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

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FILE:

Office: PHILADELPHIA, PA

Date:

DEC 13 2007

IN RE: Applicant:

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, 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 sustained.

The applicant filed the Application for Advance Processing of Orphan Petition (I-600A application) on August 24, 2007. The applicant is a 48-year old citizen of the United States who seeks to adopt a child from Guatemala. The applicant has been married three times, each marriage ending in a divorce. Her most recent divorce was obtained in the Dominican Republic on July 25, 2007.

The district director determined that the applicant's divorce was not valid and that she therefore was ineligible to file the application as a single parent. The director further found that the applicant failed to establish that proper care would be furnished to an adopted orphan given her estranged relationship with her natural children and the removal of foster children from her home in 2006. The application was denied accordingly.

On appeal, counsel asserts that the applicant's divorce is valid and must be recognized in the United States. In support of the appeal, the applicant submits, in relevant part, a statement from a Delaware family law expert to evidence that her divorce is valid, a letter from the foster care agency stating that she was not the subject of the allegations that led to the removal of the foster children from her home, and a statement from her son describing the nature of their relationship.

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 applicant 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.

The record contains a Home Study Report prepared by [REDACTED] of Adoption House, Inc., recommending the applicant for placement of one or two children from birth through 18 months of age. The Home Study Report includes a detailed description of the applicant's background, including her marital history and her relationship with her children. The Home Study Report indicates that the applicant has had limited contact with her children, who resided with her second husband upon their divorce, and are now grown. The Home Study Report explains that the applicant and her third husband became foster parents but that the children were removed from the home due to allegations relating to the applicant's husband. The Home Study Report further notes that the applicant's third husband had a record of criminal charges which, although expunged, would have prevented them from adopting their foster children.

The Home Study Report indicates that the applicant is well-employed as a registered nurse. The Home Study Report further indicates that the foster care agency reported that the applicant was an excellent foster parent and that the agency had no concerns about the applicant. The Home Study Report also addressed the applicant's health, financial information, insurance status, home and community. The Home Study Report indicates that a review of all available records show no information that would cause the applicant to be denied approval.

The AAO finds that the divorce obtained by the applicant in the Dominican Republic is valid and must be recognized as such. In this regard, the AAO has reviewed the affidavits submitted by [REDACTED] and the cases cited therein, as well as the cases cited in the district director's decision. The AAO has also reviewed the information regarding divorce provided by the U.S. Embassy in the Dominican Republic, and the relevant foreign and domestic statutes. The AAO notes that the applicant recently sought to obtain a divorce in Delaware but that her petition was dismissed upon a finding by the state court that she was already divorced. The AAO finds that the applicant is divorced and can therefore proceed with her application.

The question remains whether the applicant has established that she would furnish proper care to an adopted orphan. Upon thorough review of the record, including the Home Study Report, the AAO finds that the applicant has met her burden. The evidence in the record includes statements from the applicant's natural children explaining the nature of their relationship with their mother which, although at times strained, appears healthy and adequate. The AAO notes that the record also contains a letter from the foster care agency stating that the allegations resulting in the removal of foster children from the applicant's home were unrelated to the applicant.

The Act provides 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 has demonstrated that she can provide proper care to an adopted orphan. The appeal will therefore be sustained.

ORDER: The appeal is sustained.