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: MIAMI DISTRICT OFFICE Date: APR 2 3 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the District Director, Miami, Florida. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

It is noted that [redacted] of Catholic Charities Legal Services, filed the appeal on the petitioner's behalf. Counsel, however, failed to submit a Form G-28, Notice of Entry of Appearance, as required by 8 C.F.R. 292.4. Accordingly, the Service does not recognize that the petitioner is represented by Catholic Charities Legal Services and shall deem the petitioner to be self-represented.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on November 16, 1999. The petitioner is a 50 year-old married citizen of the United States. The beneficiary, who at this time is four years old, was born in Quezon City, Philippines, on April 16, 1996. The beneficiary's biological mother, [redacted] and biological father, [redacted] have been identified in the record of proceeding, and are stated by the petitioner to be living and still married.

The director denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" because the submitted evidence failed to establish that the beneficiary had been abandoned by both of his parents.

On appeal, the petitioner submits a brief.

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 director denied the petition because a child study report by a social welfare officer in the Philippines contained evidence that the beneficiary's biological parents gave the beneficiary up for adoption into the custody of the biological mother's cousin, who is also the sister of the petitioner's wife. The director further noted that the social welfare officer stated that the biological parents "did not have a second thought of giving up their youngest child for adoption when they heard of the petitioners [sic] proposal to adopt the minor." Based on the information in the child study report, the director concluded that the biological

parents did not abandon the beneficiary but, rather, relinquished their parental rights to the biological mother's cousin so that the cousin could arrange for an adoption of the beneficiary by her sister and her sister's husband, who is the petitioner.

On appeal, the petitioner claims that the evidence from the child study report that the director relied upon in making his decision was taken out of context. For example, the petitioner claims that the statement by the biological parents that was quoted by the director only supports his claims that the child was abandoned. According to the petitioner, "of course the biological parents did not give a second thought to the adoption of their son, because Brandon was well out of their hands at this point and time."

The petitioner maintains that the biological parents intended to abandon their son when they gave him to the biological mother's cousin because, as the parents of 10 children, the biological parents could not afford to raise the beneficiary. The petitioner, who has already adopted the beneficiary under the laws of the Philippines, believes that the legal foreign adoption should be persuasive evidence of the biological parents' abandonment of the beneficiary.

The petitioner's statements on appeal, while compelling, are not persuasive in overturning the director's decision. Despite the petitioner's belief that the beneficiary was abandoned by the 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 relied upon the child study report of the social welfare officer because it provides insight into the relationship among the biological parents, the petitioner and his wife, and the guardian of the beneficiary, who is the biological mother's cousin

as well as the sister of the petitioner's wife. The director's reliance upon the social welfare officer's report was reasonable. The granting of the adoption petition by the regional trial court in the Philippines is not, by itself, persuasive evidence that the beneficiary was abandoned by his biological parents as that term is defined in the regulation at 8 C.F.R. 204.3(b).

The record contains several pieces of evidence that support a finding that the adoption of the beneficiary by the petitioner was arranged by all parties, and that the beneficiary was not, in fact, abandoned.

On appeal, the petitioner rebuts the director's conclusion that the adoption of the beneficiary was "pre-arranged" by stating that the petitioner did not see the beneficiary until the beneficiary was approximately 8 months old. The petitioner argues that because a meeting between him, his wife, and the beneficiary did not occur until several months after the biological parents transferred custody to the sister of the petitioner's wife, the biological parents intended to and did, in fact, abandon the beneficiary.

Contradicting this statement, however, is information in the child study report. According to the social welfare officer, "[r]ight after his birth, [beneficiary] was already financially supported by the petitioners who are her [sic] maternal aunt and uncle." The social welfare officer further states "[t]his is a relative adoption wherein the minor subject for adoption is being adopted by her [sic] maternal aunt and uncle who have been providing him support since birth up to the present."

This information strongly indicates that the adoption of the beneficiary by the petitioner was arranged among the petitioner, the biological parents and the sister of the petitioner's wife shortly after, if not before, the beneficiary's birth. This type of arrangement is not one in which the biological parents have abandoned the child, as defined in the regulation.

First, the biological parents transferred custody of the beneficiary to a specific person, who in this case is the sister of the petitioner's wife. Second, the transfer of the beneficiary to the sister of the petitioner's wife appeared to have been in anticipation of an adoption by the petitioner. These two actions do not constitute abandonment of the beneficiary by the biological parents, as defined in the regulation. Furthermore, the social welfare officer indicates that the biological parents continue to play a role in the beneficiary's life. According to the social welfare officer, "[t]he minor calls them [biological parents] aunt and uncle which they already accepted. This statement suggests that even though the biological parents consented to the adoption of their child, they did not abandon the beneficiary, as they continue to have a familial relationship with their child.

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.