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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: PHILADELPHIA, PA

DATE:

AUG 21 2008

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, Pennsylvania, denied the Form I-600A, Application for Advance Processing of an Orphan Petition (Form I-600A) The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-600A application will be denied.

The applicant is a thirty-nine year old, married male citizen of the United States. The applicant's wife is a forty-six-year old lawful permanent resident. The applicant and his wife seek to adopt two orphan children from Thailand.

The district director determined that the applicant and his wife (██████████) failed to fully disclose ██████████'s criminal history to the adoption home study preparer and to U.S. Citizenship and Immigration Services (CIS). The district director determined further that the applicant and his wife each suffered from significant health issues that were not discussed by the home study preparer. The district director concluded that the applicant therefore failed to establish that he and his wife could provide proper care and a suitable home to two adopted orphan children. The Form I-600A application was denied accordingly.

On appeal, the applicant asserts that he and his wife did not conceal medical or criminal history information from the home study preparer. The applicant states that updated medical reports submitted to CIS reflect that he and his wife are in good health. The applicant indicates further that he and his wife stated on their home study questionnaire that ██████████ had a criminal history, but that they did not provide details because of the sensitive nature of ██████████'s arrest. The applicant indicates that no further information was provided to the home study preparer because she did not ask them any questions about the issue, and the applicant submits an updated home study report. The applicant indicates that he and his wife are law-abiding citizens, and he requests that his Form I-600A be approved.

The applicant also requests oral argument before the AAO. The regulation provides at 8 C.F.R. § 103.3(b), that the applicant must explain in writing why oral argument is necessary. CIS will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In the present matter, no cause for oral argument has been shown. The applicant's request for oral argument before the AAO will therefore be denied.

The Regulation provides 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. . . .

The regulation provides further at 8 C.F.R. 204.3(h)(2) that it is the:

Director's responsibility to make an independent decision in an advanced processing application [Form I-600A.] No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan. If the director has reason to believe that a favorable home study, or update, or both are based on an

inadequate or erroneous evaluation of all the facts, he or she shall attempt to resolve the issue with the home study preparer, the agency making the recommendation pursuant to paragraph (e)(8) of this section, if any, and the prospective adoptive parents.

In the present matter, the district director denied the Form I-600A on the ground that the applicant failed to establish that he and his wife could provide proper care and a suitable home to two orphan children. The district director's denial was based in part, on concerns that health conditions could affect the applicant and his wife's ability to provide proper care and a suitable home to two children. Specifically, the district director noted that Removal Proceedings evidence contained in the record reflected that [REDACTED] was diagnosed with breast cancer about ten years ago, and that following surgery she completed several cycles of chemotherapy in January 2007. Referring to a September 2005 statement made by [REDACTED] the district director additionally found that [REDACTED] has a history of depression resulting from her cancer and alleged infertility. The district director found further that medical evidence contained in the record reflected that the applicant was diagnosed with morbid obesity, hypertension, osteoarthritis and uncontrolled diabetes.

In support of his Form I-600A application, the applicant submitted an October 5, 2007 Adoption Home Study report prepared by [REDACTED] of Adoptions From the Heart, recommending the applicant and his wife as adoptive parents. With regard to their medical conditions, the home study report states simply that the applicant and his wife were examined by a physician in September 2007, and that they were each found to be in excellent health and with a usual life expectancy. No medical conditions were mentioned or discussed.

Medical evidence submitted on appeal reflects that: the applicant underwent gastric bypass surgery in February 2007; that he no longer has diabetes, hypertension and sleep apnea because of his weight loss; and that he has a full and long life expectancy. New medical evidence relating to the applicant's wife states: that she shows no sign of metastatic breast cancer at this time; that her pulmonary status is stable; that she will continue hormonal therapy for up to five years; and that her long-term prognosis is excellent. A December 2007, psychological evaluation for [REDACTED] reflects further that [REDACTED] does not exhibit signs or symptoms of a mental disorder. The evaluation indicates that its validity and reliability should be considered in light of [REDACTED]'s very limited ability to speak English.

