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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

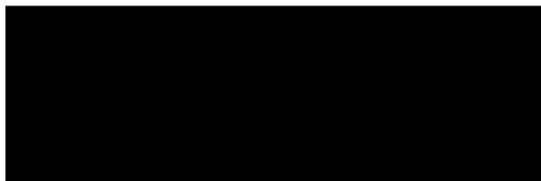


IN RE: Petitioner:
 Beneficiary:



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 PETITIONER:

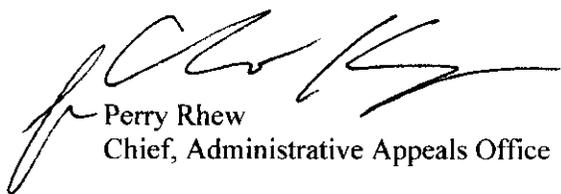


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be granted and the appeal will remain dismissed.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(b)(1)(F). The director determined that the beneficiary did not meet the definition of an orphan, and denied the petition accordingly. The AAO concurred with the director's decision, and dismissed the petitioner's appeal. In the motion to reconsider, the petitioner contends through counsel that: (1) the AAO failed to consider all of the evidence of abandonment; (2) the beneficiary meets the definition of an orphan based on his true and unconditional abandonment by both birth parents; and (3) the regulatory provision precluding a transfer of the child to a specific person has no support in the Act. *See Brief in Support of Motion to Reconsider*, dated April 27, 2010. These contentions lack merit.

First, the AAO fully considered the evidence of abandonment submitted in support of the petition. As discussed in the decision on appeal, "the record clearly establishes that the birth parents in fact intended to transfer control and possession of the beneficiary to the petitioner and her husband, and counsel's assertions on appeal fail to demonstrate that such was not the case." *Decision on Appeal*, at 4, dated Mar. 4, 2010. The decision on appeal reflects that U.S. Citizenship and Immigration Services (USCIS) fully considered the petitioner's evidence of abandonment.

Second, the beneficiary cannot qualify as an orphan due to abandonment by his parents because his birth parents specifically released him to the petitioner and her husband for adoption. *See* 8 C.F.R. § 204.3(b) ("A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment."). Counsel contends that although the birth parents "transferred the child to particular individuals they also acknowledge that the transfer was an abandonment since the abandonment was unconditional and did not rely on the specification of petitioners." *Brief on Appeal*, dated Apr. 27, 2010. Although the birth parents abandoned the beneficiary, the record is replete with evidence that they did so with the specific intent that the petitioner and her husband adopt the beneficiary. *See Statutory Declaration of Birth Parents*, dated Apr. 16, 2007 ("we have unconditionally and irrevocably decided to allow our relatives [the petitioner and her husband] to adopt the [beneficiary] to be as their own child"); *Statutory Declaration of Birth Parents*, dated Mar. 3, 2009 (attesting that they abandoned the beneficiary at the time they transferred him to the petitioner and her husband for adoption). On motion, counsel submits a new affidavit executed by the birth parents, which affirms that their abandonment of the beneficiary was unconditional, but which also confirms that they relinquished the beneficiary specifically to the petitioner and her husband for adoption. *Statutory Declaration of Birth Parents*, dated Jan. 25, 2010 ("When we transferred the physical custody of the child . . . to [the petitioner and her husband], we . . . hoped that they would adopt the child . . ."). Accordingly, the

beneficiary cannot meet the regulatory definition of an orphan due to abandonment by both parents. *Id.*¹

Third, counsel contends that the regulatory definition of abandonment, which precludes the transfer of a child to a specific person, is contrary to the Act. However, the AAO lacks jurisdiction to pass on the validity of the regulations administered by USCIS. *See, e.g., Matter of Hernandez-Puente*, 20 I. & N. Dec. 335, 339 (BIA 1991) (stating that “it is not within the province of [the BIA] to pass on the validity of the statutes and regulations” it administers); *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has not met the burden of proving that the beneficiary meets the definition of an orphan under section 101(b)(1)(F)(i) of the Act. Accordingly, the motion to reconsider will be denied, and the appeal will remain dismissed.

ORDER: The appeal remains dismissed.

¹ Counsel also cites *Matter of Handley*, 17 I&N Dec 269 (BIA 1978), for the proposition that “the definition considers the actions of the natural parents as independent categories.” *Brief on Appeal* at 2. *Handley* held that alien orphans adopted in the United States were ineligible for immediate relative classification under section 101(b)(1)(F) of the Act. *Handley* did not discuss the regulatory definition of abandonment, and is irrelevant to the present matter.