



U.S. Department of Justice
Immigration and Naturalization Service

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



File:



Office: PHILADELPHIA, PA

Date: 30 APR 2002

IN RE: Applicant:
Beneficiary:



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

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

Public Copy

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, Director
Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania district office 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 August 10, 2001. The applicant is a 32 year-old married citizen of the United States who, together with his spouse, seeks to adopt a special needs child.

The director denied the application after determining that the applicant did not present sufficient evidence that he would be able to provide proper care for an orphan due to the applicant's schizoaffective disorder (depressed type).

On appeal, the applicant submits a statement, a letter from his psychiatrist, a letter from his adoption counselor, and letters from family friends.

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

(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.* The home study must include a discussion of the following areas:

(i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of

the prospective adoptive parents' household.

In the July 11, 2001 home study report, the adoption counselor stated that the applicant had a psychiatric diagnosis of schizoaffective disorder, depressed type. The adoption counselor noted that the applicant spoke openly about the diagnosis, which dated back to 1994 and was triggered by the breakup of a relationship with a girlfriend. The adoption counselor's report indicated that the applicant had been hospitalized for depression, his condition had been stabilized due to medication, and he had been receiving ongoing counseling from a psychiatrist, [REDACTED] who stated that the applicant's long-term prognosis was excellent.

In October of 2001, the director requested the home study agency to submit a professional evaluation from [REDACTED] to include a discussion of the applicant's present psychiatric condition, a discussion of the applicant's long-term prognosis, and an evaluation of the applicant's ability to parent a child.

In a November 1, 2001 letter to the director, [REDACTED] stated that he began to treat the applicant on January 7, 1999. [REDACTED] stated that the applicant was stable on medication and that the applicant "continues to deny any paranoia or depression." Regarding the applicant's prognosis, Dr. Okamoto stated that the applicant's long-term prognosis was excellent and that he did not "find any contraindications in regards to his psychiatric problems to his intended adoption of a child under the age of 5 suffering from moderate to severe disabilities." Dr. Okamoto concluded by stating that he could not comment on the applicant's parenting skills, as he was only seeing the applicant for medication. [REDACTED] therefore, deferred to the home study report for the issue of parenting. In addition to this November 1, 2001 letter, [REDACTED] provided a copy of a January 7, 1999 treatment plan that he had developed for the applicant. In this treatment plan, [REDACTED] stated that "[t]his patient had had a history of depression and psychotic symptoms consisting of delusions and possibly some hallucinations which he minimizes or denies."

On December 13, 2001, the director denied the application for the following reasons:

From this document [January 7, 1999 treatment plan] it is evident that you were hospitalized twice for emotional problems, from March to April 1996, and in June 1997. . . . The fact that you now deny any past experiences of delusions and hallucinations, whereas such experiences are documented in your medical record, is found to be significant. You deny such experiences not only to your home study agency, but also to your present physician. It is concluded that you are not

prepared yet to discuss the extent of your past mental problems with your present psychiatrist and your home study agency. For the same reason, your home study agency may have recommended you for adoption without knowing the full extent of your psychiatric problems. . . . Inasmuch as your present psychiatric evaluation is based on your partial cooperation only, and inasmuch as your psychiatrist refrains from making an evaluation of you as an adoptive parent, this office may not conclude that you are mentally prepared and capable for the adoption of a child with mild to severe disabilities. . . .

The director further stated that the applicant "failed to present a detailed professional evaluation that unequivocally recommends you for the challenges of adopting a minor child with disabilities."

On appeal, the applicant submits additional evidence.

The first item of evidence is a letter from [REDACTED]. The director cited in his denial letter that the applicant denied any past experiences of delusions and hallucinations when such experiences were documented in his treatment plan. Therefore, [REDACTED] submits a letter to clarify the statement that he made that "[h]e [the applicant] continues to deny any paranoia or depression." According to [REDACTED] such a statement meant that the applicant was currently and in the recent past not experiencing any symptoms of paranoia and depression, and was not intended to mean that the applicant ever denied having these psychiatric symptoms in the past. [REDACTED] apologized for any confusion his statement may have made and stated that he only intended to communicate that over the last year, the applicant had not experienced symptoms or paranoia and that he is "very stable from a psychiatric standpoint."