The applicant submits an updated home study report on appeal, recommending the applicant and his wife as adoptive parents. The updated home study report, signed on January 23, 2008, by [REDACTED] MA District Supervisor of Adoptions From the Heart, and [REDACTED], MSW/LSW, Executive Director of Adoptions From the Heart, restates the medical information contained in the first, October 5, 2007, home study report. In addition, the updated report discusses the medical evidence of the applicant's gastric bypass surgery, and his improved medical condition, as well as [REDACTED]'s psychological evaluation, her breast cancer and surgery, and the medical letter reflecting that her long-term health prognosis is excellent.

Whether to deny the application is a matter entrusted to CIS discretion, based on protective concerns for the orphan. The AAO finds, upon review of the new medical evidence, that the applicant has overcome the health-related concerns raised in the district director's decision. The AAO notes, however, that the Form I-600A was additionally denied based on material criminal history information that the applicant and Ms. Sorkin failed to disclose to the home study preparer and to CIS.

The Regulation provides in pertinent part at 8 C.F.R. § 204.3(e)(2)(v), that:

[T]he 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. 8 C.F.R. § 204.3(e)(2)(v).

The AAO notes that complete knowledge of an applicant's criminal history and any material adverse information is essential to a proper determination about whether an applicant can provide a suitable home and proper care to an adopted orphan. The AAO notes further that denial of an I-600A application is justified when an applicant fails to make required disclosures, unless it is clearly shown that the undisclosed information was immaterial to a determination regarding whether the applicant can provide a suitable home and proper care to an orphan.

The initial October 5, 2007, Adoption Home Study report prepared by [REDACTED] of Adoptions From the Heart, states in a section entitled, "Police and Child Abuse Clearances," that the applicant and [REDACTED] were cleared by the Pennsylvania State Police on September 5, 2007, and that each was found to have no history of criminal activity. The October 5, 2007 home study report contains no information or discussion about the existence of a criminal history for the applicant or his wife. The home study report states further in a section entitled, "For Immigration Review," that the applicant and [REDACTED] were "questioned by this Social Worker on August 29, 2007 regarding whether either of them has a history of . . . any type of criminal activity. . . . each answered, "No," to these questions."

Evidence contained in the record reflects, however, that on September 27, 2001, [REDACTED] was arrested in Philadelphia, Pennsylvania, and charged with 1) Prostitution and 2) Conspiracy to Commit Prostitution, in violation of 18 Pa.C.S.A. § 5902. [REDACTED] was placed on probation in the Accelerated Rehabilitation Disposition Program (ARD program), and she paid \$45.00 in fees. Upon successful completion of the ARD program, [REDACTED] arrest and criminal history were expunged on April 26, 2002.

Addressing [REDACTED]s criminal history on appeal, the applicant indicates that [REDACTED] was arrested for prostitution, but that the charge was dismissed. A review of the record reflects, however, that [REDACTED] was convicted of prostitution. The evidence reflects that her criminal record was later expunged under the ARD program. *See* Pennsylvania Code, Chapter 3, Rules 312-320.

The record reflects that the district director raised concerns about the complete lack of criminal history information in the applicant's October 2007 home study report with the applicant and with the home study preparer, [REDACTED]. In response to the district director's concerns, [REDACTED] stated in a letter dated, December 3, 2007, that:

This letter is to clarify some details about this family's adoption petition. . . . [I] had no knowledge of any criminal or arrest history for either [REDACTED] or [REDACTED]. When these individuals were asked in our first meeting whether either person had a criminal or arrest history, both verbally indicated that they had no such history. However, upon further

inspection today, I found that the written statement that this family signed on August 29, 2007 indicates that the "yes" blank was checked next to the questions that asks [REDACTED] whether she has ever been arrested for a crime. There was no explanation provided on this document or any other document or conversation during the home study process.

[REDACTED] states in her letter that she did not notice [REDACTED]'s indication that she had been arrested, and that she therefore did not ask the applicant or [REDACTED] for any clarification or explanation about the arrest. [REDACTED] states further:

However, no mention of an arrest or any criminal activity was ever revealed in subsequent lengthy conversations about either individual's personal history. Furthermore, the Verification Questionnaire that [REDACTED] signed states that if the answer to any question was "yes," the individual must provide a detailed record of the arrests and/or convictions, as well as certified documentation showing the final disposition of the charges. No such explanation was ever received, and no discussion of any criminal charges ever took place.

[REDACTED] concludes that had she known of an arrest in [REDACTED] past, she would have investigated further and the issue would have been explained fully in the home study report, if the family were approved.

