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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

Date: SEP 18 2001

[redacted]

File: [redacted] Office: HO CHI MINH CITY, VIETNAM

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]

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC), Ho Chi Minh City, denied the visa petition to classify the beneficiary as an immediate relative, and the matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the OIC on March 5, 2001. The petitioner is a 37-year-old unmarried citizen of the United States. The beneficiary is 8 months old at the present time and was born in Ho Chi Minh City, Vietnam on November 18, 2000. The record reflects that the petitioner adopted the beneficiary on February 28, 2001 in Vietnam.

The OIC denied the petition pursuant to 8 C.F.R. 204.3(i) after determining that the beneficiary's biological mother sold the beneficiary to an adoption facilitator, [redacted] located in Vietnam.

On appeal, counsel submits a brief and additional evidence. In part, counsel asserts that the OIC's decision is contrary to the facts and to the law and must be reversed. Counsel further asserts that the OIC's decision was improper as it was not based on evidence contained in the record of proceeding.

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(i) states:

> *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. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as

> administrative, court, legal, translation, and/or medical services related to the adoption proceedings.

The issue in this matter is whether the petitioner has sustained his burden of proof and overcome the OIC's finding that the beneficiary's biological mother was paid to give her child up for adoption.

Based on an investigation conducted by employees of his office in conjunction with Vietnamese authorities, the OIC determined that the petitioner's adoption facilitator, [redacted] had procured the beneficiary for adoption on behalf of the petitioner through a cash payment to the beneficiary's biological mother. The record contains a copy of the INS investigator's report as well as a signed statement from the birth mother, dated March 14, 2001. After issuing a Notice of Intent to Deny, the OIC ultimately denied the orphan petition.

According to the OIC's decision, the investigation allegedly uncovered the following information: first, the chief agent of [redacted] admitted to Vietnamese authorities that he and his siblings were engaged in the business of buying babies for international adoptions; second, many of the biological mothers who worked with [redacted] had confirmed to Vietnamese authorities that they willingly sold their babies; and finally, the beneficiary's biological mother confessed to police that she sold the beneficiary to [redacted]

In reaching his conclusions, the OIC relied in part on a statement signed by the birth mother on March 14, 2001, in the course of an interview conducted by the Vietnamese authorities in the presence of an INS investigator. Regarding the circumstances of the adoption, the birth mother stated:

> I had a son name [sic] [redacted] he was born on November 18, 2000. Due to poor condition I was unable to take care my son [sic] I gave my son to [redacted] when she came to my house to contact me for relinquishment [sic] my son for foreign adoption. [redacted] gave me the form and guided me to fill out and complete the adoptive dossiers. After she picked up my son she paid me eight million Vietnam Dong (around 550 USD) and the [sic] she promises when my son boarding for US she will pay me some more. I don't know how much for this amount. I solemnly affirm that the information contained herein is correct and I fully response [sic] for what I stated about with the current law.

Regarding the birth mother's statement, the investigative report initially reported the birth mother as stating "[h]er purpose of the abandoning her child is her son will have a brighter future."

 [redacted]

The report also states that the mother initially said that "[s]he received no money from the facilitator who she did not remember the name or address." The investigative report then states that "[s]he persists in providing us the wrong information until a police officer sat down for the interview and advises her should [sic] tell the true about the facilitator, and if she did receives [sic] the money, she provide and write down the statement." The report then recites the details of the birth mother's statement and relates that the birth mother cried and said that if her child did not go to the United States with the adoptive father, she would have to return the money to [redacted]

On March 19, 2001, the OIC issued a Notice of Intent to Deny, in order to provide the petitioner notice of the previously undisclosed derogatory evidence. The notice informed the petitioner in general terms that the office had conducted an investigation of the adoption and the "practices and methods utilized by [redacted]" The OIC stated that "[t]he agents who procured the infant in the subject adoption have been detained for questioning by Vietnamese authorities." The OIC continued to state that:

> During questioning the chief agent admitted that he and his siblings were engaged in the business of buying babies for adoption by Americans and other foreigners. He stated that they approached women at their homes and at hospitals in poor neighborhoods with offers of cash for their babies. He added that higher prices were offered for more attractive babies. The chief agent confessed that every case for which [redacted] operated by himself and his family, had procured an infant for adoption involved outright purchase of the child.

The OIC also stated that both INS investigators and the Vietnamese authorities had interviewed many of the natural mothers, who confirmed that they willingly sold their babies upon being approached by agents. The OIC stated that "[t]he natural mother in this case made such a confession to the police." Upon issuance, the OIC did not provide the petitioner a copy of the investigative report or the birth mother's statement. The OIC allowed the petitioner 60 days to provide additional evidence in response to the proposed denial.

