



U.S. Citizenship
and Immigration
Services

F2

[Redacted]

FILE: [Redacted] OFFICE: PHILADELPHIA, PA DATE: DEC 14 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 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 a Form I-600A, "Application for Advance Processing of Orphan Petition" (I-600A Application) on November 16, 2004. The applicant is a 62-year-old married citizen of the United States, who together with her spouse, seeks to adopt a special needs child from Russia.

The district director determined that the applicant and her husband (the Applicants) had failed to establish that their household income was at least 125% of the Federal Poverty line, as set forth in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 213(c)(2), or that the child they seek to adopt would not become a public charge as set forth in section 212(a)(4)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(4)(A).¹ The district director determined further that the home study report submitted by the applicants failed to properly discuss the applicants' willingness and ability to care for the special needs of the beneficiary, and had failed to demonstrate that the applicants could furnish proper care to the beneficiary. The application was denied accordingly.

On appeal, the applicants submit a Home Study Addendum and a Form I-864, Affidavit of Support (Affidavit of Support) from their son. The applicants indicate that the evidence submitted establishes they are capable of providing a suitable home and proper care to the beneficiary.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i) provides that U.S. Citizenship and Immigration Services (CIS) shall not approve a Form I-600A unless satisfied that an applicant will provide proper parental care to an adopted orphan.

8 C.F.R. § 204.3(a)(2) clarifies 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. The second determination concerns the orphan petition which focuses on whether the child is an orphan under section 101(b)(1)(F) of the Act 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)(ii) provides in pertinent part that a home study must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan, and that the home study must include an:

¹ Section 212(a)(4)(A) of the Act states in pertinent part:

[A]ny alien who . . . in the opinion of the Attorney General [now, Secretary, Department of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

[A]ssessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. The Service [now CIS] will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service [CIS] reserves the right to ask for such detailed documentation.

8 C.F.R. § 204.3(e)(4) states that:

[A] home study conducted in conjunction with the proposed adoption of a special needs or handicapped orphan must contain a discussion of the prospective adoptive parents' preparation, willingness, and ability to provide proper care for such an orphan.

The record contains no household income information for the applicants. However, the December 2004, Home Study Assessment (Home Study) completed by [REDACTED] of [REDACTED] reflects that the home study preparer reviewed the applicants' financial records and federal tax returns for the years 2001, 2002 and 2003. The home study preparer states that the applicant [REDACTED] receives a yearly retirement pension in the amount of \$23,531.00, and that the applicant [REDACTED] receives a yearly pension of \$10,333.00. The AAO notes further that the district director's decision states that the applicants' combined family income is \$33,864.00 a year. This figure has not been challenged or contested by the applicants. The AAO will therefore use the \$33,864.00 annual family income amount for purposes of the present decision.

The Home Study reflects that there are currently six adopted children living in the applicants' home. The children are between the ages of five and twenty, and each has, or has had varying special medical needs requiring surgery and/or ongoing treatment.

The Home Study indicates the applicants' expenses are \$1679.00 a month and that the applicants receive adoption subsidies for their children in the amount of \$2000.00 a month. In addition, the record contains an Affidavit of Support from the applicant's son, [REDACTED] indicating that he earns \$33,000 a year and that he is willing to be a legally bound joint sponsor for the beneficiary.

The record contains an August 2005, "Addendum to Homestudy for [REDACTED] and [REDACTED] (Addendum) prepared by [REDACTED]. The Addendum clarifies that the applicants presently wish to adopt one, rather than two special needs children, and that the child they wish to adopt was born with no arms, but is otherwise healthy. The Addendum indicates that most of the medical needs of the applicant's other adopted children were paid for by Medicaid. The Addendum adds that in the past the applicants also received medical care donations from hospitals and physicians, and that the applicants paid for anything not covered by insurance. The Addendum indicates that the applicants have explored and found suppliers who can provide prostheses to the beneficiary.

The AAO notes that the applicants' household presently has eight family members and that the present I-600A application proposes a ninth family member to the applicants' household. 2005 Federal Poverty

Guidelines reflect that the annual 100% poverty level for a family of nine persons is \$35,650.00. The annual 125% poverty level for a family of nine persons is \$44,562.50. See U.S. Department of Health & Human Service website at: <http://aspe.hhs.gov/poverty/05fedreg.htm>. The record reflects that the applicants' annual income is only \$33,864.00, significantly lower than the Federal Poverty Guideline amount for the family's size.

As stated in 8 C.F.R. § 204.3(e)(2)(ii), "any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan." Accordingly, the AAO finds that the monthly adoption subsidies received by the applicants may not be counted towards the financial resources available to support the beneficiary. The AAO notes further that the joint sponsor, Affidavit of Support signed by the applicants' son fails to comply with eligibility requirements that his income meet or exceed the applicants' household size income requirements as set forth in the Federal Poverty Guidelines.² The AAO therefore finds that the Affidavit of Support does not constitute probative evidence towards the applicants' ability to provide proper financial care to the beneficiary.

Upon careful review of all the evidence contained in the record, the AAO finds that the applicants have failed to demonstrate their ability to provide proper financial care to the beneficiary.

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 meet their burden. The appeal will therefore be dismissed.

² 8 C.F.R. § 213(c)(2) states in pertinent part that:

In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain an annual income of at least 125 percent of the Federal poverty line

....

(C) (iii) [T]he sponsor's income shall be considered sufficient if the household income calculated under paragraph (c)(2)(iii)(A) of this section would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in § 213a.1

....

(iv) [I]f the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible unless the sponsor and/or the intending immigrant demonstrates significant assets or a joint sponsor executes a separate Form I-864.

....

(B) [A] joint sponsor must execute a separate Form I-864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor. A joint sponsor must meet the eligibility requirements under paragraph (c)(1) of this section. **A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section. (Emphasis added.)**

ORDER: The appeal is dismissed.