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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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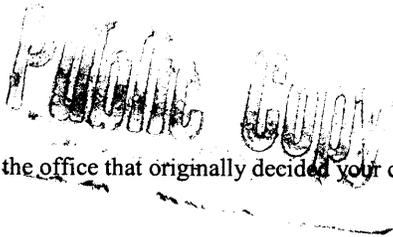
Office: CHICAGO, ILLINOIS

Date: 12 SEP 2002

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

Application: Application for Advance Processing of an Orphan Petition pursuant to 8 C.F.R. 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 C.F.R. 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 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Chicago, Illinois, denied the application for advance processing of an orphan petition and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the case remanded for entry of a new decision.

The applicant filed the application for advance processing of an orphan petition (Form I-600A) on August 31, 1999. The petitioner is a 54-year-old married citizen of the United States. The beneficiary is three years old at the present time and was born in Guanajuato, Mexico, on May 19, 1999. The record indicates that the applicant and his spouse adopted the beneficiary in Mexico in June 2001.

The director denied the petition after determining that the applicant failed to provide the disposition for a 1971 arrest by the U.S. Park Police or a letter from the Clerk of the Courts explaining why the record was not available.

On appeal, the applicant submitted a letter from the Superior Court of the District of Columbia stating that a search of the public records was done and no record of any case against the applicant was found for the year 1971.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

The record of proceeding contains the applicant's home study report and addendum, the Form I-600A application and accompanying documentation, a request for additional documentation and response, the director's denial letter, and evidence submitted on appeal.

In his March 27, 2001 denial of the petition, the director determined that the applicant had failed to fully respond to a request for additional documentation, i.e., a final disposition for a 1971 arrest.

On appeal, the applicant that he believes that the Service did not act in good faith because the applicant repeatedly left phone messages asking for further instructions but received no response from the Service. The applicant said that he had repeatedly tried to obtain a final disposition from the court regarding his 1971

arrest but was unsuccessful until after his application was denied.

In his response to the request for additional evidence, the applicant wrote a letter stating that he had unsuccessfully sought a final disposition on his 1971 arrest from the Superior Court. He said that he had sent two letters to the court and had repeatedly called the court to no avail. Ultimately, the applicant did provide the Service with all of the requested documentation. The applicant has overcome the objections of the director.

Beyond the decision of the director, the home study report should contain a more thorough evaluation of the suitability of the home for adoptive placement in light of the petitioner's substance abuse and criminal history.

8 C.F.R. 204.3(e)(2)(B) states, in pertinent part:

If . . . the home study preparer becomes aware of [history of abuse] . . . 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.

8 C.F.R. 204.3(e)(2)(C) provides that:

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.

The record is lacking sufficient evidence to conclusively demonstrate that the applicant would not provide proper care to an orphan by virtue of his criminal and substance abuse history. However, the home study report fails to adequately evaluate the suitability of the prospective adoptive home in light of the petitioner's substance abuse and criminal history and to adequately address whether the prospective adoptive parent has demonstrated appropriate rehabilitation.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.