

1 UNITED STATES COURT OF VETERANS APPEALS

2 No. 90-1309

3 FELICITAS A. MATA, APPELLANT,

4
5 v.

6 ANTHONY J. PRINCIPI,

7 ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

8
9 Before KRAMER, HOLDAWAY, and STEINBERG, *Associate Judges*.

10 ORDER

11 Appellant, Felicitas A. Mata, wife of the deceased veteran, appeals an October 17, 1990,
12 decision of the Board of Veterans' Appeals (BVA or Board) denying recognition of Irwin and Allan
13 as the veteran's adopted children for Department of Veterans Affairs (VA or Department) purposes.
14 *Felicitas A. Mata in the Case of Guillermo Mata*, BVA 90-____ (Oct. 17, 1990). The Court has
15 jurisdiction over the case under 38 U.S.C. § 7252(a) (formerly § 4052(a)).

16 The Court has reviewed the pleadings of the parties and the record on appeal and notes the
17 following. In a letter dated April 12, 1989, from appellant to the Chairman of the BVA, appellant
18 requested reconsideration of a 1989 BVA decision on the basis that all the requirements for adoption
19 were met and that the Philippine court rendering the adoption decree had jurisdiction to do so. R.
20 at 61. In the response dated June 5, 1989, from the Chairman to the appellant, the Chairman stated
21 that all of the legal requirements for adoption had not been met. R. at 62. In a response dated July
22 5, 1989, to the Chairman, appellant again asserted the Philippine court's jurisdiction to render a
23 decree and that the adoption was valid under both Philippine and United States law. R. at 63. The
24 Chairman's response dated September 18, 1989, did not dispute the validity of the adoption under
25 Philippine law, but stated that it was not recognized for VA purposes. He also indicated that
26 appellant could reopen her claim by submitting new and material evidence to the Regional Office
27 (RO). R. at 64-65. On October 17, 1989, appellant filed a letter with the Manila RO attaching a
28 copy of her July 5, 1989, letter to the Chairman of the BVA and referencing error in the 1989 BVA
29 decision with respect to the decision's conclusions regarding the local court's jurisdiction to render,
30 and the validity of, the adoption decree. R. at 66. The letter asked that the RO again address those
31 issues and, alternatively, that the case be reopened for new and material evidence.

32 The Court concludes that the issue of clear and unmistakable error was properly before the
33 BVA when it rendered its decision in the case presently on appeal. Because the BVA failed to
34 address this issue, the case must be remanded to the BVA. *See Russell v. Principi*, ____ Vet.App.
35 ____, No. 90-396, slip op. at 7 (U.S. Vet. App. Oct. 6, 1992) (en banc) (claimant may not raise issue
36 of clear and unmistakable error for the first time before the Court); *Chisem v. Principi*, ____ Vet.App.
37 ____, No. 90-1540, slip op. at 11 (U.S. Vet. App. Oct. 7, 1992) (where appellant raises the issue of
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1 clear and unmistakable error before the BVA, the BVA must review the issue) (citing *Azurin v.*
2 *Derwinski*, 2 Vet.App. 489 (1992) (BVA must review all issues which are reasonably raised from
3 a liberal reading of appellant's substantive appeal)).
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5 On consideration of the foregoing, it is
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7 ORDERED that the BVA decision is vacated and the matter is remanded to the Board for
8 adjudication of appellant's claim that clear and unmistakable error was committed in the BVA's
9 March 20, 1989, decision. In reaching its decision, the Board shall:
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11 (1) Address whether the BVA found, or now finds, fraud in the procurement of the adoption,
12 and, if so, provide reasons or bases, under 38 U.S.C. § 7104(d)(1) (formerly § 4004(d)(1)), in support
13 of any such finding.
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15 (2) Attach to its decision copies of all applicable Philippine law at the time of the adoption
16 and address whether the judge in question had the authority to waive any applicable requirement of
17 the law (including any requirement for a case study report by the Department of Social Welfare,
18 written consent from natural children, and a trial custody period) and, if so, under what
19 circumstances.
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21 (3) Provide an adequate statement of reasons or bases for the Board's finding as to whether
22 the natural children of appellant had provided such written consent, taking into consideration the
23 testimony of both the deceased veteran and his counsel before the Philippine court that the counsel
24 had submitted to the Ministry of Social Services and Development written consent documents from
25 all of the natural children (R. at 38-39).
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27 (4) Address how the provisions of 38 U.S.C. § 101(4)(B), establishing standards for
28 determining whether, for purpose of VA benefits, a person has been "legally adopted" under the laws
29 of a foreign jurisdiction, can be reconciled with the position of the Department expressed in Op. Gen.
30 Counsel 21-79 (Mar. 30, 1979) that VA has authority to look behind the face of a foreign adoption
31 to ensure that "all of the prerequisites to a foreign adoption have . . . been satisfied", *id.* at 2, beyond
32 questions of fraud or lack of jurisdiction of the court entering the decree, including a full discussion
33 of the appropriate legislative history in connection with the applicable law. It is further
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35 ORDERED that the Court retains jurisdiction because appellant's claim for reopening based
36 on new and material evidence has not been addressed by this Court. *See Russell*, __ Vet.App. at __,
37 slip op. at 16. The Secretary shall file with the Clerk (as well as serve upon appellant) a copy of any
38 Board decision on remand. Within 50 days after any such final decision, appellant shall notify the
39 Clerk whether she desires to seek further review by the Court.
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41 DATED: December 28, 1992 PER CURIAM