

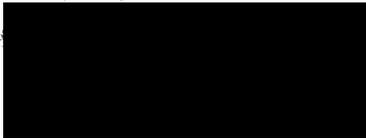
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FL

FILE: [Redacted] Office: HOUSTON, TX

Date: MAY 24 2005

IN RE: Petitioner:
Beneficiary:



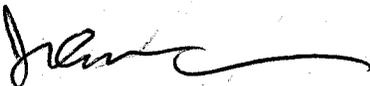
Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF APPLICANT:



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.

For 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Houston, Texas, 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 (I-600 petition) on March 3, 1995. The petitioner is a forty-seven year old married citizen of the United States. The beneficiary was born in Vietnam on October 26, 1986, and she is eighteen years old.

The district director approved the I-600 petition on March 7, 1996, and forwarded the petition to the U.S. Consular Office in Bangkok, Thailand for further processing. The consular investigation revealed information that was not available to U.S. Citizenship and Immigration Services (CIS) at the time the I-600 petition was approved. Specifically, the consular investigation revealed that the beneficiary's biological father had not disappeared, and that the beneficiary's parents had relinquished their parental rights and placed the beneficiary into an orphanage for the purpose of allowing the petitioner and her husband to adopt the beneficiary.

Based on the information revealed by the consular investigation, the district director issued a "Notice of Intent to Revoke" approval of the petitioner's I-600 petition. The petitioner, through counsel, responded to the district director's notice, stating that the beneficiary's biological parents had abandoned the beneficiary after they divorced and that the beneficiary's biological parents placed the child in an orphanage because they were no longer able to provide for her, and were no longer interested in having a parent-child relationship with her.

The district director found that the petitioner's response failed to establish that the beneficiary met the definition of "orphan" as defined in section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The I-600 petition was subsequently revoked based on the determination that the beneficiary's father had not "disappeared" as set forth in 8 C.F.R. § 204.3(b), and that the beneficiary had not been "abandoned" as defined in 8 C.F.R. § 204.3(b).

Counsel asserts on appeal that the beneficiary was abandoned by her parents and that she has no family members to care for her. Counsel concludes that the beneficiary therefore meets the definition of "orphan".

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. (Emphasis added).

Abandonment by both parents is a defined term in the regulations. 8 CFR 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.

The U.S. Department of State clarifies further that "abandonment of a child must be unconditional. Agreeing to give a child up for adoption by a specific person does not constitute unconditional abandonment." See <http://travel.state.gov/adoption.vietnam>

8 C.F.R. § 204.3(h)(14) states in pertinent part:

[T]he approval of . . . an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

In the present matter, the evidence relating to the beneficiary's status as an "orphan" includes the following:

A Vietnamese birth certificate reflecting that the beneficiary was born in Vietnam on October 26, 1986, to [REDACTED] (father) and [REDACTED] (mother).

A Vietnamese divorce decree reflecting that the beneficiary's biological parents obtained a divorce in [REDACTED] on October 21, 1997, when the beneficiary was ten years old. The decree reflects that the beneficiary's mother was awarded physical custody over the beneficiary, and that the beneficiary's father was awarded liberal visitation rights. The decree appears to award legal custody to both parents jointly.

A consent form signed on September 30, 1997, by the beneficiary's biological mother stating that she cannot support the child, and that she is giving the child to the Da Nang Center of Protection for Orphans to decide the child's future.

A consent form signed on September 30, 1997, by the beneficiary's biological father stating that the beneficiary's mother is giving the child to the Da Nang Center of Protection for Orphans and that he agrees and makes no claim to the child.

A Vietnamese adoption decree reflecting that the petitioner and her husband adopted the beneficiary on October 11, 2002.

An affidavit signed by the beneficiary's biological mother on June 15, 1994, stating that the beneficiary's father disappeared and that she is unable to support the beneficiary or provide proper care to her. The beneficiary's mother states further that she gives up all legal rights to the beneficiary for adoption purposes.

