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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

F2

[Redacted]

FILE:

Office: BOISE, ID

Date:

FEB 02 2006

IN RE: Applicants:
Beneficiary:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

DITIC 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, Boise, Idaho, denied the Application for Advance Processing of an Orphan Petition. The applicant filed the Application for Advance Processing of Orphan Petition (I-600A application) on May 3, 2005. The applicant is a forty-four-year-old married citizen of the United States, who together with his spouse, seeks to adopt a child from China. On May 10, 2005, the director issued a notice of intent to deny the application. The applicant responded to the notice of intent to deny and on June 20, 2005, the director denied the application. On July 7, 2005, the applicant filed a motion to reopen and reconsider with the district director and requested a 60-day extension in which to submit additional evidence. The district director informed counsel that he was granted a 30-day extension. The district director denied the motion to reopen and reconsider on July 22, 2005. On appeal, counsel for the applicant states that the district director issued a decision on the motion before the 30-day extension had lapsed. The applicant appealed the district director's decision denying the motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to fully disclose his criminal history, and that he and his wife 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 should not be penalized for the home study preparer's failure to instruct them to provide further documentation regarding all arrests.

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 Citizenship and Immigration Services (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 an applicant'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 that is material to a determination regarding whether the applicants can provide a suitable home and proper care to an orphan.

The evidence in the record includes a Home Study Report, prepared on May 2, 2005 by [REDACTED] of A New Beginning Adoption Agency that states:

As required by Idaho state law, the [REDACTED] submitted their fingerprints to the Department of Health and Welfare for criminal background checks, as well as state and local child/adult abuse registry checks. The results for [REDACTED] check indicted two arrests for driving infractions from 1993 to 2000. No exemption hearing was required and [REDACTED] successfully completed the background check. Of the incidents [REDACTED] stated that these were misdemeanors that required probation and community service. He was not incarcerated, and successfully completed the terms of his probation.

On May 10, 2005, the district director informed the applicants of the results of a mandatory, confidential investigation of their identity and background. According to the investigation, the applicant had been arrested on more occasions than he 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 applicant 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]
Burglary – Boise, ID – 5/14/1981
Failure to Appear – Boulder, CO – 6/28/1986
Driving Under the Influence Liquor – Boulder, CO – 2/17/1988
Criminal Damages – Prescott, AZ – 2/12/1991
Criminal Nuisance – Prescott, AZ – 5/27/1991

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.

A June 3, 2005 Home Study Addendum prepared by [REDACTED] A New Beginning Adoption Agency, addresses the criminal history omissions in her original Home Study Report. The home study preparer states that the applicant had "never denied that he was in trouble a lot when he was younger," and that he admitted to her that he had been arrested a number of times but that he could not recall each instance or the date of the offense. The home study preparer then states that the listed offenses are dated more than thirteen years ago. She further states that [REDACTED] recognizes that his actions were unlawful and now strives to be a responsible citizen. The home study preparer indicated that she continued to recommend the applicant and his wife as adoptive parents.

A review of the record indicates that the applicant was not forthcoming with the home study preparer or CIS.

According to evidence submitted on appeal, the Boise City police arrested the applicant on May 14, 1981. The Ada County Prosecuting Attorney filed a criminal complaint on June 3, 1981, charging applicant on two counts of Burglary II, felony [REDACTED] and two counts of Grand Larceny, felony [REDACTED]. On August 17, 1981, the applicant pled guilty to lesser charges: Trespassing, misdemeanor (I.C. 18-7008) and Malicious Injury to Property, misdemeanor (I.C. 18-7001). The initial charges were dismissed on March 1, 1982, after the applicant successfully completed six months of probation.

According to the home study addendum, the applicant told the home study preparer that he was arrested when he was seventeen, which was in 1979, for breaking into his neighbor's house, damaging their door, and stealing some tools. He further informed the home study preparer that he had been drinking and was upset with his neighbors for disturbing his pet's gravesite. In fact, the applicant was 20 years old when he was arrested. He incorrectly characterized a serious charge as a juvenile offense.

On April 15, 1986, the Boulder Police Department cited the applicant for Riding Bike on Mall (case # [REDACTED]). A warrant for his arrest was issued on June 28, 1986 for failure to appear. On January 25, 1987, the applicant was arrested on the warrant. According to the applicant's counsel, he paid a fine.

According to the home study addendum, the applicant told the home study preparer that he had forgotten about this event, and therefore had not disclosed it during the home study process.

On February 17, 1988, the Boulder police arrested and charged the applicant with Careless Driving [REDACTED] and Driving Under the Influence [REDACTED]. The applicant pled guilty to a lesser charge, Reckless Driving [REDACTED] on July 26, 1988. He was fined and given a ten-day sentence, which was suspended on the condition the applicant submit proof of completion of an alcohol education class.

According to the home study addendum, the applicant told the home study preparer that he had been drinking, but not driving, rather, he had been just sitting in his car waiting for a friend. The home study preparer indicated that the applicant disclosed this arrest in writing in the self-declaration supplement form that was submitted to the Idaho Department of Health and Welfare for a criminal background check, but for a different (more recent) date.

According to an investigation conducted by the FBI, the Prescott, Arizona Sheriff arrested the applicant on February 2, 1991 and charged him with Criminal Damage, misdemeanor [REDACTED]. (Docket [REDACTED]) and again on May 27, 1991, and charged him with Criminal Nuisance, misdemeanor [REDACTED]. According to the FBI report these charges were dismissed.

The applicant failed to initially disclose his Prescott charges to the home study preparer. In a home study addendum, the home study preparer wrote that the February 1991 "arrest came while [the applicant] was riding an off-road vehicle on Bureau of Land Management Property. He ran into, and caused damage to, some farmer's [sic] fences. [The applicant] had not recalled this event, and therefore had not disclosed it at the time of the home study."

In the addendum, the preparer explained the circumstances surrounding the applicant's May 1991 arrest for criminal nuisance. She said that the applicant played a practical joke on his roommates by pretending to burglarize their home. She further stated that the applicant had not recalled this event and therefore did not disclose it during the home study process.

On appeal, the applicant submitted a letter dated November 26, 2004 from the Idaho Department of Health and Welfare, informing the applicant that his background check revealed the following crimes or events:

Inattentive driving 08/30/1999

Negligent driving 09/07/2000

Driving while suspended 9/21/1983.

The applicant failed to submit an explanation of these three events and his counsel failed to submit court records of final dispositions of the above three charges.

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. The applicant failed to fully disclose his criminal history initially, in response to a notice of intent to deny and on appeal. 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 the applicant to forget the details of his criminal history because the arrests happened long ago.

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.