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U.S. Citizenship  
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Services

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FILE:

Office: BOSTON, MA

Date: SEP 25 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:

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 Field Office Director, Boston, Massachusetts, denied the Form I-600A, Application for Advance Processing of an Orphan Petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained, and the application will be approved.

The applicant filed the Application for Advance Processing of Orphan Petition (I-600A application) on February 6, 2007. The applicant is a thirty-six-year-old married citizen of the United States, who together with his spouse seeks to adopt an orphaned child from Russia.

The field office director determined that the applicant had failed to disclose his criminal history, and that he had failed to take responsibility for his past actions. The field office director indicated further that the applicant had failed to establish he could provide proper care and a suitable home environment to an adopted child. The Form I-600A application was denied accordingly.

On appeal the applicant asserts, through counsel, that he did not disclose his prior arrests and convictions for two counts of simple assault, because he was not asked by the home study agency or preparer whether he had ever been arrested. The applicant indicates that he believed the simple assault charges against him were misdemeanor violations, not criminal convictions, and he indicates that he did not understand the criminal and legal implications of his admission to guilt in the incidents. The applicant asserts, through counsel, that he did take responsibility for his illegal actions by contacting and reporting the events to the police, and by pleading *nolo contendere*. He asserts that he does not seek to hide his past criminal record now that he is aware of its significance within the Form I-600A application context. The applicant asserts that the offense took place almost six years ago, and that he had no trouble prior to or after the incident. The applicant asserts further that the home study report and addendum, as well as the evidence in the record demonstrate that he would be able to provide proper care and a suitable home environment to an adopted child.

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i) provides that CIS may not approve a Form I-600A application unless satisfied that the applicant will provide proper parental care to an adopted orphan.

The regulation provides in pertinent part at 8 C.F.R. § 204.3(a)(2) 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.

The regulation provides in pertinent part at 8 C.F.R. § 204.3(e)(2)(v) 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 [now U.S. Citizenship and Immigration Services, 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 denial of a Form I-600A, 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 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. Thus, although not mandatory, a denial of an advance processing application is often justified when an applicant fails to make the required disclosures. An advance processing application should not be approved, if 8 C.F.R. § 204.3(e)(2)(iii)(D) justifies a denial, unless it is established that the information that the applicant failed to disclose does not materially affect a determination regarding whether the applicant can be expected to provide proper care to an orphan.

In the present matter, the record reflects that on October 15, 2001, the applicant was found guilty of two misdemeanor counts of Simple Assault, in violation of New Hampshire Statutes § 631.2-A. On each count, the applicant was fined \$1000.00, with all but \$200.00 suspended upon completion of two years of good behavior. The applicant failed to disclose his criminal history to CIS or the home study preparer, and the applicant’s initial home study report fails to address or mention the applicant’s arrests or convictions for Simple Assault.

The initial home study report prepared by [REDACTED] of Children’s International Choice, Inc. (CICI) states that the agency conducted a police check for the applicant through the Massachusetts Criminal Offender Record Information System. The police check revealed no criminal record for the applicant. The initial home study report contains no other discussion of the applicant’s criminal record, and the home study report contains no indication that the home study preparer asked the applicant whether he had a criminal history, or whether he had ever been arrested.

The field office director informed the applicant in a May 18, 2007 Notice of Intent to Deny (NOID) that FBI fingerprint check results revealed he had a criminal record. Specifically the FBI results revealed that the applicant had been arrested in Plaistow, New Hampshire on October 1, 2001, and that he had been charged with, and convicted of, two counts of Simple Assault. The field office director noted in the NOID that the applicant had failed to disclose his arrests and convictions to the home study preparer. The field office director noted further that a subsequent April 12, 2007, letter written by the applicant, stating that he thought the matter was off his record, was an inadequate explanation in light of the Form I-600A application’s clear

instruction that failure to disclose such information could result in the denial of the application. Based on similar reasoning, the field office director issued a final denial of the applicant's Form I-600A application on May 25, 2007.

The AAO notes that the applicant's April 12, 2007, letter states the following regarding his arrests and convictions for simple assault: Late on the night of October 1, 2001, while returning a video to a drop box outside of a video store, a man in the parking lot began to give the applicant a hard time about where, and how he had parked. The harassment turned into an argument, and ultimately into a physical fight. The man's girlfriend tried to break up the fight by hitting the applicant on the back. The applicant put his hand out to stop her, and then walked away from the two individuals. The applicant immediately called the police to report the incident. Although he admitted to hitting the other persons, the applicant states that the other individuals would not admit to hitting him. The applicant was arrested and charged with two counts of simple assault, for hitting the other man and pushing the man's girlfriend in order to hold her at a distance. The applicant went to court a few weeks later. He was fined after he admitted his involvement in the incident. The applicant believed the matter was settled, and that it would not be on his record if he did not get into any other trouble within the next two years. This is why he did not mention the incident during his home study interview.

