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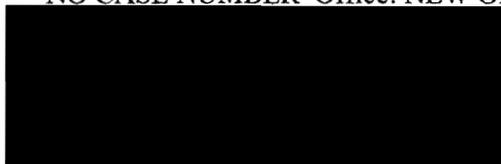


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DEC 01 2006

FILE: NO CASE NUMBER Office: NEW ORLEANS (LOUISVILLE, KY) Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New Orleans, 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 the Application for Advance Processing of Orphan Petition (I-600A application) on August 24, 2005. The applicant is a 59-year-old married citizen of the United States, who, together with his wife, seeks to adopt up to five children from Liberia.

The district director determined that the applicant's income was "not sufficient to house, feed, clothe, educate, and provide adequate health care for the requested adoptive children," and denied the application accordingly, adding that she was "not satisfied that proper care will be provided for the orphans." *District Director Decision*, November 7, 2005. As the applicant was not informed of his appeal rights in that decision, and in response to a letter of inquiry from the applicant, the district director informed the applicant that he would have 33 days from June 23, 2006 to appeal to the AAO.

On appeal, the applicant asserts that his income is sufficient to raise adoptive children, based on his and his wife's track record of raising their own family of seven children and hosting others. *Applicant's Letter in Support of Appeal*, submitted with Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290), filed July 26, 2006. The applicant further lists his children and their accomplishments, including those who are adults and do not reside with the applicant and his wife, and two adopted children, aged 16 and 10, who live at home. *Id.* He explains that his yearly income averages \$22,100, but that the family's yearly expenses are \$16,176, as they have no mortgage and do not buy on credit, and the 20-acre farm they own provides most of the fruit, vegetables, meat, milk, eggs, cheese and firewood that the family needs. *Id.* He compares the lifestyle and expenses of their "average debt-ridden, city dwelling counterparts" to support his assertion that given the applicant's lifestyle and lack of debt, and the fact that "[they] do not eat out as often as the average family . . . do not spend as much on gasoline . . . or as much on outside entertainment; etc.," his income is more than adequate for a family of eight. *Id.* Also included in the record is a home study noting that the applicant's income (in 2004) is "\$19,248 per year from SSDI/Disability Insurance plus farm income/dog breeding income and no debt," and recommending that the applicant and his wife be approved as "adoptive parents of a sibling group (no more than 5 and not older than 9 years old)." *International Adoptive Family Homestudy*, prepared by Potter Children's Home and Family Ministries, August 9, 2005.

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 the U.S. Citizenship and Immigration Service (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 states, in pertinent part:

(a)(2) *Overview*

. . . [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).

(e)(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.*

...
(ii) *Assessment 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. . . . 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.

No I-600A application shall be approved unless CIS is satisfied that proper care will be provided for the orphan. 8 C.F.R. section 204.3(h)(2). The AAO notes that the CIS determination is based on protective concerns for the orphan.

The record in this case reflects that the prospective adoptive parents have a yearly income of approximately \$22,100, including about \$2000 income from their farm; the applicant lists expenses of "electricity \$120, telephone \$88, insurance \$180, trash \$20, gasoline \$300, groceries \$200, propane \$40, entertainment \$100, livestock feed and medication \$300, for a yearly total of \$16,176." *Applicant's Letter in Support of Appeal, supra*. The AAO notes that these expenses do not include, *inter alia*, clothing, education supplies, or any of the expenses associated with keeping farm equipment in good repair. In that regard, the expenses listed by the applicant are not credible. The AAO also notes that the applicant listed the costs to maintain a family of four, but he now seeks to more than double that number by adopting five orphans. Although clearly some families are able to live more frugally than others, and whether a family owns their home and is debt free are crucial factors for consideration when looking at income in relation to expenses, it is not reasonable to conclude that a family of nine will have the same expenses as a family of four; for example, medical and insurance costs alone will significantly increase.

Poverty guidelines are published annually by the U.S. Department of Health and Human Services (HHS) and are relevant as an indicator of the **minimum** income needed to maintain a family above the poverty line. In this case, even if just one orphan is adopted, instead of the five requested by the applicant, the family would then comprise five members. The 2006 HHS Poverty Guidelines list \$23,400 as the minimum income requirement for a family of five. See <http://aspe.hhs.gov/poverty/>, last revised March 31, 2006. Maintaining a family at poverty level or even slightly above would not support a conclusion that income is sufficient for the proper care of family members. In the present case, the applicant's income falls below the minimum.

Upon careful review of all the evidence contained in the record, the AAO finds that the applicant has failed to demonstrate his ability to provide proper financial care to the orphans requested in the I600-A application. Accordingly, denial of the I600-A application is justified. The AAO finds further that the home study preparer's recommendation of the applicant does not meaningfully address the lack of sufficient income and the actual costs associated with raising children.

No Case Number
Page 4

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 and his spouse 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.