

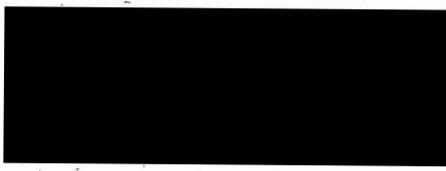
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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: PHILADELPHIA

DATE: MAR 02 2007

IN RE:

Applicant:
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, Philadelphia, 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 Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application) on November 29, 2005. The applicant is a thirty-eight-year-old married citizen of the United States, who together with his spouse, seeks to adopt an orphaned child or children from Guatemala.

The district director determined that the applicant had failed to disclose his criminal history to his home study agency and concluded that, therefore, the favorable home study was based on an erroneous evaluation; and that the applicant failed to comply with a request for additional evidence and concluded that, therefore, the U.S. Citizenship and Immigration Services (CIS) was "precluded from finding [his] household suitable for placement of a foreign-born infant." *District Director Decision (Notice of Denial)*, July 19, 2006. The application was denied accordingly.

On appeal, the applicant asserts that he did disclose his arrest to the home study agency and that he complied with all requests for additional evidence. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed August 15, 2006. In support of this assertion, the applicant submits a letter explaining that he never intended to withhold any information from the home study preparer, the adoption agency or CIS, and describing the process that he and his wife went through (1) prior to filing the I-600A Application, (2) in response to the Notice of Intent to Deny, and (3) in response to the Notice of Denial. *Appeal Letter to CIS from [REDACTED] (Appeal Letter)*, August 12, 2006. For each stage of the process, the applicant provides documents as evidence that he communicated as required with his home study preparer and CIS.

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 an 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 . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

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

The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and the Service [CIS] any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and the Service the opportunity to properly evaluate the criminal record in light of such evidence.

When such information is not presented early in the process, it comes to light when the fingerprint checks are received by the Service.

“[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 [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. Complete knowledge of an applicant’s arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide a suitable home and proper care to an adopted orphan. Accordingly, denial of an I-600A Application may be justified when an applicant fails to make the required criminal history disclosures.

In this case, the record reflects that the applicant was interviewed in November 2005 by [REDACTED] a licensed social worker and home study preparer for A Field of Dreams Adoptions Services. The Home Study Report (Report), dated November 28, 2005, states: [REDACTED] states he has no history of alcohol or substance abuse, sexual, physical or child abuse, or domestic violence history, even if it did not result in an arrest or conviction.” The Report notes that the Pennsylvania State Police Criminal Record Checks indicated no record of criminal history for either Mr. or Mrs. [REDACTED]. On March 9, 2006, the district director informed the applicant that an FBI report showed that the applicant had been arrested in Morgan Hill, California on January 31, 2000 and charged with Inflicting Corporal Injury to a Spouse/Cohabitant. *Notice of Intent to Deny*, March 9, 2006. The district director requested a certified copy of the police report and documentation showing the final disposition of the incident and evidence of successful compliance with the terms of any sentence, as well as a signed statement from the applicant with details, including any mitigating circumstances, about the incident and why the arrest was withheld from the home study preparer and CIS; the district director requested further that the home study agency prepare a home study addendum evaluating the suitability of the applicant’s home for adoptive placement of an orphan in light of his arrest history, noting that the home study preparer must also address evidence of rehabilitation. *Id.* As noted above, the final notice of denial indicated that the applicant failed to comply with these requests.

The record indicates that the applicant first responded to the March 9, 2006 Notice of Intent to Deny with a letter dated March 14, 2006 in which he explained that before he and his wife began the adoption process they communicated with their adoption agency, specifically with [REDACTED], the Executive Director of the agency, to see if his prior arrest would make them ineligible to adopt. *Letter from [REDACTED] to Acting District Director, CIS, Philadelphia (first response letter)*, dated March 14, 2006. He also explained that he did not withhold information from the home study preparer, but that he was told when responding to questions that “one arrest did not constitute a ‘history.’” *Id.* He stated that Ms. [REDACTED] later stated that she was not sure why the arrest information had not been included in the initial home study report; and, after the Notice of Intent to Deny was issued, that Ms. [REDACTED] requested that the applicant send all the required paperwork to her so that she could mail everything to CIS along with the Home Study Addendum. *Id.*

On March 27, 2006, the applicant wrote a second response letter with attachments that he sent to the adoption agency for submission. *Letter from [REDACTED] to DHS, Philadelphia (second response letter)*, dated

March 27, 2006; *Follow-up Letter*, July 11, 2006. The applicant reiterated that the agency and home study preparer had been aware of his arrest since before the adoption process began and that the couple had been “assured that it shouldn’t be an issue as long as [they] followed procedure.” *Second Response Letter, supra*. The applicant also explained the circumstances surrounding his arrest: that during an argument with his former girlfriend, he broke a beer bottle by throwing it down on the floor near her, and then grabbed her by the shoulders, tearing her shirt; he realized what he was doing was wrong and called the police to report the incident, taking full responsibility. *Id.* The applicant included as attachments (1) certified copies (issued to the applicant on March 24, 2006) of the Morgan Hill Police Department reports of the applicant’s arrest on January 31, 2000, which corroborate the applicant’s description of the incident; (2) a letter, dated May 4, 2000, from the applicant’s former attorney regarding the sentencing and closing of his case file stating that the applicant “pled no contest to PC 242/243, a misdemeanor, battery” and was sentenced to three years of formal probation, meaning that, *inter alia*, he must report to a probation officer as set forth in the terms of probation, and enroll in a domestic violence program; and (3) a note from the County of Santa Clara Probation Department, dated March 13, 2006 confirming that the applicant had successfully completed probation on April 27, 2003.

