



U.S. Citizenship
and Immigration
Services



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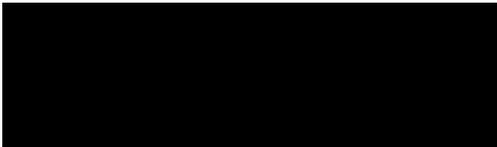
FILE: [Redacted] Office: PHILADELPHIA, PA

Date: NOV 16 2005

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:



RECEIVED

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, Philadelphia, Pennsylvania, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 petition) on July 15, 2003. The petitioner is a forty-five-year old married citizen of the United States. The beneficiary was born in China on March 23, 1999, and she is six-years-old.

The district director determined the petitioner had failed to establish that, for immigration purposes, the beneficiary was “abandoned” by her natural parents, or that her natural parents had “disappeared” or “deserted” her. The district director additionally found the petitioner had failed to establish that the beneficiary was in the custody of a competent authority in China prior to her adoption by the petitioner. The district director noted further that the petitioner had failed to provide a valid home study, and the district director concluded that the beneficiary failed to meet the definition of “orphan” as set forth in section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i).

On appeal Counsel asserts that the adoption process and adoption certificate evidence submitted by the petitioner establishes that the Chinese government determined the beneficiary’s parents could not be located and had “disappeared” for immigration law purposes. Counsel concludes that the beneficiary therefore meets the definition of “orphan” as set forth in section 101(b)(1)(F)(i) of the Act.

Section 101(b)(1)(F)(i) of the Act defines an “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 . . . who have or has complied with the preadoption requirements, if any, of the child's proposed residence. (Emphasis added).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(b) provides, in pertinent part, the following definitions:

Disappearance of both parents means that **both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority** in accordance with the laws of the foreign-sending country. (Emphasis added).

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).

Desertion by both parents means that **the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority** in accordance with the laws of the foreign-sending country. (Emphasis added).

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

The record contains the following evidence relating to the beneficiary's status as an "orphan":

An affidavit signed by the petitioner on May 6, 2004, stating that he posted an advertisement in the Shanghai, China Family Newspaper on October 13, 1999, searching for the biological parents of the beneficiary. The petitioner states that no one responded to the advertisement. The petitioner states that subsequent to posting the advertisement, the Putuo Civil Affairs Bureau in China required him to submit a founding certificate from the Hong Kou District, Ou Yang Public Security Bureau, and that on September 20, 2000, the Ou Yang Public Security Bureau issued a certificate indicating that attempts to locate the parents of the beneficiary had been unsuccessful, and that the child was therefore abandoned. The petitioner indicates that a copy of his newspaper advertisement and a copy of the Ou Yang Public Security Bureau certificate have been submitted.

A copy and partial translation of the petitioner's "Public Notice of Seeking Relatives" advertised in the Shanghai Family News newspaper, reflecting that [REDACTED] name and March 23, 1999, date of birth were contained on a list of abandoned babies, and requesting that relatives of the abandoned baby having a valid certificate contact the advertising department of the newspaper within 60 days of the public notice.

A copy of a September 20, 2000, Hongkou Branch, Security Bureau of Shanghai police station, "Abandoned Baby Certificate" stating that on March 29, 1999, the petitioner and his wife picked up an abandoned baby, born on March 30, 1999, and that after a search, the baby's natural parents did not claim the child.

A copy of the Adoption Application completed by the petitioner and his wife on September 27, 2000, stating in part that the petitioners wanted to adopt a child and that

[W]e asked lots of relatives and friends for help. On March 31, 1999, our good friend [REDACTED] a called me and told me that there was an abandoned child which was born by a young student couple. They did not reach the legal marriage age and they were doing their practical training. They would be dismissed from school if the school knew they gave birth to a child. The new born girl was born on March 23 After heard the news, we decided to adopt this child and named her [REDACTED]. She is 18 months now. One year ago, we made a public notice in Shanghai Family newspaper to look for her parents, no one responded. We are going to adopt [REDACTED] as our daughter by following the legal procedures.

A Shanghai Putuo District Civil Affairs Bureau, "Registration Certificate of Adoption", dated November 6, 2000, certifying that the petitioners applied to adopt a, "foundling not supported by the social welfare association as their adopted daughter, and, with their adoption being found after examination in conformity with the provisions of the Adoption Law of the People's Republic of China, are granted registration and issued this Certificate. The relationship of adoption shall be established as of the date of registration." The certificate additionally states "Name of Sender of the Adopted Child: None"

A copy of the beneficiary's Chinese passport issued in Shanghai on May 31, 2001

A Statement signed on September 28, 2003 by [REDACTED] stating that she sought medical treatment at the Shanghai Pu Tuo District Maternity and Infant Healthcare Hospital on March 31, 1999, and that the natural parents of the beneficiary approached her at that time and begged her take their baby or have it adopted. The affiant states the couple said the child was a love child and that they were technical school students, had no means to raise the baby, were under the legal marriageable age, and would be expelled from school if the authorities became aware of the baby. The affiant states the couple showed her and her husband [REDACTED] the baby's birth certificate and informed them of the child's age, but she did not take the birth certificate. The affiant states she knew her friend [REDACTED] [the petitioner's wife] wanted to adopt a baby, and she called [REDACTED] mother who told her to bring the baby to her home. The affiant states that the beneficiary's natural parents gave them a verbal promise not to take any recourse, and that the child has been raised by [REDACTED] since that time.