On March 21, 2001, the petitioner submitted a letter requesting that the Service disclose the evidence that the OIC relied on in reaching the conclusions reflected in the Notice of Intent to Deny. The petitioner noted that his request to view the underlying evidence had been denied by the OIC in a meeting on March 19, 2001. The petitioner renewed his request in the letter, specifically requesting copies of any statements given by witnesses, whether in written or recorded form, with details of

the circumstances under which the statement was given. The petitioner also requested copies of any reports or other materials obtained from Vietnamese authorities. Subsequently, at an undetermined time, the petitioner's Vietnamese attorney obtained a copy of the birth mother's March 14 statement from the foreign service national who originally obtained the statement from the Vietnamese authorities.

On March 21, 2001, after the birth mother gave the written statement to the Vietnamese authorities and after the OIC issued the Notice of Intent to Deny, the birth mother gave a statement to the Vietnamese law firm representing the petitioner. When asked if she had received any money from the petitioner, the birth mother claimed that "[n]either individual nor organisation [sic] gave me any money." The birth mother stated that "[t]he funds for taking care [sic] the child and the fees for health service were paid by myself and no one gave me money." The birth mother further stated that she had never been interviewed by the police or any other organization, domestic or foreign. The statement is signed by the birth mother and the managing attorney of the Vietnamese law firm. The birth mother's statement was initially submitted by the petitioner to the Service in response to the OIC's Notice of Intent to Deny.

On May 10, 2001, the birth mother made a second statement regarding the adoption to the Vietnamese law firm. In a two-page statement, the birth mother explained her family's dire economic situation and her father's rejection of her second son. The birth mother further stated that while she was pregnant, she inquired about the possible adoption of the child as she had realized that she would be unable to raise the child herself. Through a series of contacts, the birth mother states that she met "[redacted]" who told her that "the people who adopted would also give me some financial assistance for the delivery of the baby." Through [redacted] the birth mother states she was introduced to [redacted][1] The birth mother claimed that [redacted] through [redacted] lent her money so that she could recover her "residence registration booklet" from a pawn shop so that she could obtain the baby's birth certificate. The birth mother also stated that she had to borrow money from friends to cover hospital fees to be admitted to the hospital for the birth. "Each time I needed money," the birth mother recounted, "I called [redacted] and asked her to seek [redacted]." The birth mother stated that after the birth, she also required money to pay for foster care.

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[1] It is noted that the record contains various spellings of the name [redacted]" Depending on the translation, the name has been transcribed as [redacted]," [redacted]" and "[redacted]" For purposes of this decision, the name will be referred to as "[redacted]" unless the decision is referring to an original quotation.

Regarding the adoption and the payments made to her, the birth mother stated:

> After the fosterer had taken care of my baby for more than one month, [redacted] told me to take the baby out for a medical examination. On that day, [redacted] and I took my baby to the Children Hospital 2 and met two foreign men there. After that, those foreigners took my baby away. On that day, [redacted] did not give me anything except VND 50.000 for travel expenses. Since I delivered my child until the ceremony at the Service of Justice, I looked for [redacted] whenever I needed money for the birth and the baby. I received money from [redacted] several times, each a little. The total money I received is about VND 3 million. After the ceremony at the Department of Justice, [redacted] gave me VND 3.900.000.

Finally, the birth mother explained the circumstances of her interview by the Vietnamese authorities on March 19, 2001, and her subsequent conflicting statements:

> Once a local policeman requested me to go to the ward Police Station in order to meet two strange men. They did not say who they were. I was frightened because they spoke harshly and pounded at a table. They asked me why I offered my child for adoption. I said that I could not feed my child. They asked who introduced the adoptive people. [redacted], I said. They asked how much money [redacted] gave me. I said about VND 8 million. After that some lawyers asked me to go to a lawyer's office and also asked whether I had ever received money from anyone. I thought that the reason why I was being called and investigated so often was that I had previously said that I received money. So, I told the lawyers that I had never received money from anyone.

The birth mother concluded her statement by maintaining that "[if] [redacted] did not give me money I would still give my child for adoption. Because I do not want to and cannot feed my child [sic]."