On appeal, the applicant provided additional evidence that he did not conceal his prior arrest and that he was unaware that information regarding the arrest had not been previously submitted to CIS. The applicant also included documents that he had previously submitted in response to the Notice of Intent to Deny, noting that it was not clear whether CIS had received and considered all the documents previously submitted. *Appeal Letter, supra*. The evidence submitted on appeal includes:

Email exchanges dated July 26, 2005, before the adoption process was initiated, between the [REDACTED] and A Field of Dreams Adoption Agency. The applicant’s wife asks if the applicant’s 2000 arrest for a misdemeanor in California and subsequent probation would affect their eligibility to adopt, and the agency responds that it would need to see “documentation on the court proceeding and what was done to rectify the situation.”

A Home Study Addendum, dated April 11, 2006, prepared in response to the Notice of Intent to Deny. The addendum describes the circumstances of the applicant’s arrest and the terms of his probation, and notes that he had successfully complied with those terms and no further incidents had occurred.

Email exchanges dated July 26-28, 2006 between the [REDACTED] and [REDACTED], Executive Director of A Field of Dreams, after issuance of the Notice of Intent to Deny. Ms. [REDACTED] expresses surprise at the request for more evidence, stating that she had sent [CIS] everything and that the applicant had “everything they had asked for.”

In response to the Notice of Denial, further clarification in the form of an additional Home Study Addendum (dated July 27, 2006) and letter from the home study preparer, [REDACTED] (dated August 3, 2006). Both documents continue to recommend the [REDACTED]’s as adoptive parents, taking into consideration the applicant’s past conviction. The letter also explains the circumstances surrounding the omission of information in the home study regarding the applicant’s prior arrest. Mr. [REDACTED] explains that at the time of the home study he did not have information regarding any criminal record for Mr. [REDACTED] other than a criminal clearance from Pennsylvania; that although Mr. [REDACTED] stated that he mentioned the California incident, Mr. [REDACTED] does not recall any such statement from

Mr. [REDACTED] during their meeting; he clarifies, however, "I do not find him to be an individual who is prone to acts of deception and deceit and I believe he made the statement." [REDACTED] adds that the absence of complete information may be attributed to "human error" and that he does not feel that the [REDACTED] should be denied the opportunity to become adoptive parents as a result.

An email copy of a letter from [REDACTED] addressed "To Whom It May Concern," dated August 3, 2006. Ms. [REDACTED] confirms that the adoption agency had been aware since the couple's first consultation that the applicant "had had trouble with the law in California;" that the adoption agency had asked for all documentation regarding the incident; that the couple had no problem relating the applicant's past; and that by calling the police, the applicant showed his character. She asks for reconsideration of the matter [the adoption application] as "Mr. [REDACTED] will be a wonderful adoptive father."

Upon thorough review of the record, the AAO finds that the evidence indicates that the applicant did not intend to hide his past arrest, as he had discussed his history with the adoption agency, and he responded fully to concerns regarding his criminal history after he received the Notice of Intent to Deny. He did, however, sign a document stating that he had no history of domestic violence and he did not fully reveal his criminal history to the home study preparer. The reason behind this failure to provide complete information is not clear, but his actions are mitigated by his prior disclosure of his criminal history to the adoption agency before the home study was conducted. The adoption agency failed to investigate and report on this past history in the completion of the home study.

The AAO finds that the applicant's failure to fully disclose his criminal history at the time of the home study is serious and cannot be condoned, as is the adoption agency's failure to adequately investigate and report on this history. Nevertheless, the AAO finds that, in spite of the applicant's arrest and conviction and failure to fully disclose the details of his offense and conviction during the home study, a review of the totality of evidence in the record establishes that the applicant would be able to provide proper care to an adopted orphan, as set forth in section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(a)(2).

As previously noted, the CIS determination regarding whether or not to approve an I-600A application is based on protective concerns for the orphan. The AAO notes that the applicant's one arrest and conviction occurred seven years ago. The applicant has no criminal history prior to or subsequent to that incident. The AAO notes further that the applicant at the time of his actions recognized that he was wrong, called the police and took full responsibility. He successfully completed three years of probation that included enrollment in a domestic violence program in California. He continues to be recommended by the adoption agency and home study preparer as a suitable parent. In addition, the home study report reflects that the applicant and his wife have a strong and loving relationship and are financially secure and stable, and that their families are very supportive and excited about their plans to adopt.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. In the present matter, the AAO finds that the evidence in the record sufficiently establishes that the applicant can provide proper parental care to an adopted orphan. The applicant has therefore met his burden, and the appeal will be sustained.

ORDER: The appeal is sustained.