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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20530

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: ATLANTA, GEORGIA Date: JUL 22 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 District Director of the Atlanta, Georgia Citizenship and Immigration Services (CIS) District Office denied the Application for Advance Processing of Orphan Petition and the case was certified to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn and the application will be approved.

The prospective petitioner filed the Application for Advance Processing of Orphan Petition (Form I-600A) on December 2, 2003. At the time of filing, the prospective petitioner was a 36 year-old married citizen of the United States, who together with her spouse, sought to adopt a child from China.

The district director denied the application based on the determination that the prospective petitioner failed to establish the legal immigration status of her spouse.

The prospective petitioner files a timely appeal.

The regulation at 8 C.F.R. § 204.3(b) defines "prospective adoptive parent" as:

> A married United States citizen of any age and his or her spouse of any age . . . [t]he spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

As noted by the district director in her decision, the record contains a copy of the petitioner's spouse's Form I-94. The Form I-94 indicates that the spouse was lawfully admitted as an L-1 nonimmigrant on January 24, 2004. The record further reflects that the spouse is permitted to remain in the United States until September 14, 2006. The record also contains a copy of the spouse's approved Nonimmigrant Petition Based on Blanket L Petition, Form I-129S filed on behalf of the spouse by Barco, Inc. The evidence contained in the record, including the home study, confirms that the spouse continues to work for the petitioning company.

Given the evidence contained in the record, we can find no reason for the district director's conclusion that "this is not the equivalent to lawful immigration status."

The burden of proof is on the petitioner to establish eligibility for the benefit sought. *Matter of Annang*, 14 I&N 502 (BIA 1973); *Matter of Brantigan*, 11 I&N 493 (BIA 1966); *Matter of Yee*, 11 I&N Dec. 27 (BIA 1964); section 291 of the Act, 8 U.S.C. § 1361. As the prospective petitioner has established that her spouse resides in the United States in a lawful immigration status, the prospective petitioner has met the burden of proof in this case.

Accordingly, the decision of the district director denying the application will be withdrawn and the petition will be approved.

ORDER: The director's decision is withdrawn and the petition is approved.