The Adoption Law of the People's Republic of China, effective April 1, 1992, provides that the following classes of children under the age of fourteen may be adopted:

- a) Orphans who lost their parents
- b) **Abandoned children whose birth parents cannot be found**
- c) **Children whose birth parents are incapable of providing for them because of unusual hardship.**

(Emphasis added). See U.S. Department of State (DOS) information on China, contained at <http://www.travel.state.gov>. The DOS provides additional information regarding Chinese adoption procedures, and states in pertinent part that:

[T]he government office responsible for adoptions in China is the Ministry of Civil Affairs, specifically the CCAA [China Center for Adoption Affairs]

Once the application for adoption is approved, the CCAA matches the application with a child whose paperwork has been forwarded to the CCAA by a provincial Civil Affairs Bureau

[A] series of interviews of the prospective adoptive parent(s) will occur; **a contract will be signed with the Children's Welfare Institute**; the contract will be registered with the Civil Affairs Bureau; and a notarized adoption decree will be issued

After all interviews are completed, the actual adoption and completion of the contract . . . take place **Prospective adoptive parents will be requested to sign an adoption agreement/contract with the welfare institute**, then register the adoption at the provincial Civil Affairs Bureau, pay requisite Chinese fees, and obtain a Chinese passport and exit permit for the child. **The adoption process also includes signing an agreement with the person or institution putting up the child for adoption, registering in person with the Chinese Civil Affairs Bureau and carrying out the notarized procedures at the designated Chinese notarial office. When the notarial office in the child's place of residence approves the adoption, that office issues a notarized certificate of adoption, a notarized birth certificate and either notarized death certificate(s) for the child's biological parent(s) or a statement of abandonment from the welfare institute.** The adoptive relationship goes into effect on the day of the notarization. (Emphasis added).

The DOS clarifies in its Adoption Agencies and Attorneys section, that responsibility for the various procedures necessary to adopt a child in China is divided among five Chinese government authorities, including the China Center for Child Affairs (CCAA), the Department of Civil Affairs, the Children's Welfare Institute, Notarial Offices and the Public Security Bureau. The DOS clarifies that the Children's Welfare Institute is:

[A]dministered by the Ministry of Civil Affairs through provincial Civil Affairs Bureaus. These are government-operated homes for orphaned or abandoned children. Children can only be placed in the welfare institutes if their parents have died or abandoned them. In cases of abandoned children, the authorities attempt to locate the children's biological parents before allowing them to be adopted from the institutes.

The DOS additionally clarifies that:

Notarial Offices- the Provincial Notarial Offices, which are administered by the ministry of Justice Department of Notarization Division . . . issue the final adoption certificate. That process terminates parental rights of the birth parent(s). **Each adoption certificate**

is accompanied by a notarial birth certificate for the child and either a statement explaining the circumstances of abandonment for abandoned children or notarial death certificates of the orphaned child's parents. (Emphasis added).

Upon review of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the beneficiary meets the definition of "orphan" as defined in the Act. The record contains no evidence or indication that the beneficiary became a ward of a competent authority in China or that she was released by her natural parents to a third party authorized under the Chinese welfare laws to act in a custodial care capacity in anticipation or preparation for adoption. The beneficiary was therefore not "deserted" or "abandoned" by her natural parents, as set forth in 8 C.F.R. § 204.3(b).

The petitioner additionally failed to demonstrate that the beneficiary's natural parents "disappeared" as set forth in the regulations. The petitioner submitted copies of the "Public Notice of Seeking Relative" advertisement he submitted to the Shanghai Family News newspaper, the "Abandoned Baby Certificate" from the Hongkou Branch, Security Bureau of Shanghai police station, and the Shanghai Putuo District Civil Affairs Bureau, "Registration Certificate of Adoption". The AAO notes that the information contained in the "Abandoned Baby Certificate" regarding the beneficiary's date of birth (listed as March 30, 1999) and the date she was found (listed as March 29, 1999) are inconsistent with the March 23, 1999 birth date and March 31, 1999 date of discovery statements made by the petitioner. The record additionally lacks important information referred to in the DOS discussion of the Chinese adoption procedure process, which would clarify the nature of, and circumstances surrounding the beneficiary's adoption, and whether the beneficiary's natural parents had been found to have "disappeared". The record lacks any evidence from the CCCA, and the record does not contain a signed agreement with the person or institution putting the beneficiary up for adoption. The record additionally lacks evidence of a contract or adoption agreement with the Chinese Children's Welfare Institute, and the record does not contain a statement of abandonment from the Children's Welfare Institute, or the notarial office statement explaining the circumstances of the beneficiary's abandonment.

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 AAO finds that petitioner has not met his burden of establishing that the beneficiary meets the definition of "orphan" as defined in section 101(b)(1)(F)(i) of the Act. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.