Through counsel, the petitioner submitted a response to the Notice of Intent to Deny on May 16, 2001. Counsel asserted that the Notice was vague and filled with errors, and that the OIC's conclusion is "misleading and bootstrapping and replete with indefinite references." Counsel for the petitioner claimed that, contrary to established law, the Notice did not indicate the grounds for the intent to deny or the evidence that the Service relied on in reaching its conclusions. The response included the following evidence: an affidavit of the petitioner; a translation of the birth mother's May 10 statement; a translation of the

birth mother's March 14 statement; a translation of the birth mother's original letter of inquiry to [redacted] dated December 15, 2000; an affidavit from [redacted] the founder and operator of [redacted] an affidavit from [redacted] who claims to have "assisted" [redacted] and [redacted] and three declarations from other adoptive parents, describing their experience in Vietnam and knowledge of the petitioner's situation.

On June 4, 2001, the OIC denied the petition. After repeating the allegations made in the Notice of Intent to Deny, the OIC concluded that the petition must be denied:

> It has been established that [redacted] and its staff have been engaged exclusively in the purchase and trafficking of babies as an established practice. It has thus been established that the beneficiary in this case was procured for adoption by agents of [redacted] in exchange for a cash payment. [redacted] was acting on behalf of the adoption agency in the United States, the Adoption Center of Washington, and thus on behalf of the petitioners as clients of the adoption agency. As such payment is in violation of 8 CFR 204.3(h)(14)(i) [sic], . . . it is hereby determined that the subject petition must be denied.

In response to the petitioner's claim that the Notice of Intent to Deny was not sufficiently detailed and specific to enable a rebuttal, the OIC stated that the Notice was sufficiently detailed to make the petitioner aware of the derogatory evidence. The OIC specifically pointed to the revelation that "the chief agent and his employees . . . confessed that every case for which [redacted] . . . had procured an infant for adoption involved outright purchase of the child."

Considering the evidence submitted by the petitioner in response to the Notice of Intent to Deny, the OIC dismissed the affidavits as untrustworthy. As the petitioner's rebuttal evidence was obtained after the OIC gave notice of his intent to deny the petition, the OIC concluded that the statements were self-serving, unreliable, and of little probative value. Instead, the OIC concluded that the "[t]he evidence of baby buying by [redacted] in general and in this particular case is credible and reliable."

On appeal, counsel asserts that the OIC's decision is contrary to the facts and to the law and must be reversed. Counsel states that the record does not contain any evidence to support the OIC's conclusions, much less the level of evidence required to justify the deprivation of an adoptive parent's fundamental interest in his child. Furthermore, counsel states that the petitioner was not provided a full and fair disclosure of the adverse evidence

upon which the OIC relied in reaching his decision, contrary to the regulations and the principles of fundamental fairness and due process. Counsel maintains that the decision only set forth the OIC's conclusions and did not identify the evidence on which these conclusions were based. Counsel adamantly asserts that the evidence does not support a finding of statutory ineligibility:

> Here, there is no evidence in the Record to warrant such a finding. In his Decision, the OIC refers to alleged statements made by several birthmothers and agents of the facilitators. However, the Petitioner has not been afforded an opportunity to review the evidence or rebut it. The OIC does not give the specifics of the alleged witness statements or the circumstances under which they were taken. In his Decision, the OIC does not include alleged statements to the Vietnamese police by any witnesses (including the birthmother and the so-called "chief agent") in support of his position, or any reports from the Vietnamese authorities. Indeed, the OIC does not indicate any additional evidence other than that submitted by the Petitioner in rebuttal as part of the record of proceedings. As a result, there are only two possibilities: the Decision was not based on any evidence, or it was improperly based on evidence not in the record. In either event, the Decision cannot be upheld.

(Citations to the evidence omitted.)

The petitioner submits several affidavits to rebut the OIC's allegations that the beneficiary's biological mother is one of the individuals who sold her child to [redacted] The petitioner submitted an affidavit emphatically stating that no money was offered by himself or any agent as an inducement to the beneficiary's birth mother. The petitioner also submitted an affidavit from the biological mother, who explains that she freely and willingly gave up the baby for adoption as she was unable to provide adequate care for him. Another affiant is the proprietor of [redacted] who states that he never paid the beneficiary's biological mother money in order to induce her to give the beneficiary up for adoption. Other affiants include, but are not limited to, [redacted] an employee of [redacted] three adoptive parents who utilized the services of [redacted] and who testify that no money was offered as an inducement to the parents of their adopted children; [redacted] who attests that the birth mother initiated contact with her, seeking to give her child up for adoption; and [redacted] Executive Director of [redacted] who attests to the typical birth expenses incurred by birth mothers in Vietnam.