The second item of evidence is a letter from the adoption counselor who recollects that she had asked the applicant about whether he experienced delusions or hallucinations and he had stated "no." The adoption counselor states, however, that in a recent conversation with the applicant she noticed that the applicant defined both delusions and hallucinations as "seeing things that aren't there" and was not aware of a difference between the two terms. According to the adoption counselor, after she explained the difference between the two terms, the applicant stated that he agreed with [REDACTED] that he had experienced delusions in the past but has never experienced hallucinations.

The third item of evidence is a statement from the applicant. In this letter, the applicant states that upon reviewing the terms "delusion," "paranoia" and "hallucination" in the dictionary, he

discovered that he had experienced some of these symptoms in the past but not recently. The applicant explains that when he sees [REDACTED] for routine visits about his medication [REDACTED] asks him whether he is experiencing any paranoia or depression. The applicant states that because he is not experiencing either of these conditions at the present time, he answers "no" to these questions. The applicant further states that in his discussions with the adoption counselor he denied ever having delusions or hallucinations because he did not know the full meaning of these terms. The applicant states that, in retrospect, he should have been aware of the definitions of those terms in order to adequately answer questions regarding his symptoms. Finally, the applicant states that he has consistently taken his prescribed medication, and plans to continue taking medication for as long as his doctor believes it is necessary. The applicant maintains that he has not experienced any delusions since he has been on medication.

The final items of evidence are letters from the applicant's family and friends, who attest to the applicant's and his spouse's abilities to parent a child with special needs.

The applicant presents persuasive evidence on appeal.

Based upon the statements of Dr. Okamoto, the adoption counselor and the applicant, it appears that the director took [REDACTED] statement (the applicant "continues to deny any paranoia or depression") out of context. Such a statement by Dr. Okamoto was not an admission that the applicant denied ever having these episodes, as the director concluded. Rather, it was a statement that the applicant does not currently experience episodes of paranoia or depression. There is no evidence in the record which suggests that the applicant's schizoaffective disorder (depressed type) has not been and cannot be successfully managed with medication and continued evaluation.

Regarding the director's conclusion that the applicant did not submit a professional evaluation that "unequivocally" recommended him as an adoptive parent, such a requirement by the director places an undue burden upon the applicant.

According to 8 C.F.R. 204.3(e)(2)(i):

The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or

clinical social worker for an evaluation. . . .

Nothing in the regulation requires an applicant to obtain evidence that he or she is "unequivocally" able to provide proper care for an adoptive child. The regulation permits an adoption agency to make such an assessment in the home study report and to refer to other parties for evaluation those areas that the adoption counselor believes is beyond his or her expertise.

Here, the adoption counselor referred the applicant for an evaluation of the applicant's schizoaffective disorder, not for an assessment of whether the applicant would be able to care for an adoptive child. In a November 27, 2001 home study addendum, the adoption counselor stated that "[i]t is felt that both [the applicant and his spouse] are mentally, emotionally, and physically competent to adopt a child with special needs." Similarly, although [redacted] did not make a finding regarding the applicant's ability to parent, he did state that he did not "find any contraindications in regards to his psychiatric problems to his intended adoption of a child under the age of 5 suffering from moderate to severe disabilities." Neither the adoption counselor nor [redacted] stated that the applicant would be unfit as an adoptive parent. Therefore, there was no reasonable basis for denying the petition for failure to supply a recommendation that the applicant is "unequivocally" able to care for the beneficiary.

Based upon the above discussion, the applicant has overcome the objections of the director. The director did not raise any other objections to the approval of the application; therefore, 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.