



U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File: [Redacted] Office: MANILLA Date: APR 23 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Application: 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)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was approved by the Officer-in-Charge, Tampa, Florida. Upon further review of the record, the Officer-in-Charge of the Manilla office determined that the petitioner was not eligible for the benefit sought. Accordingly, the officer properly served the petitioner with notice of his intent to revoke the approval of the petition, and his reasons therefore, and ultimately revoked the approval of the petition on June 23, 2000. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on March 3, 2000. The petitioner is a 37 year-old married citizen of the United States. The beneficiary, who at this time is 6 years old, was born in Cebu City, Philippines, on May 12, 1994. The beneficiary's biological mother, [REDACTED] has been identified in the record of proceeding, and is stated by the petitioner to be living. She is the sister of the petitioner. The beneficiary's biological father is named in the record of proceeding as [REDACTED]. His whereabouts are allegedly unknown.

The officer-in-charge revoked the petition after determining that the beneficiary did not meet the statutory definition of "orphan" because the submitted evidence failed to establish that the beneficiary had been abandoned by both parents.

On appeal, the petitioner submits a statement requesting a 90-day extension to submit evidence in support of the appeal. According to the petitioner, the extension is being requested because she and her husband are in the process of hiring an attorney in the Philippines so that they can petition the Filipino court to issue a corrected adoption decree and a corrected affidavit of consent. The petitioner affirms her prior statements that the beneficiary is an orphan.

The appeal was filed on July 26, 2000. As of this date, the petitioner has not submitted the additional evidence that she stated would be forwarded to the Administrative Appeals Office (AAO) within 90 days. Accordingly, the record is considered complete.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), 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.

The petitioner has not presented any compelling evidence to persuade this office to overturn the director's decision. Despite the petitioner's belief that the beneficiary was abandoned by both biological parents, the evidence in the record does not demonstrate that the beneficiary was abandoned within the meaning of the regulation.

8 C.F.R. 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)**. . . . 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. [emphasis added]

The director denied the petition because the Affidavit of Consent submitted by the beneficiary's biological mother for the adoption of the beneficiary by the petitioner and her husband indicated that the biological mother was relinquishing her parent rights specifically for the adoption of her child by the petitioner and the petitioner's husband. Such a statement persuaded the director to conclude that the beneficiary's biological mother and the petitioner, who are sisters, pre-arranged an adoption. Furthermore, the record contained a copy of an e:mail message between the biological mother and the petitioner's husband in which the petitioner's husband informs the biological mother that "...[t]hat means that no one from the embassy will be coming by Gerry's apartment to check on anything, so there is now absolutely no need for you to stay away from the apartment during the daytime or anytime for that matter..." This exchange suggested that even though the biological mother consented to the adoption of her child, she did not abandon the beneficiary, as she continues to have a familial relationship with her child, who is living with her and the petitioner's mother.

The director's conclusion regarding the issue of abandonment was reasonable. Evidence in the record indicates that the beneficiary's biological mother continues to have a familial relationship with her child, even though the beneficiary has been

adopted by the petitioner and the petitioner's husband. The arrangement that the biological mother, the petitioner, and the petitioner's husband made to adopt the beneficiary does not fit the definition of abandonment found in the regulation. While the petitioner claims that she had ineffective counsel, such an excuse is not enough to persuade this office to overturn the decision to revoke the petition.

The petitioner has submitted insufficient evidence to establish that the beneficiary has been abandoned by his parents. Accordingly, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act. For this reason, the petition may not be approved.

As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.