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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: CHICAGO, ILLINOIS

Date: OCT 30 2002

IN RE: Applicant: [Redacted]

Application: Application for Advance Processing of Orphan Petition (Form I-600A) Pursuant to 8 C.F.R. 204.3(c)

IN BEHALF OF APPLICANT:

[Redacted]

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 Chicago, Illinois district office denied the Application for Advance Processing of Orphan Petition (Form I-600A) and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the application will be approved.

The applicant filed the Form I-600A with the director on September 2, 1999. The applicant is a 43-year-old married citizen of the United States who, together with his spouse, is seeking to adopt a child.

The director denied the application as a matter of discretion.

On appeal, counsel submits a brief and the applicant submits additional information.

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

- (2) *Overview.* . . . 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. . . .

The director denied the application on June 19, 2001 as a matter of discretion pursuant to 8 C.F.R. 204.3(h)(6). Although not specifically stated in the denial letter, the director apparently concluded that the applicant would not make a suitable parent because of the applicant's criminal history record, which contains one conviction for unlawful imprisonment and one conviction of sexual abuse in the first degree. In the denial letter, the director quoted the applicant's description of the incidents:

The first incident happened when I saw two girls playing in a wooded area near [REDACTED] in [REDACTED]. I approached the girls and told them to get undressed. Then I tied the two girls hands together when someone called for them, and at that time I untied their hands and took off on my bicycle. The second incident happened a few weeks later. A girl was walking home from school when I approached her with a knife (I don't remember if I had a knife the first incident) and forced her into a wooded lot and made her get undressed. I tried to have sexual intercourse with her but was unable. I then masturbated and left on my bicycle.

The incidents that the applicant described occurred on November

4, 1975 and November 18, 1975, respectively. The applicant, who was born on December 2, 1958, was 16 years old at the time of the two incidents. On October 1, 1976, the State of New York sentenced the applicant to seven years imprisonment for sexual abuse in the first degree, and to four years imprisonment for unlawful imprisonment in the first degree. The court found the applicant ineligible as a Youthful Offender and directed that the records of both convictions be unsealed. The applicant appealed his sentences and on June 27, 1977, an Order on Appeal from Judgment of Conviction reduced the applicant's sentences to five years of probation.

The applicant claimed in the I-600A application that despite his convictions, he is rehabilitated and can provide a proper home environment for a child. In support of his application, the applicant submitted two consultation letters from [REDACTED] LCSW, BCD, an evaluation report from [REDACTED] an updated home study report, a letter from the applicant's wife, and letters of reference from family and friends regarding the applicant's ability to parent. The director was not persuaded by this evidence to find that the applicant had been successfully rehabilitated, and he denied the application pursuant to 8 C.F.R. 204.3(h)(6).

On appeal, counsel states that the applicant was forthcoming with the home study preparer about his prior convictions and that he has never tried to hide that he has a criminal history. Counsel further states that the Service should give weight to the recommendations of the applicant as an adoptive parent that were made by the home study preparer, and two experts, James Gerber and [REDACTED]. Finally, counsel argues that the applicant, who committed the offenses 25 years ago at the age of 16, is not the same individual desiring to adopt a child today.

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act) provides that the Attorney General must be satisfied that proper care will be furnished to an adopted child if he or she is admitted to the United States. While neither the statute nor the accompanying regulations defines what constitutes proper care, the Service must be satisfied that the child will not be placed in a home that would imperil his or her physical or mental health.

The applicant in this case has disclosed a criminal history, which includes crimes of a sexual nature. 8 C.F.R. 204.3(e)(2)(iii) states:

- (B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of

this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

- (C) *Evidence of rehabilitation.* If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent. Additionally, if any adult member of the prospective adoptive parents' household has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer must apply the requirements of this paragraph to that adult member of the prospective adoptive parents' household.

The first item of evidence regarding the ability of the applicant to provide proper care to an orphan is the home study preparer's assessment of the applicant. In the record are the original home study report and two subsequent addendums. The home study preparer notes that she referred the applicant to two experts in the evaluation and treatment of sex offenders when the applicant disclosed to her his criminal history and the nature of those crimes. The home study preparer maintains that the applicant is rehabilitated, noting the length of time since the events occurred, and strongly recommends the applicant and his wife as a "positive adoptive family."

The second item of evidence is an evaluation from [REDACTED] MA, LCPC. The home study preparer referred the applicant to [REDACTED] for an evaluation on whether he would pose a threat to a child. According to the home study preparer [REDACTED] is an expert in the evaluation and treatment of sex offenders; counsel refers to [REDACTED] as a "well respected pedophile profiler in Southern Illinois." After interviewing the applicant and conducting several tests, [REDACTED] made the following assessment:

The positive prognostic indicators are: He did attend treatment after the offenses. He expresses remorse for the offenses. He willingly disclosed the history of the offenses to the adoption service. He complied with this assessment process. There has been no known report of illegal or compulsive sexual behavior since [the applicant's] adolescence. He has maintained a healthy and satisfying marriage for thirteen years. He has a stable employment history. These are significant in that the extended period of time without re-offense indicates that [the applicant] has been successful in revising the patterns of behavior which resulted in the offenses. Also relevant is that stable attachments and life satisfaction are associated with a decreased risk to re-offend. There are no indications in the test results which warrant concern.

While an evaluation such as this cannot determine whether an offense will re-occur the prognostic indicators described above are consistent with individuals who do not re-offend. The length of time that [the applicant] has maintained a satisfying life without legal problems is evidence of a stable pattern. There is no pattern or traits currently reported which would indicate that [the applicant] would not be an appropriate parent. The nature of the relationship that both [the applicant] and [the applicant's wife] describe would indicate that they would be caring parents.

The final items of evidence are two evaluation reports from [REDACTED] LCSW, BCD, who also interviewed the applicant based upon a referral from the home study preparer. The home study preparer also refers to [REDACTED] as an expert in the evaluation and treatment of sex offenders. In two separate evaluations, dated the same day, [REDACTED] concluded that:

. . . I believe [the applicant] does not pose a risk to a child. He could benefit from therapy to help him become more aware of his affective states and facilitate his ability to empathically resonate with a child. With that help, I think [the applicant] could be a good adoptive parent.

. . . I think he is a mature and psychologically healthy person. I do not think he is in any way a danger to a child. And I believe [the applicant] would be a good adoptive parent.

The Service may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. Cf. Matter of Caron International, 19 I&N Dec. 791 (Comm. 1988).

Each individual who evaluated the applicant recommended him as an adoptive parent. None of the evaluations appears questionable or is in conflict with other information in the record. Thus, considerable weight is given to the opinions of the home study preparer, [REDACTED] regarding whether the applicant would make a fit adoptive parent. In view of the foregoing, the applicant has overcome the objections of the director to the approval of this application. The record contains sufficient evidence of the applicant's rehabilitation and his ability to offer a proper home to an orphan.

The director did not raise any other objections to the approval of the application; therefore, the appeal shall be sustained. Although the applicant requests oral argument pursuant to 8 C.F.R. 103.3(b), the request for oral argument is denied because the issues of law have been adequately addressed in writing. 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.