An April 12, 2007, Addendum to Home Study, prepared by [REDACTED], LCSW of CICI reflects that the applicant discussed the above criminal history with her after her initial home study report was written. The home study preparer states that the applicant did not disclose the crimes initially because, based on his understanding of the court proceedings, the incident would not be on his record if no further incidents occurred over the following two years. The home study preparer states that she finds the applicant's explanation to be credible, and she states that the applicant regrets that the incident occurred and that he did not think to discuss it during the initial home study meetings. The home study preparer states further that upon evaluation of the incident and the complete record before her, she feels it to be an aberrant incident that is not characteristic of the applicant. The home study preparer states that the applicant has no other charges against him, that he is a well adjusted man with good judgment and a mature sense of self control, and she recommends him as an adoptive parent.

The applicant provides additional information regarding his failure to disclose his criminal history in a May 20, 2007 letter. Specifically, the applicant states that the application provided by the home study adoption agency asked the question, "Were you ever convicted of a crime?" The applicant indicates that he replied, "no" to the question because he did not understand the definition of the phrase, "convicted of a crime," and because he believed the term referred to more serious, felony offenses and convictions. Because he replied, "no" to the question, the applicant was not asked about arrests or anything related to arrests during his home study interview. With regard to his arrest and conviction, the applicant states that he was the one who called the police to report the incident, and that he pled *nolo contendere*, received a fine, and was told to stay away from the other parties involved. He states that his fine was reduced on both counts because he had no prior arrests. Based on this, the applicant indicates that he believed his offense was minor, and that he had not been convicted of a crime.

An affidavit written by the applicant on June 9, 2007, repeats the above information and states additionally that the applicant chose to plead *nolo contendere* in court despite the fact that the other parties involved in the

incident did not show up for the hearing. The applicant states that he wrongly believed that his suspended fine, pending two years of good behavior, meant that the charges against him would also be suspended after two years. The applicant indicates that he would have answered a question about arrests in the affirmative. The home study application did not ask about arrests, however. The applicant indicates further that he did not understand that being found guilty and fined for a misdemeanor, rather than being convicted of a felony, also qualified as being "convicted of a crime" for Form I-600A purposes. The applicant indicates that the event was a deviation from his normal course of conduct, and he states that he is remorseful for his past actions.

A May 21, 2007, letter signed by the CICI home study report preparer, [REDACTED] LCSW, reflects her belief that the applicant's failure to disclose his criminal history was a mistake. The home study preparer indicates that the adoption agency's application asks, "Have you ever been convicted of a crime?" The home study preparer notes that the agency's application does not clarify its question by asking whether the applicant has been arrested or convicted of any offense, and she indicates that the agency will clarify its criminal history application question in the future. She states that the applicant has consistently conveyed that he did not think of his offenses as a criminal matter based on the light manner in which the matter was handled by the police and in court, and the home study preparer states that the applicant even used the word "citation" when he described the disposition of his past offenses to her.

A June 13, 2007, updated home study by [REDACTED] LCSW, fully discusses the events leading up to and surrounding the applicant's arrest and convictions for two counts of Simple Assault. The home study preparer discusses the positive factors in the applicant's case and her prior favorable recommendations in the applicant's case. She recommends the applicant as a suitable adoptive parent, and she recommends the applicant's home as a suitable home for an adopted child.

In addition to the above documents, the record contains several affidavits and letters from the applicant's family members and friends, and from his employer, recommending the applicant as a responsible, caring conscientious individual who is good with children, and would make a good father to an adopted child.

The AAO finds, upon thorough review of the evidence, that the applicant has established he did not intentionally withhold information concerning his criminal history from CIS or the home study preparer. The AAO finds further that the applicant's past criminal history does not materially affect a decision regarding whether the applicant can provide proper care to an orphan. The evidence demonstrates that the home study application did not specify or explain the meaning of a criminal conviction. Moreover, the home study report reflects that the home study preparer did not ask the applicant any questions about prior arrests, convictions, or involvement in the court system. The applicant's court disposition does refer to suspended sentencing, and based upon a thorough review of the evidence, the AAO finds that the applicant's explanation that he did not think a reduced fine sentence on a misdemeanor simple assault charge constituted a criminal conviction, is credible. The AAO notes that the applicant initiated contact with the police after the simple assault incidents, and that the applicant did not deny his involvement to the police or to the judge. Furthermore, the AAO notes that the incident occurred almost six years ago, and that it appears to be a one-time event, as the applicant has other criminal history. Based upon the totality of the evidence, the AAO finds the applicant has established that he would be a suitable parent who could provide a proper home environment and care to an adopted child.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. The AAO finds that the applicant has met his burden of proof in the present matter. The appeal will therefore be sustained and the application will be approved.

**ORDER:** The appeal is sustained. The application is approved.