceedings when she states that such

office "held the child." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence presently in the record shows that the biological parents relinquished their parental rights directly to the petitioner and her spouse, which is not an act of abandonment pursuant to the applicable regulation.

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 that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.