Counsel maintains that the testimony of each affiant contradicts the OIC's unsupported finding that the biological mother of the beneficiary received payment as part of a child-buying operation.

The record is replete with the inconsistent statements of the birth mother and the unsupported allegations of the OIC. The OIC has presented evidence to raise serious concerns regarding the means by which the petitioner's adoption facilitator procured the adopted child. However, the OIC's conclusions are not supported by the record and rely heavily on unconfirmed inferences. For these reasons, the decision of the director will be withdrawn and the matter remanded for further action.

In his decision, the OIC relies on numerous claims that are not supported by the record.

The OIC did not specifically identify the "chief agent" in either the Notice of Intent to Deny or the ultimate decision. However, the petitioner's affidavit discloses that the assistant officer-in-charge revealed to him on March 9, 2001, that the "'chief agent' of [redacted] identified in the Intent to Deny letter was [redacted] Although the OIC repeatedly relies on the "confession" of the chief agent of [redacted] the record does not contain any evidence of this critical statement. While the OIC states that "[t]he INS investigator witnessed [redacted] sign a confession," the OIC did not provide a copy of this confession for the record or an investigative report describing the purported statement. It is also noted that the OIC claimed that multiple "agents" had been detained by the police regarding the subject adoption. Other than this brief reference to multiple agents, the OIC's decision does not discuss any agent other than the "chief agent."

The OIC further stated in his decision that the birth mother "also confirmed that subsequent to the initial arrangement with [redacted] the case was further facilitated by [redacted] This critical claim was revealed by the OIC for the first time in the final decision. The petitioner was not given notice of this claim prior to the OIC's final decision, and accordingly had no opportunity to rebut this statement. There is no evidence of this alleged statement in the record; neither the birth mother's March 14 statement nor the investigative report mentions [redacted] as a facilitator of the adoption or as a partner of the enigmatic [redacted]

Finally, the OIC stated that the "defining element of this case, and the primary basis for the denial" is the critical March 14 statement of the birth mother. According to the signed statement, "a lady named [redacted] contacted the birth mother and asked her to give up the baby for adoption. The statement also reveals that [redacted] paid the birth mother 8 million VND and "promised to give [her] some more money when [her] son was on

board." However, there is no evidence to establish the identity of [redacted] The OIC did not establish that [redacted] was an agent of [redacted] or establish that she had any connection to the petitioner or any person or entity acting on his behalf. As prepared by the OIC, the record does not include any statement by [redacted] or include any investigative materials regarding the identity of [redacted] or her affiliation with [redacted] or the petitioner. On appeal, the petitioner has not provided any evidence to clarify the role of [redacted] in the adoption. The record is disturbingly silent as to the identity of [redacted] or her connection to [redacted]

Denial of this petition cannot be based upon the serious allegations of the OIC without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the OIC. 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).

However, it is also noted that the credibility of the birth mother is seriously injured by her inconsistent and constantly evolving statements. The birth mother has submitted three separate statements for the record, beginning with the statement that she gave the Vietnamese authorities on March 14, 2001. The credibility of the birth mother's testimony is severely damaged by her March 21 testimony which contradicted her original statement by claiming that she had not been interviewed by the police and had not received any money from any individual or organization. Finally, on May 10, the birth mother attempted to explain the circumstances of the payments and her previously inconsistent statements. As the birth mother's testimony is inconsistent and contradictory, her subsequent testimony cannot be found to be credible.

Furthermore, the petitioner has submitted evidence on appeal which raises serious concerns regarding the practices of [redacted] and its role in the procurement of children for foreign adoption. In his affidavit, [redacted] an employee or "assistant" of [redacted] and [redacted] stated that "[u]pon completion of the [adoption] process, the adoptive parent(s) or [redacted] in consideration of the economic conditions of the child's birth mother, might offer some money and/or gift as financial assistance." Considering the impoverished conditions of the birth mothers, such payments can only create the appearance of impropriety, at best. With birth mothers living in extreme poverty, such payments or gifts might induce a parent to abandon a child for foreign adoption if the parent had expectations of a gift or prior knowledge of the potential for a monetary gift. This type of payment or "gift" cannot be condoned and the OIC would be justified in investigating such a practice. However, in the present case,

there is no direct evidence in the record to establish that the birth mother received such a gift from the adoptive parent, or a person or entity working on his behalf.

In accordance with 8 CFR 204.3(i), an orphan petition must be denied for "child buying" if the following elements are established:

1. the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf

2. have given or will give money or other consideration

3. either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity

4. as payment for the child or as an inducement to release the child.

