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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE:

Office: FRESNO, CA

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Applicant:

Beneficiary:

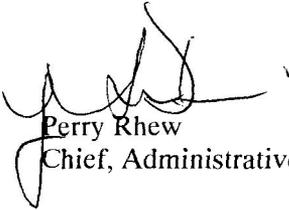
PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(b)(1)(F)(i). The field office director denied the petition on the basis of his determination that because the petitioner had submitted evidence and testimony lacking in credibility, the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan, as the term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). Specifically, the field office director raised questions regarding: (1) the veracity of the testimony of the petitioner during his 2001 naturalization interview; (2) the petitioner’s submission of three different birth certificates for the beneficiary, and the differences among those birth certificates; (3) the testimony of record with regard to the placement of the beneficiary with the petitioner’s wife; (4) a conflict between the birth certificates and the certificate of foundling; (5) the circumstances surrounding the DNA testing of the petitioner, his wife, and the beneficiary; and (6) the home study conducted in connection with the couple’s adoption of the beneficiary in the Philippines. On appeal, newly-retained counsel submits a brief and supporting documentation.

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) of this title, 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; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States[.]

The petitioner is a fifty-five-old citizen of the United States. The beneficiary was allegedly born in the Philippines on February 6, 1993. According to the home study submitted with the Form I-600, the beneficiary began living with the petitioner’s wife in the Philippines shortly after she was born.

The petitioner filed the Form I-600 on April 21, 2006. The field office director issued a notice of intent to deny (NOID) the petition on June 18, 2009, and the petitioner submitted a response on July 14, 2009. The field office director denied the petition on July 28, 2009, and a timely appeal was submitted on August 31, 2009.

**I. Inconsistencies, contradictions, and unreasonable testimony identified by the field office director**

The field office director's June 18, 2009 NOID placed the petitioner on notice that U.S. Citizenship and Immigration Services (USCIS) considered much of the evidence and testimony of record lacking in credibility. Specifically, the field office director raised the following six concerns:

- The field office director noted that during an October 4, 2001 interview in connection with his citizenship application, the petitioner stated that he had a daughter named [REDACTED]. The field office director noted further that the petitioner submitted a letter on October 30, 2001 in which he stated that although he had thought that his daughter was using "[REDACTED]" as her last name, when he called to "make sure," he was told that she was using "[REDACTED]" as her last name. The field office director stated that it was unclear how the petitioner had been unable to provide the last name of his claimed daughter, and that it was not reasonable to believe that he had forgotten that his claimed daughter uses the same last name as him.
- The field office director noted that the petitioner submitted three versions of the beneficiary's birth certificate at the time he filed the petition. As noted by the field office director, the first birth certificate is undated, is annotated "certified true transcription," and contains birth information such as birth order and weight at birth. It also listed the total number of children born alive to the petitioner's wife as one. The certificate indicated further that a traditional midwife had been present at the beneficiary's birth. The second birth certificate, which is dated January 10, 2006, is annotated as an "amended certificate of live birth," and contains the same information as the first birth certificate. This certificate also indicated that a traditional midwife had been present at the beneficiary's birth. Finally, the field office director noted that the third birth certificate, which is dated April 3, 2006, has no marking in the annotation section, and the information regarding birth order, weight, and total number of children born alive to the petitioner's wife has been deleted. Although the first two birth certificates indicated that a traditional midwife had been present at the beneficiary's birth, the third birth certificate made no such indication. The field office director stated that no evidence had been submitted to explain why the beneficiary's three birth certificates contained differing information.
- With regard to the testimony of the petitioner's wife regarding how the beneficiary came to be placed with her, the field office director noted that the petitioner had submitted a January 10, 2006 "certificate of foundling," which stated that the petitioner's wife found the beneficiary on February 8, 1993, and that the beneficiary was two days old at that time. However, the February 21, 2005 document entitled "Social Case Study Report" stated the following:

On February 5, 1993, [the petitioner's wife] was informed that there was a newly adopt baby [sic]. . . .

The following day, [the petitioner's wife] met the old woman whose name was not revealed, who handed her a newly-born baby. It took them less than 2 minutes, without any question where the child came from and who the parents are, [the petitioner's wife] left with the baby. . . .

The field office director, however, did not find this account reasonable, stating the following:

The story presented by [the petitioner's wife] is not reasonable to believe. It is not reasonable to believe an unknown individual would somehow contact [the petitioner's wife] and tell her there is a baby for her to adopt. It is not reasonable to believe that [the petitioner's wife] did not even ask the person[']s name or any other identifying information. It is not reasonable to believe an old unknown woman appeared and handed [the petitioner's wife] a newborn baby which raised no questions.

