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U.S. Citizenship
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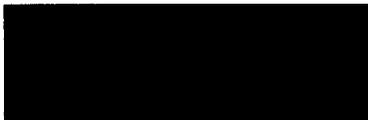
JUL 13 2005

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF APPLICANT:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Kansas City, Missouri, denied the Application for Advance Processing of an Orphan Petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (I-600A application) on May 28, 2003. The applicant is a fifty-four-year-old married citizen of the United States, who together with her spouse, seeks to adopt a child from Guatemala.

The district director determined that the applicant and her spouse (the applicants) had failed to fully disclose their criminal history, and that they had failed to establish that they could provide proper care or a proper home environment to an adopted orphan. The application was denied accordingly.

On appeal, counsel asserts that the applicants did not intentionally deceive the home study preparer or U.S. Citizenship and Immigration Services (CIS) regarding their criminal history, and that they reasonably did not remember the details of arrests that happened more than twenty years ago. Counsel asserts that the applicants informed the home study preparer that they had additional arrests, but that they were unsure of the dates and circumstances, and counsel asserts that the home study preparer was negligent in failing to probe more deeply into the applicant's criminal history prior to submitting her report.

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

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.** 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. (Emphasis added).

“[F]ailure to disclose an arrest . . . by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service [now CIS], may result in the denial of the advance processing application pursuant to paragraph (h)(4) of this section.” See 8 C.F.R. § 204.3(e)(2)(iii)(D).

The statutory and regulatory provisions discussed above permit, but do not require, denial of an advance processing application based on a petitioner's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to CIS discretion. The AAO notes that the CIS determination is based on protective concerns for the orphan. Therefore, complete knowledge of an applicant's arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide proper care and a suitable home environment and to an adopted orphan. Accordingly,

denial of an I600A application is often justified when an applicant fails to make the required criminal history disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide proper care and a suitable home and to an orphan.

In the present matter, the AAO finds that the applicants failed to disclose serious criminal history information which is material to a determination regarding whether the applicants can provide a suitable home and proper care to an orphan.

The Home Study Report, prepared on March 24, 2004 by [REDACTED] of Ultimate Places, states that the applicant's [REDACTED] criminal history:

[I]ncludes an arrest for drug violations in 1967 for which she served a probationary sentence, and possession of a controlled substance in 1971 for which she spent time in prison. [REDACTED] has had no arrests since this time and has willingly undergone a psychological evaluation which provided favorable results for her parenting endeavor.

The Home Study Report states that the applicant's spouse's [REDACTED] criminal history:

[I]ncludes an arrest for disturbing the peace in 1991 where he was issued a citation and driving while under the influence in 1982 where he was discharged. [REDACTED] has had no criminal history for 12 years.

On May 18, 2004, the district director informed the applicants of the results of a mandatory, confidential investigation of their identity and background. According to the investigation, both the applicant and her spouse had been arrested and, in [REDACTED] case, imprisoned, on more occasions than they had disclosed to the home study agency and CIS. The district director requested the court dispositions relating to each arrest, as well as written statements from the applicants explaining the arrests and why they were not disclosed in the home study. Specifically, the district director requested explanations and court dispositions for the following criminal history:

[REDACTED]
September 10, 1967 - University City
September 11, 1967 - Clayton Sheriff's office
October 20, 1967 - Jefferson City Highway Patrol
March 31, 1968 - Clayton Sheriff's Office
April 18, 1971 - Jefferson City Highway Patrol
May 30, 1971 - St. Louis County Police
May 20, 1985 - Conspiracy to Distribute LSD
January 3, 1986 - Distribution of LSD

[REDACTED]
1982 - DWI
1991 - Disturbing the Peace
April 21, 1969 - Clayton Sheriff's Office for possession of marijuana
June 7, 1984 - St. Louis for Sale of LSD

The district director also requested that the home study agency prepare an Addendum to the existing Home Study Report expressing whether or not the agency continued to approve the applicants' household for placement of an orphan.

