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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: SPM07365400005

Office: ST. PAUL, MN Date:

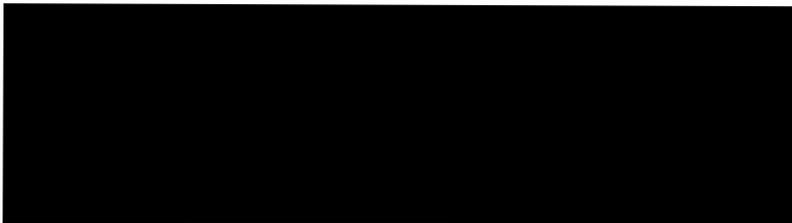
JAN 11 2008

IN RE: Applicants:
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, St. Paul, Minnesota, denied the application for advance processing of an orphan petition. The applicant filed both an appeal and a motion to reconsider the denial. The field office director denied the motion, certified her decision, and forwarded the appeal to the Administrative Appeals Office. The director's decision on certification will be withdrawn. The appeal will be sustained and the application will be approved.

The applicant filed the Form I-600A, Application for Advance Processing of Orphan Petition (Advance Processing Application) on September 19, 2007. The applicant is a thirty-six-year-old married citizen of the United States, who, together with his spouse, has adopted a Chinese child, [REDACTED] (now known as [REDACTED]).

The field office director determined that the applicant and his spouse had failed to establish that proper care will be furnished to the child if admitted to the United States. Specifically, the director noted that the applicant had been arrested and convicted of Driving While Under the Influence. The director further noted that the applicant remained on probation until February 2009. Given the type and recency of the arrest, and the fact that the applicant continued to be on probation, the director denied the application for advance processing.

On appeal, the applicant, through counsel, asserts that his arrest was an isolated incident. The applicant further claims that his application should be approved based on an updated home study prepared by Children's Home Society, Inc. of Minnesota. The applicant maintains that he has been upfront about the arrest, has been evaluated by a psychologist who determined that he did not have any susceptibility to alcohol or other addiction, and has completed all court requirements such that probation has been terminated by the court.

The AAO notes that petitioning for an orphan involves determining that the prospective adoptive parents can provide a proper home environment and on their suitability as parents. This determination is based primarily on the home study report and fingerprint check results, and it is essential for the protection of the orphan. Knowledge of an applicant's arrest and conviction information is clearly essential for a proper decision regarding whether an applicant will provide proper care to an adopted orphan.

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

8 C.F.R. § 204.3(a)(2) clarifies 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.

8 C.F.R. § 204.3(e) provides in pertinent part that a home study must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan, including a review of the applicant's criminal history.

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 finds that the applicant's conviction for Driving While Under the Influence appears, as he claims, to have been an isolated incident. The AAO notes that the Updated Home Study Report reflects that the applicant was re-approved by the home study preparer as a suitable parent after a thorough review of the circumstances surrounding the applicant's arrest. The Home Study Report preparer opined that the applicant's arrest "was an isolated incident and not one indicative of an addiction, drinking problem or dysfunction." *See Updated Home Study Report at 3.* The record contains a report submitted by [REDACTED] which indicates that the applicant has "no indications of problems with chemical dependency or other addictive predispositions," and that "[h]is philosophy of parenting and his understanding of developmental stages is appropriate, informed and represents appropriate attitudes and knowledge. *See I* [REDACTED]'s Report at 2. [REDACTED] further stated that there was "no basis for any concerns related to further alcohol abuse." *Id.* The record also contains that certified copy of the Modification of the applicant's sentence indicating that the applicant has been discharged from probation. *See Certified Copy of Modification of Sentence, dated November 20, 2007.* While the Modification requires that the applicant report back to the Court four times over the course of the next year, the AAO does not find that this outweighs the professional opinions regarding the petitioner's suitability as a parent. In view of the evidence in the record, the AAO finds that there are no concerns with respect to the applicant's recent arrest and his ability to provide proper care to an adopted orphan.

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 director's decision is withdrawn. The appeal is sustained. The application is approved.