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Immigration and Naturalization Service

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



JAN 21 2003

File:

Office: ST. LOUIS, MO

Date:

IN RE: Applicant:
Beneficiary:

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

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

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 District Director of the St. Louis, Missouri 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 dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A). The applicant is a 53-year-old married citizen of the United States, who together with his spouse, seeks to adopt two or three children from Russia or Kazakhstan.

The district director denied the application because he was not satisfied that proper care would be provided for the orphans. The district director noted that the applicant and his wife had previously adopted five Russian orphans all suffering with various degrees of reactive attachment disorder. Shortly after their entry into the United States, the daughter sexually abused a younger brother. The daughter stuck a large spoon handle in her younger brother's rectum. The rectum was pierced and required surgery. Upon his discharge from the hospital, the son was placed in foster care. The eldest son was placed in a foster home for almost five months and was returned to the applicant's family. The daughter spent a year at an alternative residential facility for children with emotional or behavioral disorders. She was diagnosed as having moderate to severe reactive attachment disorder. The district director notes that it appears that the applicant and his wife are doing a good job of parenting their remaining four adoptive children, but determined that he was not satisfied that they could provide proper care for two or three additional young children.

On appeal, the applicant argues that since his wife is no longer home schooling their children, adopting two more would not add stress to their home. The applicant emphasizes that two home study reports recommended that they be approved to adopt more children.

8 CFR 204.3(a)(1) states in pertinent part:

Petitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan. . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

The district director noted in his decision that although the applicant obtained favorable home studies from two different agencies, a home study preparer's favorable recommendation does not guarantee approval of the I-600A application for advance processing.

The district director carefully reviewed the record. The applicant provided the Service with numerous letters of reference that praised the applicant's and his wife's parenting skills. Most if not all of the letters' authors wrote favorable remarks about the applicant's four adoptive children's conduct. Nonetheless, all four of the applicant's adoptive children suffer from varying degrees of reactive attachment disorder. The youngest is also hyperactive. One of the children sexually assaulted her younger brother with a large spoon. Although the record indicates that this child spent a year in a residential treatment facility, there is no updated psychiatric evaluation in the record. The Service has an obligation to use caution when evaluating whether proper care will be provided to an orphan.

The applicant has failed to overcome the objections of the director. It is determined that the evidence of record is not sufficient to establish that the applicant and his spouse will provide proper care to an adopted orphan. For this reason, the application must be denied. 8 CFR 204.3(h)(2).

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.