



U.S. Citizenship
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FILE: OFFICE: HO CHI MINH CITY DATE: SEP 21 2007

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge [REDACTED] City, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.¹

The petitioner filed a Petition to Classify Orphan as an Immediate Relative (Form I-600). The petitioner is a forty-one-year-old married citizen of the United States. The beneficiary's birth certificate reflects that she was born in Vietnam on November 16, 2006.

The officer-in-charge found that the evidence in the record reflected fraudulent adoption practices in the beneficiary's case, and the officer-in-charge determined that the petitioner had failed to establish that the beneficiary met the definition of an *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 Form I-600 was denied accordingly.

On appeal, the petitioner indicates that the officer-in-charge's conclusions are not supported by direct evidence, and that the evidence in the record establishes by a preponderance of the evidence that the beneficiary was abandoned, and that the adoption practices followed in the beneficiary's case were legal and proper.

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 pre-adoption requirements, if any, of the child's proposed residence. (Emphasis added.)

The regulation provides in pertinent part at 8 C.F.R. § 204.3(d) that:

(1) [T]he following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

(iii) Evidence that the child is an orphan as appropriate to the case:

¹ The petitioner has filed Form I-600's for two separate beneficiaries. The other petition, for the second beneficiary, also named [REDACTED], is found in [REDACTED]. A single fee was paid on appeal, therefore there will be only one appellate decision. It is noted that the circumstances are identical in both cases and therefore, the decision will be applicable to the other beneficiary as well.

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section

The AAO notes that in visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Reg. Comm. 1989.)

The officer-in-charge found that the petitioner had failed to overcome issues of fraudulent adoption practices in the beneficiary's case, including the: selection of the orphanage; location of where the beneficiary was found; contradictory statements from the individuals who purportedly found the infants; suspicious paperwork; and failure to establish that the beneficiary and the second infant with whom she was found are siblings.

The officer-in-charge noted the petitioners claim that two individuals, [REDACTED] and his cousin, Officer Thuc, were involved in finding the beneficiary and a similarly aged sibling around 10pm on November 16, 2006. The infants were found wrapped in a blanket together, with a note stating that:

Because of my difficult situation, I made a mistake and gave birth to 2 girls out-of-wedlock. As the reality, [sic] I could not take care of my daughters. I had to leave my daughters. I would like someone who has kind heart to receive the girls and take care of them for me, or send them to somewhere who [sic] they can have a better life. Thank you very much. I would like to not mention my name and address.

A police report was filed and the beneficiary and second infant were transferred to the Viet Tri orphanage the following day. The petitioner claims that government officials announced the discovery of the beneficiary and a sibling on the radio, but that no one responded. The beneficiary and second infant subsequently remained at the Viet Tri orphanage, and were offered for adoption to the petitioner in February 2007. The petitioner submitted statements from [REDACTED] the finders of the babies. He additionally submitted the letter found at the time that the beneficiary was found, and police, orphanage and radio announcement documentation.

The Consular Section, U.S. Embassy, Hanoi conducted a field investigation into the petitioner's claim in March 2007. The consular investigation noted the exclusive involvement of two [REDACTED] police officers and the chief registrar of the [REDACTED] Committee in the discovery of the beneficiary and second infant, and the infants' transfer to the Viet Tri orphanage rather than a closer orphanage. The investigation noted further that other persons interviewed, including persons living near the location where the infants were found, relatives of the child finders, and higher-ranking government officials were unaware that the beneficiary and a second infant had been found. Specifically, the officer-in-charge noted that:

- 1) Deputy Police [REDACTED] who was one of the police officers involved in this case, had been involved in three other local infant abandonment cases within the last four months, which had been investigated by the U.S. Embassy Consular section. One of the cases involved the wife of [REDACTED] one of the persons who found the beneficiary. [REDACTED] had allegedly found an abandoned infant on October 16, 2006, and had stated during a consular investigation into her case, that [REDACTED] had written and signed a statement about the discovery

of the infant. This statement was subsequently admitted to by [REDACTED] stated further during her interview that [REDACTED] told her he knew someone who wanted to adopt the child, and that he gave her 50,000 Vietnamese Dong and a packet of biscuits.

