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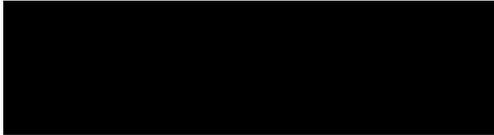


FILE: [Redacted] Office: SAN FRANCISCO, CA Date: **MAY 23 2005**

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:



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.

RPW

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California, 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 February 20, 2003. The applicant is a thirty-six-year-old married citizen of the United States, who together with his spouse, seeks to adopt two children (the applicant's cousins) from Sierra Leone.

The district director determined that the applicant and his spouse had failed to disclose the criminal history of the applicant's wife, and had failed to obtain a favorable home study report. The district director concluded that the applicant had failed to establish that proper care would be furnished to an orphan if admitted to the United States, and the application was denied accordingly.

On appeal, the applicant, through counsel, asserts that he and his wife did not know or understand that she had been arrested or that she had a criminal history, and that they did not intentionally withhold information from the home study preparer regarding the applicant's wife's past arrest history for domestic violence. Counsel asserts that the applicant and his wife [REDACTED] did not believe that [REDACTED] was arrested in January 2000, and that instead they believe that the police simply intervened on the applicant's behalf after he and his wife had a heated family argument. Counsel asserts further that the breakdown in communication between the applicants and the home study preparer occurred because the applicants were offended and troubled by the home study preparer's belief that they had tried to hide an arrest record. Counsel asserts that despite a breakdown in communication between the applicants and the home study preparer, the applicants attempted to cooperate with the home study preparer's suggestion pertaining to domestic violence counseling, by independently hiring a counselor to evaluate the marital relationship between the applicant and his wife. Counsel asserts further that the counselor's determination regarding the marital relationship between the applicant and his wife should have been addressed and taken into account by the home study preparer and by the U.S. Citizenship and Immigration Services (CIS) district office in San Francisco.

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).

The present record contains a home study report prepared by Across the World Adoptions, stating, that the agency is not able to recommend the applicant and his wife as adoptive parents. The agency's conclusion was based on the applicants' failure to disclose [REDACTED] January 2000, arrest for domestic violence and the severity of the reported violence, as well as the applicant's refusal to cooperate fully in the home study process. The agency was additionally concerned about the applicants' refusal to provide documentation regarding two incidents in which [REDACTED] left her young daughter alone at home, which resulted in her

8 C.F.R. § 204.3(e)(2)(iii)(D) states in pertinent part:

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 [CIS], may result in the denial of the advance processing application pursuant to paragraph (h)(4) of this section.

The AAO notes that petitioning for an orphan involves a CIS determination of the prospective adoptive parents' ability to provide a proper home environment and on their suitability as parents. This determination is based primarily on the home study report and fingerprint check results, and it is essential for the protection of the orphan. Knowledge of a petitioner's arrest and conviction 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 that an orphan petition cannot be approved unless CIS makes a favorable determination on the advance processing application. 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 clearly shows that the information that he or she failed to disclose was immaterial to a determination regarding whether the applicant and his or her spouse can reasonably be expected to provide proper care to an orphan.

The AAO notes that the "Marital Evaluation" that was independently prepared on the applicant's behalf by [REDACTED] LCSW, fails to demonstrate that the applicants are involved in counseling to address the history of abuse, domestic violence and child rearing concerns that exist in the present matter. Moreover, the applicants' lack of candor regarding [REDACTED] arrest and the seriousness of the domestic violence incident, combined with the child neglect concerns raised in the home study report and the home study preparer's concern that [REDACTED] has not received counseling for domestic violence and her history of abuse by a previous husband, lead the AAO to conclude that the applicant has failed to establish that he and his wife can provide proper care to an orphan.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i) provides 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. *See also* 8 C.F.R. § 204.3(h)(2) (stating that, "no advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the 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 AAO finds that the evidence contained in the record fails to overcome the district director's decision that the applicant's have failed to establish that proper care would be provided to an orphan if admitted into the United States. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.