



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: HONOLULU, HI Date: **JAN 20 2004**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Identifying data deleted to
prevent disclosure of information
invasion of personal privacy

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.

for *Mari Johnson*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Interim District Director of the Honolulu, Hawaii District 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 June 26, 2002. The petitioner is a 55-year-old married citizen of the United States. The beneficiary is 3 years and eleven months old at the present time and was born in Taiwan on February 10, 2000.

The director denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan found at 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 submits a statement and additional evidence.

Section 101(b)(1)(F) 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

In the I-600 petition, the petitioner claimed that the beneficiary was an orphan because her mother has schizophrenia and her father is unable to provide proper care for the beneficiary. In a sworn statement in the record, the beneficiary's parents relinquished their parental rights to the beneficiary on February 11, 2003. The adoption order indicates that the beneficiary's parents consented to the beneficiary's adoption and entered into an adoption agreement with the petitioner.¹ The beneficiary has been in the custody and care of her adoptive maternal grandmother since her adoption.

The interim district director denied the petition on May 15, 2003. In the denial letter, the interim district director determined that the civil ruling by the Taiwan Taipei District Court, which the petitioner submitted, shows that the petitioner and his wife adopted the beneficiary directly from her birth parents and that a release by the parents to the prospective adoptive parents does not constitute abandonment; therefore, the petitioner failed to establish that the beneficiary meets the definition of an orphan.

On appeal, the petitioner states that:

Per Title 8, Code of Federal Regulations, part 204.3 states: 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 (Taiwan Children Welfare League), a court of competent jurisdiction (Taiwan Taipei District Court) is authorized under the child welfare laws of the foreign sending country to act in such a capacity. I have documents from the Taiwan Children Welfare League sanctioning the adoption, along with the Court.

As the record is presently constituted, the petitioner has established that the beneficiary is the child of two parents. The evidence does not show that the beneficiary is an orphan because of the death or disappearance of,

¹ The consent to adoption and the adoption agreement are not in the record.

abandonment or desertion by, or separation or loss from both parents. The evidence on the record shows that both of the beneficiary's parents are alive and their whereabouts are known. The evidence further shows that the beneficiary's parents consented to the beneficiary's adoption by the petitioner and his spouse.

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.

[Emphasis added.]

The petitioner's assertion that the beneficiary's parents relinquished the beneficiary to a governmental agency or a court of competent jurisdiction is not persuasive. The evidence shows that a governmental agency and a court of competent jurisdiction sanctioned the beneficiary's adoption by the petitioner and his wife. Sanctioning or approving an adoption is not equivalent to the court or child welfare agency assuming the custody and control of a child. The petitioner has failed to establish that the beneficiary meets the definition of an orphan as defined in the Act.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met his burden of proof.

ORDER: The appeal is dismissed.