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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

[redacted]

File: [redacted] Office: MANILA, PHILIPPINES Date: 14 SEP 2001

IN RE: Petitioner:
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:

[redacted]

Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC), Manila, Philippines, denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The previous decision of the OIC will be withdrawn and the case will be remanded for further action consistent with the foregoing.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on July 5, 2000. The petitioner is a 45-year-old married citizen of the United States. The beneficiary is 8 years old at the present time and was born in Tuliao, Philippines on September 26, 1992.

The OIC denied 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 of her parents.

On appeal, counsel submits a brief, a copy of a deed for the purchase of a house in the Philippines, an order of abandonment from the Trial Court, an affidavit from the biological mother, and copies of documents previously included in the record of proceeding. In part, counsel asserts that the OIC's decision was improper, as the evidence in the record of proceeding supports the conclusion that the beneficiary's biological parents abandoned her.

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.

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). 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.

In issuing the Notice of Intent to Deny, the OIC relied upon an interview that a member of his staff conducted with the biological mother. According to the OIC, the biological mother stated that in October of 1996, the biological father and the petitioner's husband met in the Philippines at which time they agreed that the petitioner would adopt the beneficiary in order to circumvent United States immigration laws. The OIC further noted that the biological father informed the biological mother that he could not petition for the beneficiary to immigrate to the United States because he (the biological father) was unemployed. The OIC found the biological mother to be credible and did not doubt the veracity of her claims.

In a February 5, 2001 response to the OIC's Notice of Intent to Deny, counsel rebutted the OIC's allegations. According to counsel, the evidence of abandonment is an April 17, 2000 *Deed of Voluntary Commitment* that a court in the Philippines allegedly issued. Counsel maintains that this deed ordered the termination of the biological parents' rights and the placement of the beneficiary in the custody of the Department of Social Welfare and Development (DSWD). Counsel also addressed the biological mother's testimony by stating that the biological mother lied to the Service official. Finally, counsel submitted evidence from the petitioner's husband's employer to evidence that the petitioner's husband was not in the Philippines in October of 1996 as alleged by the biological mother in her statement.

The OIC denied the petition on April 16, 2001, citing that the evidence submitted in response to his Notice of Intent to Deny did not overcome his conclusion that the biological parents specifically gave the beneficiary to the petitioner and the petitioner's husband for adoption. The OIC noted that counsel submitted a signed consent from the biological father who stated

that he consented to the adoption of the beneficiary by the petitioner and the petitioner's husband. The OIC found this evidence contrary to the definition of abandonment cited in 8 C.F.R. 204.3.

On appeal, counsel submits three documents not previously included in the record. The first document is a July 24, 2001 *Order of Abandonment* from the Regional Trial Court, First Judicial Region, Branch 43, Dagupan City. The order states that the beneficiary and her brother are "declared ABANDONED and are considered LEGALLY FREE CHILDREN." The second document is a June 6, 2001 affidavit from the biological mother, who states that she lied to the Service officer who interviewed her in November of 2000 because she was jealous of her children's good fortune to be able to live in the United States. The third document is a deed for a house that the petitioner and her husband bought in the Philippines; this is the house where the beneficiary resides with her brother and her guardians (the beneficiary's grandparents).

Counsel asserts that the biological parents surrendered their rights, obligations, claims, control and possession of the beneficiary "over five years ago and they did it by documentation to ICAB [Inter Country Adoption Board]." As presently constituted, however, the record does not contain sufficient information to either find merit with counsel's conclusions or affirm the OIC's decision. Therefore, the case shall be remanded to the OIC for further action.

The record of proceeding contains a cable indicating the approval of the petitioner's Form I-600A advance processing application, a copy of the petitioner's home study report, the Form I-600 petition and accompanying documentation; the OIC's Notice of Intent to Deny, and the final denial letter. The record also contains an investigative report, the contents of which the OIC disclosed to the petitioner in the Notice of Intent to Deny.

Counsel's statements on appeal regarding the veracity of the biological mother's testimony to a Service officer cannot be found persuasive because counsel makes unsupported conclusions about why the biological mother testified to certain facts.

In both the Notice of Intent to Deny and the final denial, the OIC disclosed to the petitioner that the biological mother made statements to a Service officer, which indicated that the petitioner was seeking to adopt the beneficiary in order to circumvent the United States immigration laws. On appeal, counsel presents an affidavit from the biological mother who states:

> That the reason why I lied to the investigator was because I was jealous and could not accept the fact that my children will be going to the United States and

> will have a good life while I, will be left behind to suffer the brunt of poverty here in the Philippines.

The biological mother's affidavit clearly sets forth her reason for allegedly lying to a Service officer; however, in her brief, counsel states that the biological mother told her that she lied to the Service Officer because:

> . . . she was unable to put a word [in] wedge [sic] wide [sic]. The field officer asked her many questions and he asked the questions very quickly. According to her, she did not have the opportunity to respond to his questions. Additionally, the field officer intimidated her, causing her to freeze and become silent. He must have taken silence as affirmation. Such a conclusion is unfair because it casts a suspicious light upon the case.

Counsel makes serious allegations about the conduct of a Service officer, yet fails to explain why none of these allegations were present in the biological mother's affidavit. The biological mother's only stated reason for lying to the Service officer was jealousy; she never stated that the Service officer intimidated her or conducted the interview in a manner that was improper. The absence of counsel's allegations in the biological mother's affidavit leads to a conclusion that the events as counsel described did not occur. Counsel cannot make such serious allegations of misconduct without presenting credible evidence in support of those allegations. Unproven assertions of counsel are not evidence. Cf. Matter of Obaigbena, 19 I&N Dec. 533, 534 note (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). There is no persuasive evidence that leads to the conclusion that the biological mother lied as a result of being intimidated by a Service officer.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Id. at 591.