An affidavit signed by the beneficiary's maternal grandfather [REDACTED] on November 2, 1999, stating that illness and divorce caused his daughter, the beneficiary's mother, to be unable to care for the beneficiary, and that on September 30, 1997, she brought the beneficiary to the orphanage center in [REDACTED] and admitted her.

A Vietnamese certificate of death reflecting that [REDACTED] died of illness at home on November 2, 1999.

An affidavit signed by the beneficiary's maternal aunt [REDACTED] on November 26, 1999, stating that the beneficiary's biological father left the beneficiary in the woods and that the family had to pay to claim the child. The affidavit states that the beneficiary's mother's boyfriend did not have a good relationship with the beneficiary, and that her mother brought the beneficiary to live with her maternal grandfather, two aunts and an uncle. The affidavit states that the family members were unable to care for the beneficiary due to financial problems and mental and physical illnesses, and that the beneficiary's mother subsequently transferred the child to an orphanage.

An affidavit signed by the petitioner on December 3, 2002, stating that the beneficiary is her husband's niece. The petitioner states that the beneficiary's father tried to sell her by leaving her in the woods, but that her maternal grandfather was able to pay a fisherman and get the child back. The child subsequently began residing with her grandfather, two aunts and an uncle. The petitioner states that an adoption agency (MAPS) told her to place the child into an orphanage in Vietnam in order to facilitate the adoption process. The petitioner states that the beneficiary was subsequently placed into the Da Nang Orphanage for one year. The orphanage subsequently closed and the beneficiary returned to live with her maternal relatives.

Evidence of financial contributions made by the petitioners to the beneficiary's maternal relatives in 1999 and of phone calls made to Vietnam in 1999.

A Home Study Report prepared on February 29, 1996, stating in part under the header, "Readiness to Adopt and Motivation" that the petitioners are applying to adopt their niece who is living in Vietnam with an ailing grandparent, that they have the consent of the child's birth mother, that the beneficiary is in agreement with the impending adoption and looking forward to it, and that the extended family members are also supportive of the adoption plan.

The AAO finds that the evidence contained in the record fails to overcome the CIS determination that the beneficiary's biological father did not "disappear" and that the beneficiary was not "abandoned" by her parents as defined in 8 C.F.R. 204.3(b).

The October 1997 divorce decree contained in the record awards physical custody to the beneficiary's mother with liberal visitation to the beneficiary's father, and appears to award legal custody to both parents. The AAO finds that the information in the divorce decree contradicts the consent form information indicating that the beneficiary's parents gave up their parental rights in September 1997, or that they had the beneficiary placed into an orphanage in Da Nang, Vietnam. The AAO notes further that the beneficiary's mother's 1994 affidavit statement that the beneficiary's father disappeared is contradicted by the existence of his signed 1997, consent form and subsequent 1997 divorce decree between the beneficiary's parents. Moreover, the 1994, affidavit reflects that any intent by the beneficiary's mother to give up her parental rights over the beneficiary was done specifically for adoption purposes. The 1996 information contained in the Home Study Report additionally reflects the beneficiary's mother's intent to give up parental rights over the beneficiary specifically so that the petitioner could adopt the beneficiary.

The AAO finds further that the information contained in the affidavits signed by the beneficiary's grandfather and aunt is uncorroborated and that it fails to establish that the beneficiary was "abandoned" by her parents. The AAO notes that the record contains no evidence to corroborate the claim that the beneficiary was placed into an orphanage. Moreover, even if she was placed in an orphanage, the petitioner's affidavit concedes that such placement was done solely for the purpose of facilitating the petitioner's adoption of the beneficiary, and a review of the evidence reflects that the beneficiary continues to live with her biological mother's family.

The AAO finds that the evidence in the record reflects that the beneficiary's biological parents maintained their parental rights, obligations and claims over the beneficiary prior to the petitioner's October 2002, adoption of the child. A review of the evidence reflects further that the beneficiary's biological parents intended to transfer their parental rights over the beneficiary specifically so that the beneficiary could be adopted by the petitioner and his wife. The beneficiary was therefore not "abandoned" by her parents and the AAO finds that she does not meet the definition of "orphan" as set forth in section 101(b)(1)(F) of the Act.

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 not met his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.