

PUBLIC COPY

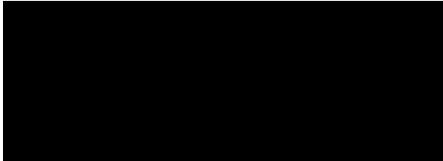
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**identifying data deleted to
prevent identity and warranted
invasion of personal privacy**

F O



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: PHILADELPHIA, PA

Date: **FEB 02 2004**

IN RE:

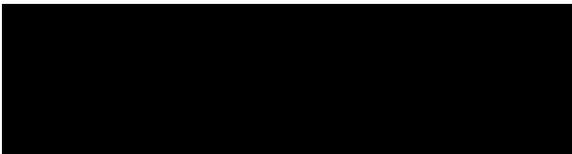
Petitioner:



Beneficiary:

APPLICATION: Applicant for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Interim District Director of the Philadelphia, Pennsylvania district office denied the application for advance processing of an orphan petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on February 20, 2003. The applicant is a 46-year-old married citizen of the United States, who together with his spouse, seeks to adopt a Russian child.

The interim district director denied the application, in part, because the applicant failed to fully disclose his arrest record and failed to provide the final disposition of all charges. The interim district director denied the application, in part because the applicant failed to demonstrate rehabilitation and is currently on probation.¹

On appeal, the applicant's counsel asserts that the interim district director's decision to deny the application based on her determination that the applicant's household is not presently suitable to adopt an orphan from a foreign country is inconsistent with the record and an abuse of discretion.

The record of proceeding contains the Form I-600A application and accompanying documentation, the interim district director's request for additional evidence and the applicant's reply, the denial notice, and the appeal documents. At the time of the appeal, counsel for the applicant indicated that she would submit proof of termination of probation within thirty days. More than sixty days have lapsed since the date of appeal, and no further documentation has been submitted on appeal.

As shall be discussed, the applicant has not presented sufficient evidence to overcome the interim district director's decision to deny the petition. Therefore, the interim district director's decision to deny the petition will not be overturned.

I. DISPOSITION OF PREVIOUSLY UNDISCLOSED ARREST

On May 21, 2003, the interim district director informed the home study agency and the applicant that she had obtained results of a mandatory, confidential investigation of the applicant's identity and background. According to the investigation, the applicant had been arrested on May 2, 1992 and charged with "driving while intoxicated." Noting that the applicant had failed to divulge information about that arrest to Citizenship and Immigration Services (CIS) or the home study preparer, the interim district director requested court dispositions for all criminal charges ever brought against the applicant and evidence that all terms of any sentence imposed were successfully completed. She also requested a complete medical evaluation by a professional with regards to the applicant's present and past alcohol use.

In response to the request for additional evidence, the applicant provided CIS with an adoption home study addendum, a psychologist's evaluation, records of his arrests with respective final court dispositions, and a "no records found" letter from the Philadelphia Police Department. He also provided CIS with an explanation as to why he had failed to mention his 1992 arrest. The applicant said that he believed that he was not really arrested in 1992 because the police stopped him and administered a breathalyzer test which he passed and then released him. According to the evidence on the record, the police arrested the applicant in 1992, charged him with driving while intoxicated, administered a breathalyzer test that he passed, and he was released.

In her decision, the interim district director noted that failure to disclose an arrest, conviction . . . by the

¹ The terms probation and parole are used interchangeably.

prospective adoptive parents . . . to the home study preparer and to [CIS], may result in the denial of the advanced processing application. 8 C.F.R. § 204.3(e)(2)(D). In his reply to the request for additional evidence, the applicant provided a sufficient explanation for his failure to disclose the 1992 arrest.

II. APPLICANT'S CRIMINAL HISTORY

1981 Arrest

According to the evidence on the record, the applicant was arrested on June 18, 1981 for simple assault, aggravated assault, resisting arrest, disorderly conduct and hindering apprehension and risking a catastrophe. He was convicted in Upper Darby, Pennsylvania, of disorderly conduct and the remaining charges were withdrawn.. (Docket # 3510-81). He was assessed a \$51 fine.

1983 Arrest

The applicant was arrested again in Delaware County, Pennsylvania, on August 24, 1983 and charged with driving while intoxicated. On November 17, 1983, the court sentenced the applicant to attend an alcoholism program, one-year probation, suspended his license for three months and ordered him to pay \$92 restitution. (Case No. 32-104-04483-83). The evidence indicates that the applicant satisfied all of the conditions of probation and hence the charge was dismissed on January 9, 1986.

1992 Arrest

According to the evidence, the applicant was involved in a car accident. Police arrived at the scene of the accident, arrested the applicant and charged him with driving while intoxicated. The police then administered a breathalyzer test that the applicant passed so the police released him.

2001 Arrest

On June 28, 2001, the applicant was again arrested for driving while intoxicated. He was convicted in Delaware County, Pennsylvania, on February 19, 2002. (Case No. 3517-01). The sentence imposed included a minimum of 48 hours of confinement, attending a twelve-hour alcohol safe driving course and a ten-hour outpatient intervention treatment program. He was ordered to pay a \$300 fine plus costs and restitution and complete sixteen hours of community service. An ignition interlock device was ordered for his vehicle. He also had to submit to a court reporting network evaluation performed by the Department of Diagnostic Services.² According to a letter written by the applicant's probation officer, he has completed all requirements imposed except for his probation, which expires on January 22, 2004. He also provided evidence that the Probation Department of Delaware County, Pennsylvania obtained a judgment against him to collect \$1,356.50 for fines, costs and restitution. He provided proof that he satisfied the judgment.

III. REHABILITATION

The interim district director's decision hinged upon a finding that the applicant had not yet completed probation. Unless and until an applicant completes probation, CIS cannot conclude that the applicant has demonstrated rehabilitation as required by the pertinent regulation.

² Unfortunately, a copy of this evaluation was not submitted to the home study preparer, or to the psychologist who evaluated the applicant, or to CIS. According to a notation on the record, the applicant had 1.5% blood alcohol content.

The regulation at 8 C.F.R. § 204.3(e)(2)(C) states, in pertinent part, that:

If a prospective adoptive parent has a history of substance abuse . . . 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 arrests(s), convictions(s) or history of abuse, the number of such incidents, the length of time since last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may be also 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 parents . . .

In the instant case, the applicant provided CIS with an evaluation prepared by an appropriate licensed professional (a clinical psychologist) and a home study report addendum. The psychologist said of the applicant: "This man does not impress me as being an active alcoholic. He does not present as being a risk for future DUI incidents. I do not think this should play a factor in the adoption procedures." Both the psychologist and the home study preparer recommend the applicant and his wife for adoption.

The home study preparer's recommendation is not binding upon CIS. CIS must make its own determination as to whether proper care will be provided for the orphan. 8 C.F.R. § 204.3(h)(2). Given the seriousness of this responsibility, CIS would rather err on the side of safety rather than give an applicant the benefit of the doubt. Given the recency of the latest arrest, the number of arrests and convictions, the applicant's failure to acknowledge having a problem with alcohol, and that he is currently on probation, the AAO concurs with the interim district director in finding that the applicant has not shown proper rehabilitation; hence, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.