The inconsistencies in the biological mother's statements seriously injure her credibility. The affidavit, which counsel submits on appeal, does not sufficiently establish that the biological mother's testimony during her interview with a Service officer was untruthful. Accordingly, as the biological mother is not credible, her statements cannot be relied upon in the adjudication of this petition. The Service must, therefore,

focus on evidence that may be deemed credible and ultimately apply the law and make a final determination. In the instant case, the record contains several documents that are relevant to the adjudication of the instant petition. The OIC must consider these documents on remand in a determination of whether the beneficiary is an orphan.

I. *Deed of Voluntary Commitment*

In response to the OIC's Notice of Intent to Deny, counsel stated that evidence of the biological parents' abandonment of the beneficiary existed in the form of an April 17, 2000 *Deed of Voluntary Commitment* that a court in the Philippines allegedly issued. According to counsel, this deed is proof of the termination of the biological parents' rights and the placement of the beneficiary in the custody of the Department of Social Welfare and Development (DSWD).

In his final denial letter, the OIC stated that:

> This office received an e-mail from the Law Offices of Irene Steffas in regard to this case on February 6, 2001. E-mail is not the approved format for response of an Intent to Deny. In addition, there is no G-28, Notice of Appearance of Attorney, on file for this attorney. Nevertheless, in the interest of fairness, the issues brought up by your attorney have been reviewed and included in the official record.

The OIC did not specify the "issues" raised by the petitioner's counsel. Although counsel's response is included in the record, the final denial letter is devoid of information regarding whether counsel submitted a copy of the *Deed of Voluntary Commitment* and, if the *Deed* was submitted, why it was not persuasive evidence of the biological parents' abandonment of the beneficiary. The *Deed* should be considered in a determination of whether the beneficiary was abandoned by her biological parents. Therefore, the OIC must provide counsel an opportunity to submit a copy of the alleged *Deed* and determine whether it is persuasive evidence that the biological parents abandoned the beneficiary.

II. *Order of Abandonment*

Additionally, on appeal, counsel presents a July 24, 2001 *Order of Abandonment* from the Regional Trial Court, First Judicial Region, Branch 43, Dagupan City, which indicates that the petitioner and her husband petitioned the court to declare the beneficiary and her brother abandoned. Like the *Deed of Voluntary Commitment*, this *Order* should be considered in a determination of whether the beneficiary was abandoned by her biological parents.

The OIC must, therefore, analyze the *Order* in conjunction with the *Deed* and determine whether the beneficiary is an orphan. In such a determination, the OIC should consider the following issues regarding the *Order*.

According to the United States Department of State:[1]

> The DSWD assigns social workers to the provincial level of local government throughout the country. These social workers start the adoption process by conducting a child study for abandoned foundlings as well as for children put up for "voluntary commitment" by one of the natural parents. Local courts throughout the Philippines process petitions to declare children abandoned. They do so after receiving a "deed of voluntary commitment" signed by either the natural mother or father. When the court issues a "decree of abandonment", the DSWD takes custody of the child. The original parents may not reclaim an abandoned child without petitioning the courts. The DSWD social worker submits the child study to a local court while a DSWD attorney petitions the court for custody of the child.
>
> . . . Under the authorization agreement between the agency and the DSWD, the DSWD accredited agency shall be responsible for the health, care and social well-being of the prospective adoptee for a period of at least six months with the essential and appropriate social services from the date of placement and before the release of the child for travel abroad for the purposes of adoption."

The *Order* is problematic because it does not appear to have been obtained according to the procedures outlined above.

First, the Department of State indicates that social workers for the DSWD are responsible for starting the adoption process; however, the petitioner and her husband, not the DSWD, petitioned for the *Order of Abandonment* on behalf of the beneficiary and her brother. It is not clear what role the DSWD played in this process, if any.

Second, the Department of State notes that "[w]hen the court issues a "decree of abandonment," the DSWD takes custody of the child." According to evidence in the record, however, the beneficiary has been and is currently residing with Relito and Imelda Concepcion, who are the beneficiary's grandparents. The record contains a copy of a deed for a house that the petitioner

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[1] General information on international adoptions as well as country-specific information may be found at the Department of State's website at www.state.gov. At the home page click to "Children's Services."

and the petitioner's husband purchased in the Philippines; this house is the residence of the Concepcions, the beneficiary, and the beneficiary's sister. Neither the *Order* nor any other evidence in the record states that the DSWD has custody of the beneficiary. Additionally, no evidence establishes that a DSWD accredited agency has been responsible for the health, care and social well-being of the beneficiary. The Department of State notes that each of these requirements is a normal processing procedure for an abandoned child.

8 C.F.R. 204.3(b) states, in pertinent part, that:

> 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.

The OIC concluded that the biological parents released the beneficiary for a specific adoption by the petitioner because of the biological mother's statements and the biological father's signed consent to the adoption of the beneficiary by the petitioner and the petitioner's husband. Thus, the *Deed of Voluntary Commitment*, the *Order of Abandonment*, and all relevant evidence must be reviewed and analyzed together in order to determine the credibility of each document and reach a decision on the petition. Additional evidence is also required to confirm that the DSWD has secured custody of the beneficiary in accordance with the laws of the Philippines and that a DSWD accredited agency has been responsible for the health, care and social well-being of the beneficiary.

Accordingly, this case shall be remanded to the OIC so that he may determine whether the *Deed of Voluntary Commitment* and the *Order of Abandonment* sufficiently establish that the beneficiary has been abandoned as that term is defined in the regulation. The OIC may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director for entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.