Adoption And Immigration Of Alien Orphans

by Clayton B. Doughty
Deputy Assistant Commissioner, Adjudications
Central Office

During the nineteen years which have elapsed since the end of World War II, more than 21,000[1] orphaned or abandoned children have been brought to this country and taken into the homes of citizens of our country under special or temporary legislation. For some time, the number of children for adoption has been low in this country, so it was not surprising that the tragic plight of orphaned children in war-torn countries brought forth immediate response in the United States, not only from prospective parents but from the Congress which made this great humanitarian undertaking possible.

Even before the first temporary legislation was enacted in 1948, some 1,600 orphans had come to the United States. During May and June 1946, 231 Polish children were admitted under the care of the Catholic Committee for Refugees. In the next two years, nearly 1,400 children from Europe, sponsored by the United States Committee for the Care of European Children, entered for adoption and upbringing in American homes. Beginning in 1948, Congress on ten occasions enacted or extended temporary legislation benefitting orphans in other countries of the world.

Displaced Persons Act of 1948

This law, as amended, authorized the issuance of 5,000 visas to United Nations and Greek orphans, and 5,000 to orphans residing in western Europe. Visas were limited to orphans under 10 years of age and assurances of proper care and support were also required. The law was administered by the Displaced Persons Commission, assisted during the first two years by the United States Committee for the Care of European Children. The various state and child welfare agencies also assisted the Commission in placing the children for adoption. A total of 4,065 orphans entered the United States during the years this Act was in effect. Included in the total were 1,246 born in Greece, 1,156 in Germany and 568 in Italy.

Act of July 29, 1953

When the Displaced Persons Act of 1948 expired, there were still many servicemen and civilians abroad who wanted to bring home adopted children. This Act provided for the issuance of 500 visas to orphans in such cases and, unlike the Displaced Persons Act of 1948, permitted visa issuance to Japanese children. In all, 466 children were admitted under this law, 287 of whom were born in Japan.

Refugee Relief Act of 1953

Section 5 of this Act authorized 4,000 special nonquota visas to eligible orphans under ten years of age adopted or to be adopted by United States citizens upon assurances underwritten by recognized welfare agencies that the child would be given proper care. One couple was not permitted to adopt more than two orphans unless necessary to prevent the separation of brothers and sisters. All of the 4,000 authorized visas had been issued before the law expired on December 31, 1956. Of the total admitted, 1,315 were born in Japan, 506 in Greece, 464 in Italy and 461 in Korea.

Emergency Parole of Orphans

By September26, 1956, all the visas authorized under the Refugee Relief Act had been used but there were still many citizens stationed abroad who had adopted or were about to adopt orphan children. After consultation with appropriate committees of Congress and the Department of State, the Service paroled these children into the United States. A total of 925 orphans who fully qualified under the expired Act were authorized parole into the United States. Their status was subsequently regularized under provisions of the Act of September 11 1957, including 282 from Korea, 213 from Japan, 117 from Italy and 108 from Greece.

Act of September 11, 1957

Section 4 of this Act allowed the issuance of an

[1] This figure does not include immigrant orphans who were able to be issued regular immigrant visas as nonquota aliens or aliens chargeable to quotas which were available.

unlimited number of special nonquota visas to "eligible orphans" adopted abroad or to be adopted in the United States by a United States citizen and spouse. Such visas were available only to orphans from oversubscribed quota countries and one couple could bring only two children, as before. This provision of law expired June 30, 1959.

The Act of September 9, 1959, in amending Section 4 of the Act of September 11, 1957, made a significant change in the procedures and required a petition to the Service by the parents and a Service investigation in the cases of orphans adopted abroad as well as for those coming to the United States for adoption. This amendment was the result of allegations that abuses existed under the administration of prior law[2] and placed responsibility for administering the entire program with the Attorney General.

Section 4 of the Act of September 11, 1957, as amended, finally expired on June 30, 1961. By June 30, 1963, a total of 10,231 orphans had been admitted under its provisions, including 3,442 from Korea, 1,440 from Italy, 1,268 from Greece, and 1,214 from Japan.

Act of September 26, 1961—Present Law

After 13 years of temporary orphan legislation, this Act finally incorporated into the Immigration and Nationality Act, on a permanent basis, provisions for according nonquota status and the issuance of visas to certain alien orphans, and their admission to the United States. One requirement of some of the temporary Acts —that the quota of the orphan's country of origin must be oversubscribed —was eliminated, but an additional and important new restriction was introduced. Adoptions abroad by proxy are no longer recognized, the present law requiring that both parents must have seen and observed the child before or during the adoption proceedings.

Under Section 205(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1155(b)), the first step in the immigration of an orphan is the filing of a petition, Form 1-600, Petition to Classify Alien as Eligible Orphan, before a District Director of this Service or Officer in Charge of a Service office abroad. The petition must be accompanied by a fee of $10 and must be filed by a citizen *and spouse*. Unmarried persons are not eligible to confer nonquota status upon alien orphans. Proof of marital status and the United States citizenship of one spouse must be presented. The same petitioners may not petition for more than two orphans unless necessary to prevent the separation of brothers and sisters.