- 2) The consular investigation noted that [REDACTED] had failed to mention his own discovery of two abandoned infants at the time he was questioned about his wife's discovery of an abandoned infant in March 2007. The officer-in-charge found the explanation that memory failure accounted for [REDACTED] failure to discuss his own, and the other abandoned infant cases, to be unconvincing.
- 3) During a March 2007 consular investigation interview with Officer [REDACTED] [REDACTED] stated that she had also been involved in an abandoned infant case, and that she had found an abandoned infant in February 2007.
- 4) The U.S. consular officials were unable to interview [REDACTED] regarding the circumstances of the present case. The investigative report reveals that consular officials set up a meeting with Officer [REDACTED], but were told when they arrived that [REDACTED] was unable to attend because he had another meeting. Another attempt was made to interview [REDACTED] but the consular officials were told that he was unable to meet because he had to visit relatives in the South. The consular report noted, however that consular officials had interviewed [REDACTED] in March 2007 while investigating the discovery of an infant by [REDACTED]. The consular report in that case noted that [REDACTED] wife [REDACTED] cared for the abandoned infant after its discovery, and before it was placed with the Viet Tri orphanage. The report additionally noted discrepancies in [REDACTED] insistence that he witnessed [REDACTED] write and sign a statement regarding the discovery of an abandoned infant, and his subsequent admission that she did not write and sign the report when confronted with [REDACTED] statement that [REDACTED] had written and signed the statement. The consular investigation revealed that [REDACTED] wife had been involved in caring for the beneficiary and the second infant prior to placement of the infants into the Viet Tri orphanage. [REDACTED] had also been involved in caring for an abandoned infant she herself found prior to its placement into an orphanage. The consular investigation noted that [REDACTED] and his wife had provided conflicting testimony regarding the date that [REDACTED] wife found an abandoned infant – initially stating February 2007 (before the TET holiday) and later stating October 2006. The consular report noted further that [REDACTED] had not mentioned his own wife's discovery of an abandoned infant, or any other child abandonments to the consular officials when he was interviewed in March 2007. The officer-in-charge found the explanation that memory failure accounts for [REDACTED] failure to discuss the other abandoned infant cases, to be insufficient.
- 5) A consular officer interview with [REDACTED]s superior, [REDACTED] revealed that he was away on training in October 2006, but that he was orally informed by [REDACTED] of the abandoned infant case involving [REDACTED]. [REDACTED] stated during his consular interview that he was not informed by [REDACTED] of the November 2006 discovery of the beneficiary and a second infant by [REDACTED] and he was not aware that [REDACTED] found an abandoned infant. In a rebuttal affidavit, [REDACTED] indicated that although he did not remember [REDACTED] reporting the case involving the

beneficiary and the second infant when asked about it by consular officials, he remembers hearing about the case.

- 6) A consular interview with [REDACTED] vice chairwoman of the People's Committee of Nang Yen Village, revealed that her superior, [REDACTED] Chief of the Nang Yen People's Committee, had not informed other members of the People's Committee about the discovery of the beneficiary and a second infant. [REDACTED] stated during her interview that her office has weekly meetings with the police station, and that if anything has happened in the village, it should be reported at the meeting. On rebuttal, [REDACTED] stated that [REDACTED] does not tell her everything that happens.
- 7) A consular interview with [REDACTED] revealed that although he was aware of the child abandonment case involving the beneficiary and a second infant, and was also aware that [REDACTED] s wife, [REDACTED] had found an abandoned infant, he was unaware of any involvement in the case by [REDACTED]. He was also not aware that [REDACTED] had found an abandoned infant.
- 8) A consular interview with Officer [REDACTED] s wife, [REDACTED] revealed that she had no knowledge of her husband finding any abandoned infants.
- 9) Officer [REDACTED] stated in a consular interview that shortly before the consular investigator's visit, sometime around March 2007, [REDACTED] told him to go to his son's home. Two women from the Viet Tri Orphanage met with him at Officer [REDACTED] son's home in order to have him sign two papers relating to the discovery of the beneficiary and the second infant. The consular investigation notes that the only documentation presented to them bearing [REDACTED] signature is a police report dated November 16, 2006, and the report indicates that it appears the documents containing his signature may have been backdated by four months.
- 10) The consular investigation questioned the location at which [REDACTED] and Officer [REDACTED] stated they found the beneficiary and the second infant. The investigation found that the [REDACTED] secondary school gate was not on the way to their home, and the consular officials noted nearby store owner and nearby on-duty security guard's [REDACTED] statements that they had not heard a baby crying, as claimed by [REDACTED] and Officer [REDACTED] wife additionally stated in a consular interview that she had not heard of any child being abandoned in the village or in the school. Interviews with [REDACTED] who lived next to the police station, also reflect that she did not hear anything the night the beneficiary and second infant were discovered. Hand-drawn map and rebuttal statements that the witnesses are sound sleepers and not always home, and that the infant was whimpering or sleeping rather than crying loudly were found not to overcome the consular findings. The AAO also notes that [REDACTED] and Officer Thuc both stated that they shouted loudly to see if anyone in the vicinity has left the infants. It was not merely the whimpering of infants.
- 11) Although the [REDACTED] was located near the place where the beneficiary was found (about 6 miles away), the beneficiary was instead brought to Viet Tri Orphanage (located about 25 miles away). The officer-in-charge found the explanation that Thanh Ba Orphanage was