An August 11, 2004, Home Study Addendum prepared by [REDACTED] of Ultimate Places, addresses the criminal history omissions in her original Home Study Report by stating that she approved the applicants based on the information which had been made available to her. The home study preparer states that the omitted arrest records were not mentioned to her due to the applicants' difficulty in obtaining information relating to the arrests. The home study preparer then states that the applicants have had an exemplary history for the past two decades, and that "[t]hey are an ideal example of how positively the legal system can work when individuals take responsibility for their offenses."

An additional letter signed on February 22, 2005, by Home Study preparer, [REDACTED] states that the applicants did not try to deceive her and that:

[D]uring the initial phase of the home study process, the Spotos did not disclose all of their arrests because they were not certain of all the arrests. They did let me know that they had been arrested but could not provide all of the details. It was only after they received the records from all the arrests that they were able to go back and provide the details of those arrests and they did so willingly.

The applicant, [REDACTED] provides the following information regarding her criminal history:

On September 10, 1967, she was arrested by University City police when she attempted to pass a forged prescription for diet pills. She was transferred to Clayton Sheriff's Office on September 11, 1967. On March 31, 1968, she was convicted of a misdemeanor and given two years probation. (The AAO notes that St. Louis County Circuit Court documents contained in the record reflect that the applicant was convicted of Conspiracy to Obtain Stimulant. Her six-month jail sentence was stayed and she was placed on probation for two years).

On October 20, 1967, she was arrested by the Jefferson City Highway Patrol while hitch hiking, and taken to Fulton Missouri Jail. She went before a judge and her father paid a fine.

She does not recall her April 18, 1971 arrest by the Jefferson City Highway Patrol, but states that the Highway Patrol record reflects she was arrested for a drug possession violation, that no further action was taken, and that the case closed. (The AAO notes that the record does not contain a copy of the Highway Patrol record).

On May 30, 1971, she and a friend were arrested and questioned about a bag her friend had claimed at the airport containing cocaine. She states that she and her friend were questioned and released.

On May 20, 1985, she was arrested by the DEA in San Francisco. She was charged and convicted in St. Louis with a felony and sentenced to serve 30 months in jail. The

applicant refers to enclosed documentation for details. (The AAO notes that U.S. District Court, Eastern District of Missouri documents contained in the record, reflect that the applicant was convicted of Possession With Intent to Distribute LSD, and that she was sentenced to imprisonment for 2 ½ years. The court record additionally states that [REDACTED] filed an affidavit in the case. The applicant began serving her sentence on January 3, 1986).

The applicant's husband, [REDACTED] provides the following information regarding his criminal history:

On April 21, 1969, he was arrested by the Clayton Sheriff's Office for possession of marijuana. He was convicted of a reduced charge of Disturbing the Peace, and he was placed on probation for one year.

In 1982, he was arrested for driving while intoxicated. He attended driver's education classes.

On June 7, 1984, he was arrested for sale of LSD. He cooperated with the DEA and the charge was dismissed. (The AAO notes that the court disposition report reflects he was charged with Conspiracy to Sell LSD, and that the charge was dismissed on December 17, 1985.

In 1991, he was arrested for disturbing the peace after his former wife called the police during a verbal screaming match. He spent the night in jail and no charges were filed.

Upon thorough review of the record, the AAO finds that the applicants failed to disclose serious material criminal history information to the home study preparer and to CIS. Given the nature and seriousness of the crimes, and the fact that the arrests involved court hearings and sentences, the AAO is unpersuaded by the assertion that it was reasonable for both of the applicants to forget the details of their criminal history because the arrests happened long ago.

The AAO finds further that the home study preparer's statement that the applicants did not mention their other arrest records to her based on their difficulty in obtaining arrest-related information, is inconsistent with her later February 2005, statement that the applicants did let her know they had been arrested, but that they were unable to provide the details. Moreover, the statements made by the home study preparer do not meaningfully address the basis of the home study preparer's continued recommendation of the applicants.

The Act provides clearly that, 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 AAO finds that the applicant's have failed to demonstrate that they can provide a suitable home and proper care to an adopted orphan. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.