- The field office director stated that the statement on the Certificate of Foundling that the beneficiary had been "found" was inconsistent with the statement on the birth certificate that she had been born to the petitioner's wife with a traditional midwife.
- The field office director noted that the petitioner had been afforded the opportunity to submit to DNA testing in order to establish the parentage of the beneficiary, and that USCIS received the results of the DNA testing on January 6, 2009. However, because biographical/identity information regarding the tested individuals was withheld, the results of the testing could not be confirmed. The field office director found such withholding of information to raise further questions regarding the credibility of the petitioner, and questioned whether the beneficiary could in fact be the petitioner's biological daughter.
- The field office director noted that although the home study conducted in the Philippines in connection with the couple's adoption of the beneficiary in that country stated that the petitioner and his wife were living in the Philippines and caring for the beneficiary in that country, the Form I-600 indicated that the petitioner and his wife reside in the United States. The Filipino adoption decree indicated that the petitioner's wife lived in the Philippines.

The petitioner responded to the NOID on July 14, 2009, and submitted a letter. The field office director found the petitioner's letter insufficient to resolve any of the six areas of concern, and denied the petition on July 28, 2009, finding that the inconsistencies of record undermined the credibility of the petitioner.

Upon review of the entire record of proceeding, the AAO agrees with the field office director's decision to deny the petition. The AAO will address each of the field office director's findings separately.

A. *The petitioner's citizenship interview*

As noted previously, the petitioner stated that he had a daughter named [REDACTED]. He later informed USCIS, by letter, that she was using "[REDACTED]" rather than "[REDACTED]" as her last name. The field office director stated that it was unclear how the petitioner had been unable to provide the last name of his claimed daughter, and that it was not reasonable to believe that he had forgotten that his claimed daughter has the same last name as him.

In his July 11, 2009 letter, the petitioner offered the following explanation:

Advice given to me was that it might not be possible for me to file a petition for my daughter and that it would be better for me if the child's last name should be filed under wife's (then my girlfriend) last name. So I wrote you a letter changing my statements. Please consider this lack of common sense, ignorance[,] and lack of information but honestly, that was done in good faith. . . .

In his July 28, 2009 denial, the field office director stated that "[t]his argument confirms you have intentionally provided the Service with a false name, however the argument fails to provide a legitimate explanation."

On appeal, counsel notes that the petitioner was already living in the United States at the time the beneficiary came to live with the petitioner's wife in the Philippines, and that he returned to the Philippines to visit them each year for three weeks. As such, counsel asserts that "[i]t is not unbelievable that the petitioner was not sure" whether the beneficiary was using his name or his wife's name.

The AAO finds counsel's assertion unconvincing, as she is attempting to explain why the petitioner "was not sure" of the beneficiary's last name. The petitioner's July 11, 2009 letter, however, revealed that such uncertainty was in fact not the case. Rather, as noted, he made the statements he made at his interview, and then retracted them via his letter, because of advice he had been given that "it would be better for me" if the beneficiary's last name matched that of his wife. The AAO agrees with the field office director's implicit determination that such behavior on the part of the petitioner diminishes the probative value of his testimony. Because counsel's assertions on appeal attempt to explain why the petitioner was uncertain of his daughter's last name, and the petitioner's July 11, 2009 NOID response indicates that such uncertainty did not exist but was rather done purposefully, counsel's assertions on appeal do not adequately address this portion of the field office director's finding. As such, this portion of the field office director's decision stands and, accordingly, the AAO agrees that the petitioner's behavior undermines the reliability of his testimony.

*B. Inconsistencies among the three birth certificates and certificate of foundling*

The differences among the three birth certificates were set forth previously. In his July 11, 2009 NOID response, the petitioner stated that when he and his wife first obtained custody of the beneficiary, they registered her with the help of their community midwife. The midwife filled out all information, and he and his wife, believing their work to be complete, used the birth certificate obtained by the midwife from that point forward. He stated that, in 2004, during his wife's

immigration interview in the Philippines, she was advised to go to court and legally adopt the beneficiary, which they did. They went to court, and had the first birth certificate canceled. According to the petitioner, it was at that point that the “second, birth certificate of foundling” was issued,<sup>1</sup> and he explained that issuance of this certificate was required in order for the legal adoption to proceed. The petitioner stated that the third birth certificate was issued after completion of the legal adoption. According to the petitioner, they were informed that the third birth certificate “now stands as the birth certificate of the child and the first and second are already considered dead files.”

The field office director found the petitioner’s assertions unconvincing. In his July 28, 2009 decision, he stated that “a midwife is an individual who assists in childbirth,” and questioned why, if the petitioner’s wife did not give birth to the beneficiary, she would require the assistance of a midwife and, further, why the birth certificate initially stated that his wife had given birth to the beneficiary with the assistance of a midwife.

