U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: ATLANTA, GEORGIA Date: OCT 29 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The District Director, of the Atlanta, Georgia, Citizenship and Immigration Services (CIS) district office denied the Application for Advance Processing of Orphan Petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The application was denied by the district director based on the finding that the prospective adoptive parent and her husband had been investigated for alleged child abuse. The district director noted that while the allegations were unsubstantiated, the prospective adoptive parent and her husband answered, "No," when asked whether they had a history of child abuse, even if it did not result in arrest.

The regulation at 8 C.F.R. § 204.3(a)(2) states:

> Petitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan.

Further, the regulation at 8 C.F.R. § 204.3(h)(2) provides:

> *Director's responsibility to make an independent decision in an advanced processing application.* No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan.

Finally, the regulation at 8 C.F.R. § 204.3(e)(2)(iii)(D) states:

> *Failure to disclose arrest or cooperate.* 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 [CIS], may result in the denial of the advanced processing application or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section. Failure by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to cooperate in having available child abuse registries in accordance with (e)(2)(iii)(A)(1) and (e)(2)(iii)(A)(1)(i) through (e)(2)(iii)(A)(1)(iii) of this section will result in the denial of the advanced processing application, or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section.

The district director found that the petition should not be approved because the prospective adoptive parents failed to disclose the fact that they had been investigated for child abuse. On appeal, in an attempt to explain why she and her husband failed to reveal the child abuse allegation during the home study process, the prospective adoptive parent states:

> I have no strikes in my 47 years of life against me. Nothing criminal in no style. I am able to produce any document you may need to support this matter. The question on the application was just a case of reading fast but all supporting documents should justify this.

As stated in the regulation cited above, the district director must rely on the prospective adoptive parents' home study and fingerprint checks in order to determine if the child will be properly cared for and will be living in a safe environment. If the district director finds an applicant to be less than forthcoming during the home study process, the district director is unable to rely on the home study to make a determination as to the suitability of the parent and the home environment.

The record reflects that the prospective adoptive parent and her husband met with the home study preparer on at least two separate occasions, after the allegation of abuse; April 8, 2002 and May 3, 2003. Despite these meetings with the home study preparer, where the prospective adoptive parents were interviewed regarding all aspects of their lives, neither of the prospective adoptive parents revealed any information regarding the allegations of child abuse. As such, the statement on appeal that the failure to reveal this information was "just a case of reading fast," as the prospective adoptive parent claims, is not plausible.

No additional documentation related to the prospective adoptive parents' credibility has been submitted on appeal.

Beyond the decision of the district director's decision, the home study is deficient pursuant to 8 C.F.R. § 204.3(e)(2)(iii)(B). If the home study preparer becomes aware of any history of abuse or violence, he or she is required to submit a certified copy of the documentation showing the final disposition of each incident along with the home study report. In this case, the home study preparer submitted a copy of a child abuse neglect intake worksheet. Although there are some handwritten notes on the report indicating that the allegations were "unsubstantiated," the copy of the report was uncertified and does not otherwise contain a final, certified disposition. In addition, the regulation at 8 C.F.R. § 204.3(e)(2)(iii)(B) requires that the home study preparer ensure that the prospective adoptive parent(s) submit a signed statement giving details of each incident of abuse and/or violence. No such statements were submitted or discussed within the home study report. As the home study report is deficient for these additional reasons, the application may not be approved.

We, therefore, agree with the district director's decision in denying the application based upon the finding that, based on the record, CIS cannot find that the prospective adoptive parents are suitable for the adoption of orphans or that they are able to provide a proper home environment to an orphan.

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.