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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

[Redacted]

File: [Redacted]

Office: ST. PAUL, MN Date

DEC 24 2002

IN RE: Applicant: [Redacted]
Beneficiary: [Redacted]

Application: Application for Advance Processing of Orphan Petition Pursuant to 8 CFR 204.3(c)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

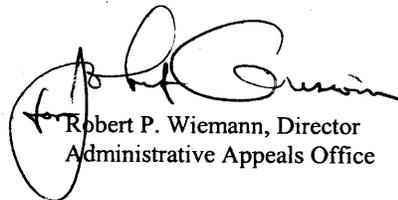
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 CFR 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 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 that originally decided your case along with a fee of \$110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the St. Paul, Minnesota district office denied the application for advance processing of an orphan petition.¹ The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on February 21, 2002. The applicant is a 41-year-old married citizen of the United States, who together with his spouse, seeks to adopt a Russian child, more specifically, the applicant's spouse's niece.

The director denied the application because the applicant and his spouse failed to disclose the latter's criminal history to the home study preparer, the spouse is currently on probation, and given the recency of the conviction, there has not been an adequate amount of time that has passed to determine if rehabilitation has occurred.

On appeal, the applicant submits a two-page letter. The applicant asserts that his wife did not intentionally violate the law, but that her work supervisor tricked her into committing the crime. He said that his wife pled guilty to a misdemeanor to avoid the risk of being found guilty of a gross misdemeanor, and of deportation.

The record of proceeding contains the Form I-600A application and accompanying documentation, the applicant's spouse's conviction record, an amended home study, the director's denial notice, and the appeal documents.

The applicant provided the Service with a home study report dated February 26, 2002 that indicates that no criminal history records were found for the applicant and his wife. On February 26, 2002, she had not yet been convicted; the court entered judgment on March 21, 2002. *Minnesota v. Latham*, Sentencing Order, No. K3-02-91 (Dakota County, Minnesota, District Court. Filed March 21, 2002). The related charging document, however, shows that the complaint was filed in January 2002. The charging document also shows it was issued well before the date of the home study. It is not clear from the initial home study report whether the home study preparer asked the applicant and his spouse (Karine) about any criminal history. The district director requested additional information from the applicant's spouse regarding her arrest and conviction for credit card fraud. An attorney responded to the request on behalf of the applicant's spouse.²

¹ The office of the district director of the St. Paul district is actually in Bloomington, Minnesota. 8 CFR 100.4(b)(10).

² This attorney is not the applicant's counsel, for purposes of this proceeding, since neither the applicant nor the attorney has filed a notice of appearance. 8 CFR 292.4.

The court record establishes that the applicant's spouse was convicted of financial transaction card fraud, in violation of Minn. Stat. § 609.821, Subd. 2(1). She was sentenced to probation for one year, fined \$341.00 (including the surcharge), and compelled to pay \$218.00 in restitution. The amended home study indicates that she told the home study preparer she did not know she was using the card improperly. The applicant's letter, submitted on appeal, also suggests that his spouse was not actually guilty. It is well settled, however, that the Service has no authority to adjudicate the validity of a conviction. See *Matter of Reyes*, 20 I&N Dec. 789, 793 (BIA 1994). The reasons that the applicant gives for his spouse's decision to plead guilty are irrelevant to this proceeding, and the Service may not consider them. That is to say that, for purposes of this appeal, it is established beyond doubt that the applicant's spouse used another person's financial transaction card to obtain property, knowing both that it was someone else's card and that she did not have permission to use it. Minn. Stat. § 609.821, Subd. 2(1).³

According to regulations, failure to disclose an arrest or conviction by the prospective adoptive parents to the home study preparer and to the Service, may result in the denial of the advanced processing application. 8 CFR 204.3 (e)(iii)(D). Denial of a Form I-600A under this regulation is particularly appropriate where the undisclosed arrest resulted in the person's conviction, for which the person remains on probation.

The conviction, moreover, provides an additional reason to deny this application. The Service may not approve a Form I-600A unless the Service is satisfied that the applicant and his spouse will provide proper parental care to an adopted orphan. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i). The statute requires the submission of a favorable home study. *Id.* 204(d), 8 U.S.C. 1154(d). The Service is not, however, bound by the home study preparer's favorable recommendation. 8 CFR 204.3(h)(2). The Service must, instead, assess all the evidence and reach an independent judgment concerning whether the applicant and his spouse will provide proper parental care to an adopted orphan. *Id.* Fraudulent use of a financial transaction card is a crime involving moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839 (1966). The applicant's spouse's conviction may not make her subject to removal from the United States. Section 212(a)(2)(A)(ii)(II) and 237(a)(2)(i), 8 U.S.C. 1182(a)(2)(A)(ii)(II) and 1227(a)(2)(i). It remains the case that

³ The Minnesota statute defines the offense as a gross misdemeanor. Minn. Stat. §§ 609.02 and 609.821, Subd. 3(1)(v). In the applicant's spouse's case, however, Minnesota law considers her offense to be a misdemeanor, since the punishment actually imposed is within the sentencing range for misdemeanors. *Id.* § 609.113, Subd. 2(1).

she has been convicted of a crime, and fraud is an essential element of that crime. She remains on probation. For these reasons, the Service concludes that the applicant had failed to establish that an adopted orphan will receive proper parental care.

The applicant has not presented sufficient evidence to overcome the director's decision to deny the application. Therefore, the director's decision to deny the application will not be overturned.

In visa petition proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.