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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: PHILADELPHIA Date: APR 0 8 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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 APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director of the Philadelphia district office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on October 31, 2001. The petitioner is a 29-year-old married naturalized citizen of the United States. The beneficiary is 15-years old at the present time and was born in Vietnam on August 30, 1987. The beneficiary's biological father died in 1996. The beneficiary resides with his biological mother, the petitioner's aunt.

The district director issued a request for additional documentation that incorporated a notice of intent to deny. The district director noted that the fact that the beneficiary continues to reside with his biological mother is evidence that she is capable of providing proper care for her children. The district director denied the petition on November 1, 2002, finding that the beneficiary was ineligible to be classified as an orphan and that the petitioner had failed to establish that the sole or surviving parent of the beneficiary is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

On appeal, counsel for the petitioner submits a brief and requests an additional 45 days to provide additional documentation. As of this date, however, no additional documentation has been received. The record, therefore, must be considered complete as presently constituted.

Section 101(b)(1)(F) of 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 record contains the death certificate of the biological father who died in 1996. Therefore, upon the biological father's death, the biological mother became a surviving parent. 8 C.F.R. § 204.3(b) states, in pertinent part:

> *Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section

> 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.
>
> *Incapable of providing proper care* means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.

In support of his claim that the biological mother became unable to care for the beneficiary after the death of the biological father, the petitioner submitted several letters from the biological mother. One letter states:

> [Y]ou already know about the hardships and difficulties that I have gone through. . . . It is difficult everywhere since work is so scarce and the drought does not contribute much, everyone barely provides for themselves; also, there has been no help from relatives as before. . .
>
> After a lot of thought I've decided that it is okay for me to ask you and your relatives for my children's' education and better future. I wish for them to become foster-children and I insist on you to petition for them to come over to live with you. [Sic.] I believe that you wouldn't mind to do that, raising them as your own children with your love and care.

In another letter, the biological mother writes:

> Since my husband, your uncle, passed away in 1996, I had solely worked very hard to raise these five small children. . . . Nowadays life over here is harder to struggle. Weather hasn't been cooperative either. Poor harvest caused shortage of food for 5 to 6 months annually. For the family's basic necessities I was forced to sell cattle and even a piece of rice field.
>
> We are short of everything. I am so worried and afraid the children may have to stop school this coming year that I decided to ask for your help. You might be able to file a petition for [redacted] and [redacted] to enter the USA so that they may have an opportunity to pursue their education for a better future.

[Sic.] The petitioner failed to provide sufficient evidence of the biological mother's inability to provide proper care for the beneficiary *consistent with the local standards of the foreign sending country*. Two letters from the biological mother are insufficient evidence of her inability to provide proper care for her children. No evidence was provided as to the local standard

of living in Vietnam.

The petitioner also failed to provide the Bureau with evidence that the beneficiary's biological mother has in writing irrevocably released the child for emigration and adoption. The mother's letters do indicate her willingness to send the children to the United States. But they do not qualify as a formal and irrevocable release. For this additional reason, the petition must be denied.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F).

ORDER: The appeal is dismissed.