The applicant indicates on appeal that he and his wife did not reveal details about [REDACTED]'s arrest in their questionnaire due to the sensitive nature of the arrest. The applicant states that he and his wife did not discuss [REDACTED]'s criminal history with the home study preparer because she did not ask any questions about the issue.

An updated home study report, signed on January 23, 2008, by different home study preparers, [REDACTED], MA District Supervisor of Adoptions From the Heart, and [REDACTED], MSW/LSW, Executive Director of Adoptions From the Heart, restates the information contained in the initial home study report, and states further in the section entitled, "For Immigration Review" that:

When questioned whether or not [REDACTED] had ever been arrested or had any history of criminal activity, [REDACTED] answered "No." When [REDACTED] was asked this same question, the form she signed indicated that she said "Yes," but her criminal history was never revealed in conversation, nor did she supply any documentation, as was required by the signed Verification Questionnaire.

The updated home study report continues that:

After the family received a denial letter by USCIS, [REDACTED] and [REDACTED] requested a meeting with Adoptions From the Heart to discuss all of this information. During this meeting in December 2007, it was revealed that [REDACTED] had been arrested on September 27, 2001 for prostitution. [REDACTED] was arrested, paid a fine of \$45, and completed the ARD program. The letter, dated April 26, 2002, indicating that Pratin successfully completed the ARD program is contained in the case file. It was also revealed that [REDACTED] had also engaged in prostitution after her arrest, and that this is how she met her second husband and also her current spouse.

The updated report contains no other discussion or evaluation relating to: [REDACTED]'s criminal history; the applicant and [REDACTED]'s failure to provide the required detailed information regarding the criminal history in the home study questionnaire; and the applicant and [REDACTED] verbal denial of a criminal history during related home study interview discussions. The updated home study report also contains no information, discussion or evaluation regarding [REDACTED] continued involvement in illegal prostitution after her arrest. (See [REDACTED]'s, February 26, 2007, Removal Hearing statement stating that after her September 2001 arrest for prostitution, she engaged in prostitution until April 2002.) Furthermore, the updated home study report contains no discussion analyzing or clarifying the home study agency's decision to approve the applicant and his wife as adoptive parents in light of [REDACTED]'s criminal history.

Moreover, the AAO finds the applicant's claim that it was the home study preparer's fault for not asking for more information to be disingenuous. While the applicant did answer "yes" to the agency questionnaire question about "criminal arrest and history," and while it is clear that [REDACTED] did not review the questionnaire response and ask specific questions about [REDACTED]'s criminal history during the applicant's interview, the record reflects that the applicant and his wife were aware that they needed to provide the home study agency with detailed information and documentation regarding any arrest and criminal history. Their failure to provide full details about [REDACTED]'s criminal history on the home study agency application may be understandable. The applicant and his wife's failure to provide information about [REDACTED]'s criminal history during their home study interview, and their statement instead, that they had no arrest or criminal history when asked generally by the home study preparer, is not understandable.

The AAO finds that [REDACTED]'s arrest and conviction for prostitution, and her subsequent continued involvement in illegal prostitution, is information that is material to a discretionary determination of whether the applicant and his wife can be expected to provide proper care and a suitable home to an adopted orphan. The AAO finds further that the evidence reflects that the applicant and his wife intended to conceal [REDACTED]'s criminal history from the home study preparer and from CIS. The AAO notes further that the applicant's initial home study report lacks any discussion about [REDACTED]'s criminal history, and the subsequent updated home study report lacks a meaningful discussion and analysis of the applicant and his wife's ability to provide proper care and a proper home environment in light of [REDACTED]'s criminal history, and their failure to disclose [REDACTED]'s criminal history. The updated home study report additionally lacks an explanation as to why the agency recommended the applicant's household for adoption of an orphan, taking into consideration the complete record of [REDACTED]'s criminal past.

Based upon a full review of the record, the AAO finds that the concerns raised in the district director's decision, relating to [REDACTED]'s criminal history and the applicant and his wife's ability to provide proper care and a suitable home to two orphan children are documented, valid and material. The AAO finds that the applicant did not overcome the district director's finding that he and his wife failed to establish they could provide proper care and a suitable home to two adopted orphan children. The appeal will therefore be dismissed and the Form I-600A application will be denied.

ORDER: The appeal is dismissed and the application is denied.