The child must qualify as an "eligible orphan" as defined in the Immigration and Nationality Act[3] that is, under the age of 14 as of the petition filing date, and orphaned because of the death or disappearance of, abandonment or desertion by, or separation from one or both parents. If the child still has one parent, that parent must be incapable of providing for his care and have irrevocably, in writing, released the child for emigration and adoption. The orphan must also be admissible to the United States under the regular provisions of law. If the orphan has been adopted abroad, both parents must have seen and observed the child before or during the adoption proceedings, otherwise the petition is treated as though no adoption has taken place, providing evidence is presented that the State in which the petitioner resides permits readoption following foreign proxy adoptions, and providing the petitioners intend to readopt the child in the United States.

Adoptive or prospective adoptive parents must also submit with the petition evidence that they are able to properly support and care for the child, a certified copy of the foreign adoption decree with translation and, if the child is to be adopted in the United States, evidence that any preadoption requirements of their State have been met. When pertinent, the release by the child's parent must also be presented. Recognized child welfare agencies regularly assist petitioners with the details involved.

Petitions for eligible orphans are given the highest priority in processing, investigation and adjudication. Neighborhood and employment investigations are conducted and criminal and security records are checked. Petitioners are interviewed in their own homes, information is obtained concerning their plans for rearing and educating the child, and the home environment is carefully observed. Additionally, Service officers abroad verify "eligible orphan" status and actually interview and observe the child. Pertinent information concerning the child's health and other matters is reported and passed on to the petitioners if they have not yet seen the child.

Frequently in the past, serious problems arose in the cases of citizens who had proceeded abroad to find orphans for adoption. Following the adoption,

[2] See I&N REPORTER. April 1960, page 47.

[3] Section 101(b)(6), 8 U.S.C. 1101(b)(6).

these adoptive parents would file the required petition at Service offices abroad but would suffer serious hardships, financial and otherwise, in waiting abroad, often in hotel rooms without adequate facilities to properly care for their adopted infant children, while the required investigation, home study and checks were being made by the Service in the United States.

In 1963, the Service overruled its prior holding that there existed no authority to commence the processing and investigation in an orphan case without the actual filing of the petition form, the 1-600. Of course the filing of the petition was not possible in such a case as the prospective parents were unable to name the beneficiary.

Under present procedures, when a United States citizen and spouse notify a Service office in writing that one or both intend to proceed abroad to find a child for adoption, advance processing and investigation is begun in the United States immediately. The appropriate Service office abroad is furnished the results and, providing all requirements of the statute are met and reasonable advance notice is given, the petition can be approved by the office abroad without delay. Elimination of the otherwise protracted waiting periods abroad has received much favorable comment and has been praised as a "cutting of bureaucratic red-tape." The Service will continue to exert its best efforts in devising means to provide better and more enlightened administration of not only the orphan provisions of the law, but others as well, consistent with its responsibilities for proper-enforcement of the Immigration and Nationality Act.

Since the enactment of the Act of September 26, 1961, 1,697 "eligible orphans" have been admitted to the United States as nonquota immigrants under this permanent legislation, 409 from Korea, 319 from Italy, 233 from Greece and 151 from Japan. Thus, a total of 22,724 orphans has been admitted since the end of World War II. There is no indication that the immigration of eligible orphans will decrease.

CHANGES IN THE REGULATIONS

UNDER TITLE 3, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 29, No. 12, January 18,1964,* Presidential Proclamation on Law Day, No. 3571.

Vol. 29, No. 76, April 17, 1964, Presidential Proclamation on Citizenship Day and Constitution Week, 1964, No. 3580; Presidential Proclamation on Loyalty Day, 1964, No. 3581.

UNDER TITLE 8, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 29, No. 39, February 26, 196Jf,* Sections 3.4 and 3.5.

Vol. 29, No. 40, February 27, 1964, Section 340.11.

Vol. 29, No. 54, March 18, 1964, Sections 214.2(j); 299.1.

UNDER TITLE 22, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 28, No. 247, December 21. 1963,* Sections 41.12; 41.25(c); 41.91(a)(1-6); 42.60(c); 42.91(a)(1-6)(i); 42.91(a)(14); and 42.111(e).

Vol. 29, No. 34, February 18, 1964, Sections 42.63; 42.66; and 42.67.

Vol. 29, No. 41, February 28, 1964, Sections 41.1; 41.65; 41.91(a)(1-6) ; 41.113; 41.124(e); 42.60; 42.62(a); 42.91(a)(1-6)(i); 42.111(c); 42.113(b); 63.2(b)(3); 63.3(d); 63.5(b)(1) (iii); 63.5(c)(2); and 63.5(d).