U.S. Department of Homeland Security
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Washington, DC 20536

F-1

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: INDIANAPOLIS, INDIANA Date: JUL 9 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition to Classify Orphan as an Immediate Relative pursuant to 101(b)(1)(f) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

IN BEHALF OF PETITIONER:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The District Director, Indianapolis, Indiana, denied the visa petition to classify the beneficiary as an immediate relative. 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 February 25, 2004. At the time of filing, the petitioner was a 42 year-old married citizen of the United States. The beneficiary was 14 years old and was born in on November 7, 1989. The record indicates that the petitioner and his spouse adopted the beneficiary in Peru on August 7, 2003.

The district director denied the petition on April 16, 2004, after determining that the petitioner failed to establish the beneficiary was an orphan. Specifically, the director found that as the beneficiary's parents had released parental rights directly to the petitioner and his spouse, the petitioner could not establish that the beneficiary was abandoned as defined in the regulations.

The petitioner, through counsel, files a timely appeal.

The regulation at 8 C.F.R. 204.3(b) 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). A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.

On appeal, counsel argues that despite the specific relinquishment from the beneficiary's natural parents to the petitioner and his spouse for purposes of the adoption proceeding in Peru, the natural parents had actually "abandoned the [beneficiary] as an infant, and had not cared for, provided for, lived with or been involved with the child since it was an infant." Counsel further argues that the beneficiary lived with his maternal grandparents beginning at the age of nine months and that the grandparents "did not know the whereabouts or receive any assistance or direction from either of the biological parents."

Counsel states that errors were made by the translator of the documents originally provided in support of the petition. Counsel contends that the newly translated document indicates that the beneficiary lived with his maternal grandmother, not with both his natural parents and his maternal grandmother.

We are not persuaded by counsel's arguments nor do we find the new translation to be relevant to the determination of whether the beneficiary can be considered abandoned. The fact that, as counsel states, the natural parents had not cared for, provided for, lived with, or been involved with the beneficiary since he was an infant, does not demonstrate that the natural parents had willfully forsaken all parental rights, obligations, and claims to the beneficiary.

Contrary to counsel's argument, the beneficiary's parents had rights, claims, and obligations to the beneficiary as evidenced by their statement dated March 23, 2004 in which they renounced those rights and obligations. In the adoption decree dated August 7, 2003, the judge of the Second Family Court of Peru specifically acknowledged the biological parents' statements and their "voluntary accept[ance]" that the petitioners adopt their son. Clearly, the natural parents had

not willfully forsaken all parental rights, obligations and claims to the beneficiary while he was still an infant as they still had the authority to relinquish such rights at the time of the adoption.

In the alternative, counsel argues that the beneficiary's natural mother qualifies as a "sole parent" given that she was never married to the beneficiary's father and the father "disappeared and abandoned" the beneficiary. Counsel claims that "because the [beneficiary] was born out of wedlock, the mother would be considered a "sole parent."

We disagree. The regulation at 8 C.F.R. § 204.3(b) defines a "sole parent" as:

> 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.*

Emphasis added.

As recognized by the Board of Immigration Appeals in *In re Susan Edith Torres,* 22 I&N Dec. 28 (BIA 1998), the country of Peru does not distinguish between children born in wedlock and children born out of wedlock. As the beneficiary's birth certificate clearly lists Juan Ignacio Gutierrez Rivas as his natural father, the beneficiary is not considered illegitimate and the above definition of "sole parent" does not apply to this case.

The burden of proof in on the petitioner to establish the beneficiary's eligibility for classification as an orphan. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Yee*, 11 I&N Dec. 27 (BIA 1964); section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

Accordingly, the decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.