

F2

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

PUBLIC COPY



File:

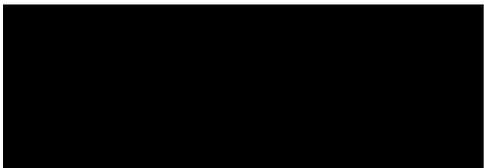
Office: DALLAS, TEXAS

Date: JAN 02 2004

IN RE: Applicant:
Beneficiary:

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

ON BEHALF OF APPLICANT:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Interim Director of the Dallas, Texas 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 May 7, 2002. The interim director issued a notice of intent to deny the application on February 14, 2003. The petitioner timely responded to the notice of intent to deny. The interim director denied the application on April 1, 2003. The petitioner filed a timely appeal. The applicant is a 43-year-old married citizen of the United States, who together with his spouse, seeks to adopt two Guatemalan brothers.

The interim director denied the application because the applicant's spouse was currently on probation, and given the recency of the conviction, there had not been an adequate amount of time that had passed to determine if rehabilitation had occurred.

On appeal, the applicant submits a one-page letter. The applicant asserts that the interim director's decision is flawed; that the interim director failed to perform its required duties under 8 C.F.R. § 204.3(h)(2); and the CIS officers acted upon personal animus in the denial. The applicant indicated that he would submit a brief on or before May 29, 2003, but no further submissions have been made.

The record of proceeding contains the Form I-600A application and accompanying documentation, the applicant's spouse's conviction record, a home study with four addenda, the interim director's notice of intent to deny and the applicant's response, the interim director's denial notice, and the appeal documents. The record also contains psychological, drug and alcohol assessments of the applicant's spouse.

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

Evidence of rehabilitation. 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 arrest(s), convictions(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 applicant provided CIS with his wife's arrest and court records. The applicant's wife was arrested in September 2000 in Georgia and was charged with DUI-Alcohol, Simple Battery on Officer, DUI-Less Safe, Failure to Maintain Lane, and No Proof of Insurance. The court record establishes that the applicant's wife pled guilty to DUI-Less Safe and Failure to Maintain Lane on October 15, 2002. By December 4, 2002, she completed the special conditions of probation, i.e. eight sessions of anger management counseling and a substance abuse evaluation. She was on probation until October 15, 2003.

CIS may not approve a Form I-600A unless CIS is satisfied that the applicant and his spouse will provide proper parental care to an adopted orphan. Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i). The statute requires the submission of a favorable home study. *Id.* 204(d), 8 U.S.C. § 1154(d). CIS is not, however, bound by the home study preparer's favorable recommendation. 8 C.F.R. § 204.3(h)(2). CIS must, instead, assess all the evidence and reach an independent judgment concerning whether the applicant and his spouse will provide proper parental care to an adopted orphan. *Id.*

More to the point, the applicant's spouse could not establish that she had been rehabilitated until she had completed probation. An applicant must establish eligibility as of the date of filing; an application cannot be approved at a future date after the applicant becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(12); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The applicant has not presented sufficient evidence to overcome the director's decision to deny the application. Therefore, the director's decision to deny the application will not be overturned.

The applicant requests oral argument. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for argument is shown. Therefore, the request is denied.



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.