U.S. Department of Justice

Immigration and Naturalization Service

F2

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

Public Copy

[redacted]

File: [redacted] Office: PORTLAND, MAINE Date: AUG 0 3 2001

IN RE: Applicant: [redacted]

Application: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. 204.3(c)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 District Director, Portland, Maine, denied the application for advance processing of an orphan petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the application will be approved.

The applicant filed the Application for Advance Processing of Orphan Petition Form (I-600A) on January 23, 2001. The applicant is a 51 year-old divorced citizen of the United States who has previously adopted seven children from foreign countries.

The director denied the application after determining that the applicant did not have the financial ability to support an adopted child. On appeal, the petitioner addresses the director's concerns.

8 C.F.R. 204.3 states, in pertinent part:

(c) *Supporting documentation for an advanced processing application.* The prospective adoptive parents may file an advanced processing application before an orphan is identified in order to secure the necessary clearance to file the orphan petition. Any document not in the English language must be accompanied by a certified English translation.

(1) Required supporting documentation that must accompany the advanced processing application. The following supporting documentation must accompany an advanced processing application at the time of filing:

(i) Evidence of the petitioner's United States citizenship as set forth in Sec. 204.1(g) and, if the petitioner is married and the married couple is residing in the United States, evidence of the spouse's United States citizenship or lawful immigration status;

(ii) A copy of the petitioner's marriage certificate to his or her spouse, if the petitioner is currently married;

(iii) Evidence of legal termination of all previous marriages for the petitioner and/or spouse, if previously married; and;

(iv) Evidence of compliance with preadoption requirements, if any, of the State of

the orphan's proposed residence in cases where it is known that there will be no adoption abroad, or that both members of the married prospective adoptive couple or the unmarried prospective adoptive parent will not personally see the child prior to, or during, the adoption abroad, and/or that the adoption abroad will not be full and final. Any preadoption requirements which cannot be met at the time the advanced processing application is filed because of operation of State law must be noted and explained when the application is filed. Preadoption requirements must be met at the time the petition is filed, except for those which cannot be met until the orphan arrives in the United States.

(2) Home study. The horne study must comply with the requirements contained in paragraph (e) of this section. If the horne study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application, or the application will be denied pursuant to paragraph (h) (5) of this section.

(3) After receipt of a properly filed advanced processing application, the Service will fingerprint each member of the married prospective adoptive couple or the unmarried prospective adoptive parent, as prescribed in § 103.2 (e) of this chapter. The Service will also fingerprint each additional adult member of the prospective adoptive parents' household, as prescribed in § 103.2(e) of this chapter. The Service may waive the requirement that each additional adult member of the prospective adoptive parents' household be fingerprinted when it determines that such adult is physically unable to be fingerprinted because of age or medical condition.

The director denied the application because he believed that the horne study did not comply with requirements in paragraph (e) (2) (ii) of §204.3, which states:

Assessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A

> statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. The Service will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

Although the home study preparer concluded that the applicant was financially able to adopt another child, the director disagreed with the preparer's assessment. The director noted that the applicant had previously adopted several children who were developmentally challenged and who received supplemental security income (SS1). The director also noted that the applicant's 2000 yearly income was only $12,848.68. Based upon these factors, the director concluded that the applicant and her family were dependent upon public cash assistance and that such a dependency would not change. Accordingly, the director denied the application.

On appeal, the applicant states that neither she nor the home study preparer was specifically requested to provide further documentation of her finances. The applicant states that some of her children receive SS1 benefits due to their disabilities, but the applicant has never received public assistance as alleged by the director. The applicant maintains the SS1 benefits, which some of her children receive, disqualify her from state and local public assistance.

The applicant presents a compelling appeal. The regulation at §204.3 (e) (2) (ii) requires a home study preparer to verify the financial ability of an individual to care for an adopted child. The home study preparer made such an assessment, which appears reasonable in light of the evidence in the record. The director questions the validity of the home study preparer's assessment; yet, fails to produce any evidence that contradicts the home study preparer's claims. The director concludes that the applicant is dependent upon public assistance, but he does not present the evidence upon which this conclusion is based. Neither the applicant nor the home study preparer admitted that the applicant is dependent upon public assistance and the record does not contain evidence of the applicant's alleged dependency upon state aid. Although the applicant's 2000 annual income was low, this should not have been the sole basis for the director's conclusions; the applicant has presented other evidence of her assets that could support herself and her family. Accordingly,

it appears that the director's conclusion to deny the application was based purely on speculation that the applicant would be unable to provide financial support for an adopted child. Without specific facts upon which this speculation was based, the denial of the application cannot be affirmed.

The director did not raise any other objections to the approval of the application, and the petitioner has overcome the basis of the director's denial; the appeal shall be sustained. The burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has met that burden.

ORDER: The appeal is sustained. The application is approved.