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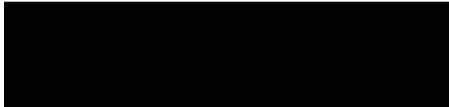


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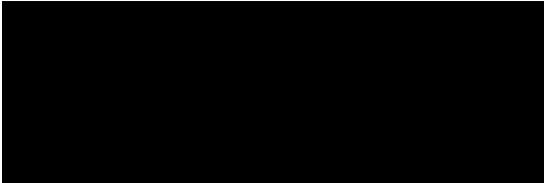
Date: JAN 22 2004

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:



Identification is required to
prevent unauthorized
invasion of personal privacy

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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This decision has been reissued to correct a typographical error on the original cover page of the Administrative Appeals Office decision dated November 17, 2003. The applicant's name should read: Scott Thomas Magruder rather than John Yoder.

The Director of the New Orleans, Louisiana district office approved the application for advance processing of an orphan petition on February 22, 2003. The district director subsequently received a letter from the home study agency that rescinded its prior recommendation of the petitioner and his wife for approval as adoptive parents. The district director sent a notice of intent to revoke approval of the petition to the petitioner on May 6, 2003 based upon the alleged unfavorable information received from the home study agency. The petitioner failed to respond to the notice of intent to revoke within the allotted thirty days. On June 12, 2003, the district director revoked approval of the petition for the reasons stated in the notice of intent to revoke. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a 43-year old married citizen of the United States who, together with his spouse, seeks to adopt one or two children from the Ukraine.

The director revoked approval of the petition based upon the alleged unfavorable information received from the home study agency.

In a letter addressed to the petitioner and his spouse dated March 26, 2003, the home study agency wrote the following:

In view of the circumstances that came to our attention during the meeting of March 15, 2003 we find it necessary to reconsider our original recommendation that you pursue adoption.

[The petitioner's wife's] statement that she is so depressed over this adoption process that she cannot get out of bed and further alluding to the fact that she is finding it difficult to care for her biological children is extremely concerning to us.

Your current motivation for adoption continues to be "to save a child". As we have repeatedly told you, while adoptive parents may ultimately save a child that cannot be the motivation to adopt a child.

You have resisted and misinterpreted our efforts to educate and prepare you for the adoption of an institutionalized child. Also, your biological children have not been involved in preparation for the transition of an institutionalized child into your family.

You have not completed the dog training that your approval was contingent upon. We are concerned about the safety of an institutionalized child with these dogs in your home.

On appeal, counsel for the petitioner submits a brief and a letter from a licensed psychologist who evaluated the petitioner's wife.

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

(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.*

The home study must include a discussion of the following areas:

(i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

In the February 11, 2003 home study report, the adoption counselor stated that the applicant's wife attended joint and individual marital counseling sessions in her early years of marriage more than eight years ago and that she had not suffered from mental or psychological illness. The home study preparer attached a medical opinion stating that the beneficiary's wife is physically and emotionally capable of caring for a baby. The home study report recommended the petitioner and his wife as adoptive parents.

On appeal, counsel for the petitioner addresses the home study agency's concerns.

Counsel asserts that the petitioner's wife made a statement to the adoption counselor that she was depressed about the adoption process in October 2002, well before the favorable home study report was concluded. Counsel states that his client never made a statement that she could not care for her children. Counsel asserts that the home study agency took the petitioner's wife's statement out of context and if the agency had concerns about the petitioner's wife's mental health, they should have referred her to a specialist and mentioned the concern in the home study report.

Counsel for the petitioner states that the petitioner's alleged motivation to adopt (to save a child) is an insufficient basis to rescind approval of their recommended approval.

Counsel states that the allegation that the petitioner and his wife had resisted the home study agency's efforts to educate and prepare them for adoption is inconsistent with the initial home study report that provides that the petitioner and his wife had thoroughly discussed these topics with the home study preparer. Counsel further states that the allegation that the petitioner and his wife had failed to prepare their children for the adoption was inconsistent with the home study report.

Finally, counsel asserts that the home study agency had not made completion of dog training a requisite for approval.

In review, the petitioner has established that he and his wife possess sufficient physical and emotional health

so as to properly care for an orphan. The initial home study was very favorable to the petitioner and his wife. Medical documentation was submitted with the initial home study report. On appeal, the petitioner submits a licensed psychologist's evaluation of the petitioner's wife, indicating that she appears to be "a well-adjusted person with no apparent clinical problems noted that would indicate difficulties in mothering an adopted child."

The home study agency's concern about the petitioner's motivation to adopt is not well-founded. The home study agency had not mentioned its concern in the original home study report. Even if the home study agency learned that the petitioner was motivated out of concern for saving a child after completion of the report, it is not a valid basis for revoking approval of the petition.

The home study agency did not adequately explain the basis for its concern regarding the petitioner's willingness to accept their education and preparation for adoption. Further, the record does not support the allegation that the petitioner had failed to involve his children in the adoptive process.

Finally, the record does not indicate that the home study approval was contingent upon completion of dog training. The home study report states that the petitioner and his family would attend training sessions to learn how to integrate an adopted child into a multi-animal family as well as training for the dogs on accepting a new child in the home. Presumably the petitioner will complete the recommended training. In the absence of reports that the petitioner's four dogs have dangerous propensities, this is an insufficient basis to revoke approval of the petition.

The applicant presents persuasive evidence on appeal.

Based upon the above discussion, the applicant has overcome the objections of the district director. The appeal shall be sustained. 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.