The field office director noted further that the certificate of foundling stated that the beneficiary had been found on February 8, 1993, but the February 21, 2005 “Social Case Study Report” stated that the beneficiary had been found on February 6, 1993. The field office noted further that the petitioner had failed to resolve the issues raised in the NOID: specifically, the field director stated that, if the beneficiary had in fact been “found” as indicated on the certificate of foundling, then the birth certificate’s statement that she had been born to the petitioner’s wife with the assistance of a midwife was contradictory. Conversely, if the birth certificate was correct, and the petitioner’s wife did give birth to the beneficiary, then such information conflicted with the certificate of foundling.

Finally, although the petitioner provided an explanation in his July 11, 2009 NOID response (i.e., the sequence of events which led the Filipino court to consider the first two birth certificates to be dead files), the field office director stated that: “[e]vidence has not been provided with any of the certificates to indicate why three birth certificates containing different information have been submitted for the same individual.”

On appeal, counsel submits, among other items, a certified copy of a November 8, 2005 order declaring the beneficiary both an abandoned child and the legitimate child of the petitioner and his wife. In her appellate brief, counsel states that as explained in that document, the first birth certificate was “simulated.” The second birth certificate was canceled pursuant to a court order, and the third birth certificate was issued after the adoption became final, as required by the November 8, 2005 order. The AAO finds these assertions reasonable, and finds them to be supported by the record.

However, counsel does not address the inconsistencies between the certificate of foundling and the February 21, 2005 “Social Case Study Report.” Again, as noted by the field office director, although the certificate of foundling stated that the beneficiary had been found on February 8, 1993, the “Social Case Study Report” stated that the beneficiary had been found on February 6, 1993.

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<sup>1</sup> In his letter, the petitioner conflated the second birth certificate and the certificate of foundling when he referred to the “second, birth certificate of foundling.” However, the second birth certificate and the certificate of foundling are two separate documents.

Counsel makes no attempt to address this inconsistency and, therefore, that portion of the field office director's decision stands uncontested.

Nor does counsel address the findings of the field office director with regard to the practice of midwifery. In his July 28, 2009 decision, the field office director stated that "a midwife is an individual who assists in childbirth." However, the AAO notes that the practice of midwifery in the Philippines is not limited to assisting in childbirth. As noted at Article III, Section 12 of the Philippine Midwifery Act, registered midwives in the Philippines have passed examination on such topics as infant care and feeding; principles of bacteriology; community hygiene and first aid; nutrition; primary health care; and family planning.<sup>2</sup> The field office director's comments regarding the scope of the field of midwifery, therefore, are withdrawn.

*C. The testimony of record regarding the initial placement of the beneficiary with the petitioner's wife*

As noted previously, in his June 18, 2009 NOID, the field office director stated, with regard to the testimony of the petitioner's wife in the February 21, 2005 "Social Case Study Report," the following:

The story presented by [the petitioner's wife] is not reasonable to believe. It is not reasonable to believe an unknown individual would somehow contact [the petitioner's wife] and tell her there is a baby for her to adopt. It is not reasonable to believe that that [the petitioner's wife] did not even ask the person[']s name or any other identifying information. It is not reasonable to believe an old unknown wom[a]n appeared and handed [the petitioner's wife] a newborn baby which raised no questions.

The petitioner did not address the field office director's comments in his July 11, 2009 response, other than to state that "[t]he story on how my wife got the baby is true, that was what she told the court, too." No additional information or testimony that would have "fleshed out" the story was submitted. As such, the field office director repeated these comments in the July 28, 2009 denial and, as was the case with the petitioner's NOID response, counsel has elected not to address these comments on appeal. Accordingly, they stand uncontested.

*D. Conflict between the birth certificates and the certificate of foundling*

As noted previously, the field office director stated that the statement on the Certificate of Foundling that the beneficiary had been "found" was inconsistent with the statement on the birth certificate that she had been born to the petitioner's wife with a traditional midwife.

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<sup>2</sup> See Republic of the Philippines, Professional Regulation Commission, Board of Midwifery, Philippine Midwifery Act, available at <http://www.orc.gov.ph/documents/MIDWIFERY-LAW.pdf> (accessed January 21, 2010).

The AAO finds the explanations of counsel and the petitioner reasonable, and withdraws this finding. The statement that certificates of foundling are routinely issued in adoption cases in the Philippines is reasonable, and it follows that the beneficiary would be listed as having been "found." It is also reasonable that the petitioner's wife would be named as the beneficiary's mother on a birth certificate. Finally, the AAO incorporates here its previous statements regarding the practice of midwifery in the Philippines.

*E. DNA testing of the petitioner, his wife, and the beneficiary*

The record indicates that the petitioner, his wife, and the beneficiary submitted to DNA testing in December 2008, and that USCIS received the results of the DNA testing on January 6, 2009. The record indicates further that, in February 2009 the company which conducted the testing notified USCIS that the petitioner had willfully failed to submit the beneficiary's biographical information. As such, the results of the DNA testing could not be verified. The field office director found further that such withholding of information raised further doubts regarding the credibility of the petitioner.

