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FILE: [REDACTED] Office: ST. PAUL (BLOOMINGTON), MN

Date: AUG 20 2005

IN RE: Applicant: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF APPLICANT:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the St. Paul (Bloomington), Minnesota District Office denied the Application for Advance Processing of an Orphan Petition (I-600A Petition). The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant filed the I-600A petition on June 3, 2004. The applicant is a fifty-year-old married citizen of the United States, who together with his spouse, seeks to adopt a Guatemalan child.

The district director concluded that the applicants had failed to establish that they could provide a proper home environment to an orphan and denied the I-600A application based on the applicants' failure to establish compliance with the Home Study Agency requirement that a family member (the applicants' eldest son) with a history of sexual abuse would not be a permanent resident in the family home.

On appeal, the applicants assert that the district director misunderstood the Home Study Report and Addendum, and they submit a new letter from the Home Study Agency stating that the applicants' home is suitable for placement of an orphan based on an agreement between the Home Study Agency and the applicants regarding where the applicants' eldest son would live.

Title 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(a)(2) states, in pertinent part, that:

[P]etitioning 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 . . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

8 C.F.R. § 204.3(e)(2)(iii)(A)(2)(B) states:

(B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, 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. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

8 C.F.R. § 204.3(e)(2)(iii)(A)(2)(C) states:

(C) *Evidence of rehabilitation.* 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. Additionally, if any adult member of the prospective adoptive parents' household has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer must apply the requirements of this paragraph to that adult member of the prospective adoptive parents' household.

The record contains the applicants' initial Home Study Report, dated September 3, 2004, a Home Study Addendum dated January 5, 2005, and a letter from the Home Study Agency, dated March 16, 2005.

The September 2004, Home Study report (Report), was prepared and signed by licensed social worker [REDACTED] New Horizons Adoption Agency, Inc. and her supervisor [REDACTED]. The home study report discusses in pertinent part that the applicants' eldest son, [REDACTED], born April 15, 1986, was sexually abused by another male whom he refused to name. The report states that [REDACTED] was subsequently, "[s]exually inappropriate with his sister . . . asking her to undress and to allow him to sexually explore with her." The applicants discovered the sexual abuse in January of 2000 and that [REDACTED]

[REDACTED] became involved with Jackson County Human Services and was referred to the Leo Hoffman Center. [REDACTED] saw Lynn Herrick for a time and discontinued counseling. [REDACTED] stated he felt it was okay. [REDACTED] has also attended sessions with a Christian counselor in Mankato, including family therapy. During his counseling Matthew had apparent panic attacks and seizure activity; it was during this time that he admitted to having been molested himself. [REDACTED] then went to Sioux Trails Mental Health in New Ulm, Minnesota where he was counseled for six to nine months with sessions every couple of weeks. The family also sought out additional counseling with [REDACTED] in Luverne, Minnesota. They utilized his services for individual and family counseling . . . .

The report states that the home study preparer spoke to [REDACTED] about his past of being molested and that [REDACTED] did not make eye contact with her during the discussion. The home preparer stated that [REDACTED] felt his counseling sessions were helping him work through his past and that he felt he was moving on. The home preparer noted, however, that [REDACTED] did not tell her or his parents who had sexually abused him and that he continued to refuse to name his abuser. The home study preparer stated:

Because he continues to refuse to name his abuser, this social worker questions [REDACTED] level of healing from this incident and feels he is appropriately receiving continuing counseling. He does not appear threatening or angry, but rather seems sweet natured, likable and down-to-earth. This social worker does not feel it is likely he would perpetrate against anyone again, and anticipates it was situationally related to his own abuse; however, for the sake of [REDACTED] who will be vulnerable as he adjusts to a new home, this social worker would recommend that Matthew not be a permanent resident of the household once Byron Jonathan arrives.

Accordingly, the "Summary and Recommendation" section of the home study report recommends approval, "[f]or the adoption of [REDACTED] the eight year-old child from Guatemala, provided [the applicants'] oldest son, [REDACTED] is no longer a permanent resident of the home by that time."

The January 2005, Home Study Addendum prepared and signed by licensed social worker, [REDACTED] New Horizons Adoption Agency, Inc. and her supervisor Marlys Ubben, restates in a new "Summary and Recommendation" section, that the Home Study Agency recommends that the applicants "[b]e approved for the adoption of [REDACTED] the eight year-old child from Guatemala, provided their oldest son, [REDACTED] is no longer a permanent resident of the home by that time." The Home Study Addendum then adds that the applicants:

[H]ave established a plan to ensure [REDACTED] safety, which includes the following:

[REDACTED] will stay in another home on the property if he is still living at home when [REDACTED] joins the [REDACTED] family. If he needs to be in the main house due to inclement weather, he will stay in a basement room, with [REDACTED] sleeping on the upper level in a room near his parents. This plan is satisfactory in meeting [REDACTED] needs. . . .

A March 2005, Home Study Agency letter prepared and signed by Executive [REDACTED] that neither the Minnesota Department of Human Services, [REDACTED] therapist or any other involved party required the removal of [REDACTED] from his home as a continued threat. [REDACTED] notes her experience with sexual abuse cases and she states that "[t]he initial social worker who completed the home study has had limited experience with sexual abuse cases and was over-compensating in the request for the removal of [REDACTED]. Upon re-examination of the plan, we have all agreed on a more realistic, yet safe, plan for [REDACTED] his siblings, and an adopted child."

The AAO finds that the record as presently constituted fails to establish that the applicants can provide a proper home environment to an orphan. The AAO notes first that the initial September 2004, Home Study Report prepared by the Home Study Agency and co-signed [REDACTED] clearly states that the agency recommends approval of the adoption, provided that [REDACTED] is no longer a permanent resident of the home. The January 2005 Addendum prepared by the Home Study Agency and co-signed by [REDACTED] that the agency recommends approval of the adoption provided [REDACTED] is no longer a permanent resident of the home. The AAO notes that without explanation, the Addendum then contradicts itself by adding terms under which [REDACTED] may reside on the applicants' property and in the applicants' home. The March 2005 Home Study Agency letter signed by [REDACTED] further contradicts the previous Report and Addendum by blaming the home study preparer's limited experience in sexual abuse cases for the agency's previous over-compensatory

recommendation. [REDACTED] in the letter that she herself has many years of experience in sexual abuse cases and that the living arrangement set forth in the Addendum is a safe plan for all involved. [REDACTED] to acknowledge that she co-signed the initial Home Study Report and Addendum, [REDACTED] fails to properly explain the contradictions between the recommendations made by the agency

The AAO finds that the record contains no evidence to establish that [REDACTED] will not be a permanent resident on the applicants' property and in their house. The AAO notes further that the record contains no detailed or documentary evidence relating to the type and level of abuse [REDACTED] perpetrated against his sister or regarding [REDACTED] rehabilitation.

Based on all of the above factors, the AAO finds that the applicants have failed to establish that they are able to provide a proper home environment to an adopted orphan.

In visa petition proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. 1361. The applicants have failed to present sufficient evidence to overcome the district director's decision to deny the I600A application. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.