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**U.S. Citizenship
and Immigration
Services**

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FILE:⁴



Office: ATLANTA, GA

Date:

JUN 21 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Miami, Florida 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 January 6, 2003. The applicant is a sixty-nine-year-old married citizen of the United States, who together with his spouse, seeks to adopt a child from Kazakhstan.

The district director determined that the applicant had failed to disclose a November 1955, arrest and charge for Hit and Run/Attempted Murder. The district director additionally noted the home study preparer's concern that the applicant and his spouse would require assistance from their 39-year-old son and 19-year-old adopted granddaughter in raising an adopted orphan. The application was denied accordingly.

On appeal, the applicant asserts that he did not intentionally deceive U.S. Citizenship and Immigration Services (CIS) or the home study preparer regarding his past arrest, and that he simply forgot about the arrest. The applicant asserts that upon direct questioning about the arrest, he remembered the incident and that his belief was that the charges had been dropped and his arrest record expunged. The applicant asserts that his arrest record was officially expunged subsequent to his receipt of a Notice of Intent to Deny his I-600A application, and that under Hawaiian law, he also has a right to state that he has no criminal record relating to the arrest.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i) states that CIS may not approve a Form I-600A unless satisfied that the applicant and his spouse 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).

8 C.F.R. § 204.3(e)(2)(iii)(D) provides that, "failure 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".

The AAO notes that knowledge of a petitioner's arrest and criminal history information is clearly essential for a proper CIS decision regarding whether an applicant will provide proper care to an adopted orphan. Thus, although not mandatory, a denial of an advance processing application is often justified when an applicant fails to make the required disclosures. The AAO notes further that an advance processing application should not be approved, if 8 C.F.R. § 204.3(e)(2)(iii)(D) justifies a denial, unless the applicant shows that the information that he or she failed to disclose was immaterial to a determination regarding whether the applicant can reasonably be expected to provide proper care to an orphan.

The evidence contained in the present record reflects that in November 1955, the applicant was arrested by the Honolulu Police in Hawaii. The applicant was initially charged with a "Hit and Run" charge relating to an accident involving a female acquaintance who had gotten out of his car. The charge was subsequently changed to "Attempted Murder" and the applicant was detained by police for approximately three days. The record contains an undated U.S. Marine Corps letter addressed to the applicant's father, stating that the applicant was "cleared by the Marine Corp of any military charges which may have been forthcoming from the accident." The letter states further that, "the civil charges still remain technically in effect", but that a request was made by the Marine Corps to have the [civil] charges dropped.

The record additionally contains a September 23, 2003, Hawaiian Expungement Certificate (Certificate) certifying the annulment of the applicant's November 25, 1955, record of arrest for Attempted Murder and Hit and Run. The Certificate states further that, "[u]nder the provisions of Section 831-3.2, Hawaii Revised Statutes, this certificate authorizes you to state in response to any question or inquiry, whether or not under oath, that you have no record regarding the specific arrest(s) listed above."

The AAO finds that although the applicant's arrest occurred approximately fifty years ago, the seriousness of the incident and the charges made against him, as well as the fact that the charges were investigated by both the U.S. military and the Hawaiian police, and the fact that the applicant was detained in police custody for several days make it unlikely that the applicant simply forgot about the arrest. Nevertheless, the fact that the applicant's arrest occurred almost fifty years ago, combined with the fact that the arrest charges against the applicant were dropped and the applicant's lack of a criminal history prior to or subsequent to the event, lead the AAO to conclude that the applicant's failure to reveal his November 1955, arrest, does not, in and of itself, materially affect the present decision regarding whether the petitioner can reasonably be expected to provide proper care to an orphan.

The AAO notes that the district director's decision to deny the applicant's I-600A application was additionally based on the concern that the applicant's son and adopted granddaughter would need to play a major role in raising an adopted child. The record contains a December 31, 2002, Home Study Report, Psychological Evaluation ("Evaluation") prepared by home study preparer, [REDACTED]. At the time of the Evaluation, the applicant was a sixty-seven year old man, who lived with his sixty year-old wife, his thirty-eight year old son, [REDACTED] and his eighteen-year-old adopted granddaughter, [REDACTED]. Based on interviews with all of the family members, the Evaluation reflects, in pertinent part that [REDACTED] "[a]pparently will play a major role in the care and parenting of her adopted brother", and that [REDACTED] had done the internet search, selected the child from photographs of many children, and that [REDACTED] had initiated contact with the adoption agency. The Evaluation additionally reflects that [REDACTED] biological father, [REDACTED], had two daughters from his former marriage. His parents adopted [REDACTED] when she was a nine-month old baby, and [REDACTED] younger sister was adopted by another family. The Evaluation notes that [REDACTED] plays more of a brother role in [REDACTED] life than that of a father. The Evaluation notes further that the family considered adoption because they wanted a brother for [REDACTED] who was closer to her age than [REDACTED]. See Evaluation at 2 and 6. The Evaluation concludes in pertinent part that the applicants are:

[W]ell equipped to care for a child particularly with the help of their 18-year-old granddaughter. The age of the parents could be a concern about integrating a 6 year old into this family. It is likely that [REDACTED] and [REDACTED] will have to play major [sic] role in raising their future adopted brother. Consequently this Evaluator would highly recommend for [REDACTED] and [REDACTED] to complete a parenting course for appropriate age children." See Evaluation at 7.