The regulation at 8 C.F.R. 204.3(i) further provides that "[n]othing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings."

The term "inducement" is not defined by the statute or the regulations. Black's Law Dictionary defines "inducement" as "the act or process of enticing or persuading another person to take a certain course of action." Black's Law Dictionary, 779 (7th Ed., 1999).

As acknowledged by the OIC, the critical piece of evidence is the original March 14 statement of the birth mother. According to the translation submitted by the petitioner, the birth mother indicated that a woman named [redacted] contacted her, asked her to give up her son for adoption by foreigners, and guided her through the adoption procedures. The birthmother also stated: "After I turned the child over to her, she paid me VND 8,000,000 (eight millions) and promised to give me some more money when my son was on board."

While this statement raises serious concerns regarding the adoption, this statement, by itself, does not establish that the petitioner was engaged in "child buying," as defined in the regulation. Although the birth mother indicated that she received money directly from [redacted] there is no evidence to establish the identity of [redacted] or to demonstrate that [redacted] was working on behalf of the petitioner or [redacted] The record of proceeding does not support the OIC's unstated conclusion that [redacted] was working as an agent for [redacted] The birth mother's claim that the money was loaned to her to cover the expense of childbirth and foster care might be a

plausible explanation for the money, considering her impoverished condition, except for the established unreliability of her testimony.

Furthermore, the birth mother's statement does not specifically indicate that she accepted the money as payment for the child or as an inducement to release the child. The birth mother began her statement by unequivocally expressing her inability to care for the child due to her economic hardship. Although one might conclude or infer that the birth mother was induced by the payment to give up her son for adoption, there is no evidence that the money was paid by the adoptive parent, or a person or entity working on his behalf. Without this critical element, there is no basis to find that the birth mother was induced to give up her child. This petition may not be denied based on inferences or conclusions that are not supported by the record.

The OIC has not provided any additional evidence in support of the claim that an agent acting on behalf of the petitioner gave money to the birth mother as payment for the child or as an inducement to release the child. Instead, the OIC relied on the undisclosed statements of the "chief agent" and other "natural mothers" in support of the broad allegation that [redacted] and its staff have been engaged exclusively in the purchase and trafficking of babies as an established practice." The record does not support the sweeping conclusion of the OIC. As stated at 8 C.F.R. 103.2(b)(16)(ii), "[a] determination of statutory ineligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner," unless such information is protected from disclosure in the interest of national security. Here, the record does not support the OIC's conclusions.

The matter will be remanded to the OIC so that the record may be supplemented to address the unresolved issues. First, the OIC should provide evidence to establish whether [redacted] was an agent of [redacted] and ultimately of the petitioner. Second, the OIC should supplement the record with evidence that the money received by the birth mother was a payment to the mother or an inducement to the birth mother to give up the child. Finally, the OIC should identify the "chief agent" of [redacted] and provide evidence of his "written confession" or statement to the Vietnamese authorities, especially as it pertains to the adoption of this particular infant.

The OIC is reminded that, in accordance with Service regulations, a petitioner must be permitted to inspect the record of proceeding which constitutes the basis of an adverse decision. 8 C.F.R. 103.2(b)(16). If an adverse decision will be based on derogatory information of which the petitioner is unaware, the petitioner must be advised of that evidence and offered an opportunity to rebut it before the decision is rendered. 8 C.F.R.

103.2(b)(16)(i). Only if the evidence is classified under Executive Order No. 12356, 47 Fed. Reg. 14874 (April 6, 1982), may the Service decline to provide such evidence in order to protect the information from unauthorized disclosure in the interest of national security. 8 C.F.R. 103.2(b)(16)(iv). Accordingly, prior to issuance of a new decision, the OIC must advise the petitioner of all adverse evidence, and provide the petitioner with the opportunity to rebut the evidence and provide evidence on his own behalf.

The OIC is also reminded that any investigation of child buying should focus on concrete evidence of the alleged child buying or an admission of guilt. See 9 F.A.M. 42.21, N12.7-7. Observations that are conclusory, speculative, equivocal, or irrelevant to the petitioner's eligibility under the Act and regulations, will not suffice to deny the petition. See, e.g. Matter of Arias, 19 I&N Dec. 568 (BIA 1988).

For the above stated reasons, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration. The director must disclose any derogatory evidence in the record to the petitioner, and afford the petitioner reasonable time to provide additional rebuttal evidence. The director shall then render a new decision based on the evidence of record.

ORDER: The OIC's decision of June 4, 2001 is withdrawn. The petition is remanded to the director for action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.