more difficult to reach, and that the government officials involved were unaware that Thanh Ba Orphanage had been upgraded to an orphanage earlier that year to be unconvincing given that the Thanh Ba Orphanage had been upgraded in June 2004, several years earlier. The officer-in-charge noted further that the consular investigation revealed that the road to Thanh Ba Orphanage is well-paved and easy to travel. The officer-in-charge noted further that according to the *Giving and Receiving Minutes*, Viet Tri Orphanage personnel picked up the beneficiaries the day after they were found. According to the *Giving and Receiving Minutes* no officials were involved in transporting the infants to Viet Tri Orphanage.

- 12) An interview with [REDACTED] of the Medical Center of Nang Yen Commune revealed that knew nothing of an abandoned infant case.
- 13) The officer-in-charge noted the contradiction between [REDACTED] consular interview statement that after bringing the beneficiary and second infant to the local police station he had no idea what happened after [REDACTED] finished the police report, and that the orphanage probably picked up the infants later, and the November 17, 2006, *Giving and Receiving Minutes* placing as well as [REDACTED] at the Viet Tri orphanage at 5pm as giving parties.
- 14) The consular investigation noted that an unsigned note found with the beneficiary and the second infant indicated that the two infants had the same mother, however the children are physically different and appear to be about the same age. The officer-in-charge determined that the petitioner had failed to submit evidence to establish that the beneficiary and the second infant were siblings. The officer-in-charge determined further that the public notice regarding the discovery of abandoned infants was therefore misleading as it referred to two children born of the same mother being found.

The regulation provides at 8 C.F.R. § 204.3(b) that:

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.

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.

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.

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.

Although the record contains evidence indicating that the beneficiary was found near a school with an abandonment letter from her mother, and that a police report was filed, radio notification made, and the beneficiary placed in an orphanage, the source of the evidence contained in the record, the circumstances surrounding the beneficiary's discovery, and the beneficiary's placement into an orphanage have not been established. As discussed in the officer-in-charge's decision, the record contains inconsistent, suspicious and insufficiently explained evidence regarding the: selection of the orphanage; the location of where the beneficiary was found; contradictory statements from individuals who purportedly found the infants; improperly prepared paperwork; and the relationship of the beneficiary and the second infant with whom she was found.

The AAO finds that the petitioner has not overcome the numerous and significant inconsistencies and questionable explanations contained in the record. Of particular note are the contradictions contained in the initial affidavits taken by the U.S. consular officer and the later affidavits presented with the rebuttal to the Notice of Intent to Deny, and resubmitted on appeal. The AAO must give greater weight to affidavits signed in the presence of a U.S. government official than to self-serving affidavits completed at a later date. The record remains unclear as to where and how the beneficiary was found, and the current status of her natural parents.

The assertion by the petitioner that the officer-in-charge must present direct evidence of fraud in the present matter is not persuasive. 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 in the present matter, the petitioner has failed to meet his burden of establishing that the beneficiary was *deserted* or *abandoned* by both parents, or that both of her parents *disappeared*. Accordingly, the petitioner has failed to establish that the beneficiary is an *orphan*, as set forth in section 101(b)(1)(F) of the Act. The appeal will therefore be dismissed, and the petition will be denied.

ORDER: The appeal is dismissed. The petition is denied.