With regard to the field office director's statements regarding the inadequacy of the DNA test results, the petitioner stated the following in his NOID response:

The letter was sealed, opened by the hospital staff, the DNA test was done after payment of the required fees, and the results were accordingly sent to your office. We trusted the DNA results as correct and accurate. . . .

On appeal, counsel states the following:

Finally, CIS indicated that the DNA results that the Service received from the DNA testing company did not include the identifying information of the individuals tested. The petitioner has not seen a copy of the evidence submitted by Orchid Cellmark to CIS, and so is unable to comment on this.

The AAO notes that the language used by the field office director in his NOID and denial with regard to this issue was nearly identical. Although the field office director did repeat the statements made by the petitioner in his letter in the denial, the field office director simply repeated the statement he had made earlier in the NOID. The field office director did not explain the evidentiary deficiency in the record with regard to this issue or explain to the petitioner how to cure such deficiency, in any meaningful way.

When denying a petition, the field office director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy his burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The field office director, with regard to this specific portion of his denial, has not met this burden and, as such, the AAO withdraws those specific comments of the field office

director. However, remand of the petition on this point for further action by the field office director would serve no purpose, as the other grounds of the denial have not been overcome.<sup>3</sup>

*F. The home study conducted in connection with the couple's adoption of the beneficiary in the Philippines*

The field office director also found that contradictions between the home study conducted in the Philippines in connection with the couple's adoption of the beneficiary in that country and other evidence of record "further raise[d] concerns regarding the credibility of the petition." In arriving at this conclusion, the field office director noted that although both the home study conducted in the Philippines and the adoption decree stated that the petitioner's wife was living in the Philippines and caring for the beneficiary there, the Form I-600 indicated that she was currently living in the United States.

Counsel states the following on appeal:

The petitioner's wife learned that she should formally adopt their daughter in order to immigrate her to the U.S. at her immigrant visa interview. Before she left for the U.S., she retained an attorney to start the adoption process. At that time, she had not yet entered the U.S., so her address was listed as the house in the Philippines. On August 10, 2004 [the petitioner's wife] entered the U.S. as an immigrant. After that, she traveled back and forth between the U.S. and the Philippines to visit her daughter, who was living with her adopted paternal grandparents and aunt . . . [The petitioner and his wife] own the house where [the beneficiary] was living with her grandparents, so that is the local address that [the petitioner's wife] used in the adoption proceedings.

In addition, the petitioner and his wife both submit affidavits on appeal setting forth every address at which they have lived since birth, in the case of the petitioner, and since 1982, in the case of his wife.

The AAO finds the explanations of counsel and the petitioner reasonable and withdraws the field director's comments that they are contradictory. The AAO, therefore, withdraws this particular portion of the field office director's decision.

*G. Conclusion*

In accordance with the previous discussion, the AAO finds that the petitioner has failed to overcome the concerns of the field office with regard to the credibility issues outlined above.

**II. Concerns over child-buying.**

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<sup>3</sup> The AAO stops at the point of withdrawing the field office director's decision on this matter. The AAO has not found that the petitioner has overcome the concerns of the field office director on this point; it finds merely that the field office director's notice to the petitioner deficient.

Beyond the decision of the director, the AAO finds that unresolved issues surrounding placement of the beneficiary with the petitioner's wife further bar approval of this petition. As was noted previously, the petitioner's wife asserts that she obtained custody of the beneficiary as a result of an elderly woman, whose identity is unclear, handing the beneficiary to her during the beneficiary's infancy. The field office director's concerns regarding the veracity of this account were set forth previously, and the petitioner has elected not to address them on appeal.

Beyond those concerns enumerated by the field office director, the AAO notes further that the November 8, 2005 order issued by the Regional Trial Court, Fourth Judicial Region, Branch 79, states that, on November 18, 2004, the petitioner's wife testified that the elderly woman who gave her the beneficiary requested "P500.00."

The regulation at 8 C.F.R. § 204.3(i) states the following:

Child-buying as a ground for denial. An orphan petition must be denied under this section if the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. . . .

The November 18, 2004 testimony of the petitioner's wife raises questions with regard to whether the petitioner is subject to the child-buying prohibition described at 8 C.F.R. § 204.3(i). Even if the petitioner could overcome the grounds of the field office director's decision, the issue of whether he and his wife in fact bought the beneficiary must be further explored, and resolved, in accordance with 8 C.F.R. § 204.3(i), before this petition may be approved.

### **III. Conclusion**

In accordance with the previous discussion, the petitioner has failed to establish that the beneficiary meets the definition of an "orphan," as that term is defined at section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). The AAO, therefore, will not disturb the field office director's decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.