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U.S. Department of Justice

Immigration and Naturalization Service

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[Redacted]

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

File: [Redacted] Office: BLOOMINGTON, MN Date: 13 SEP 2002

IN RE: Petitioner: [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:

[Redacted]

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 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 of the Bloomington, Minnesota 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 The director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The applicant filed the Application for Advance Processing of Orphan Petitioner (Form I-600A) on February 21, 2002. The petitioner is a 39-year-old married citizen of the United States.

The director denied the application because the applicant failed to fully disclose his criminal history. The director determined that the applicant's failure to fully disclose his criminal history cast doubt on his credibility.

On appeal, applicant's counsel submits a brief and the following additional evidence: an adoption study and a Minnesota Department of Human Services recommendation for placement, copies of correspondence, nine affidavits, and, fourteen reference letters.

The applicant disclosed two convictions to the social worker conducting a home study, a 1984 DUI (driving while under the influence) and a 1993 domestic abuse. In the course of her investigation, the social worker discovered two additional arrests: a 1992 traffic violation (driving after revocation) and a 1993 bad check charge. He failed to disclose the two latter arrests contrary to the requirements of the regulations.

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

Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service, may result in the denial of the advanced processing application or, if applicable, the application and orphan petition

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

If . . . the home study preparer becomes aware of [history of abuse and/or violence] . . . 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 history. The home study report fails to adequately evaluate whether the prospective adoptive parent has demonstrated appropriate rehabilitation.

Accordingly, this case shall be remanded back to the director so that he can request a thorough evaluation by a third party licensed psychiatrist, psychologist, or clinical social worker who is capable and qualified to comment on the issues raised in the home study and to assess the applicant's ability to safely and effectively parent. The third party should focus on anger and possible substance abuse issues. The director should also request a complete explanation for the 1992 traffic violation with a final disposition. The director should request an amended home study report. After receipt and consideration of the additional evidence, the director should enter a new decision.

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.