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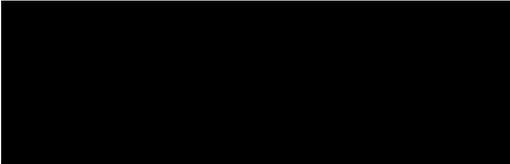
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: Office: ATLANTA, GEORGIA

Date: FEB 09 2005

IN RE: Petitioner: [Redacted]
Beneficiary: UNNAMED

PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF PETITIONER:

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.

Maif Johnson

RP Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director of the Citizenship and Immigration Services (CIS) Atlanta, Georgia, district office denied the Application for Advance Processing of Orphan Petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on March 22, 2004. The applicant is a 40-year old married citizen of the United States who, together with his spouse, seeks to adopt a child.

The regulation at 8 C.F.R. 204.3(e) states, in pertinent part:

(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.* The home study must include a discussion of the following areas:

(i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

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(iii)(B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including

mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

* * *

(D) *Failure to disclose or cooperate.* Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents . . . to the home study preparer and to [CIS], **may result** in the denial of the advanced processing application or, if applicable, the application and orphan petition

[Emphasis added.]

The original home study report, dated April 27, 2004, states the following:

When asked if he had ever been arrested or convicted of a misdemeanor or felony **as an adult**, [the applicant] stated that he had not.

[Emphasis added.]

On August 28, 2004, the district director requested the applicant to have the home study preparer submit an addendum to the home study and address the applicant's and his spouse's response to whether either one "has a criminal history (ever been arrested, cited, charged, indicted, fined, or committed a crime.)"

The home study preparer submitted an addendum to the home study indicating that the applicant and his spouse "were both asked separately if either of them had any criminal history." In response to the question posed by the home study preparer, the applicant and his spouse both responded that "they did not have any criminal history."

In the decision dated September 22, 2004, the district director noted the FBI "rap sheet" from the Federal Bureau of Investigation (FBI) contained in the record reflects that the applicant was arrested on July 30, 1981 for damaging a building using explosives and malicious damage to personal property. Based upon the applicant's denial of criminal history to the home study preparer, and in response to the district director's direct question, the district director determined that such a denial "cast serious doubt not only on [the applicant's] credibility, but also [on the applicant's] ability to honestly and accurately respond to questioning in this matter."

On appeal, [redacted], the executive director of the applicant's home study agency, indicates that she reviewed the applicant's file and found documentation establishing that the applicant did, in fact, inform the home preparer of his past arrest. In her letter, [redacted] states:

During the time of their home study process, [the applicant] DID in fact disclose [his] arrest as a minor to their social worker, [redacted]. . . I have checked [the applicant's] file for

any documentation of this disclosure and found that [the applicant] did tell [the home study preparer] about the arrest. This information is on file at Genesis Adoption, in Alpharetta, GA.

* * *

Since [the applicant] was under the age of 18 years, the record was expunged and although he will never forget this situation, being a young man he didn't realize the effect of the arrest or know it would come up later in his life and cause such an embarrassing situation. Although, being the honest man that he is, he spoke with [the home study preparer] about his experience. [The home study preparer] decided that because the record should have been expunged and the GCIC certificate of clearance came back with no record, that it wasn't necessary to add this information into the homestudy . . . We at Genesis Adoptions take full responsibility of this error and ask that it is not in anyway [be] held against the [applicant's] family. This is an unfortunate reality that the [applicant] has had to learn the hard way. I cannot express to you enough about this couple being honest, well mannered, responsible and more than adequate [sic] parents [to] orphan children from Russia .

* * *

I can assure you that if we here at Genesis Adoptions had any reservations about this couple adopting, we would surely not have approved their homestudy.

[The applicant] WAS honest about his arrest, and it would be tragic to deny their approval to adopt orphans based on the decision of the social worker not to add this information in the final report.

[The home study preparer] is no longer an employee of Genesis Adoptions.

█ does not identify what information was "found" in the applicant's file to lead her to believe that the applicant revealed his arrest during the initial home study. Though █ claims that the applicant's arrest history "is on file" and that the applicant did willingly admit such information during the preparation of his home study, █ does not produce any such documents on appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

█ provides no explanation as to why this information, though apparently known by her agency, was not noted in the original home study. Further, █ does not explain why the agency issued an even stronger statement confirming that the applicants denied any criminal history whatsoever in the addendum to the home study which specifically requested information related to the applicant's arrest. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this instance, though given ample opportunity to disclose his arrest and present such facts under his own volition, the applicant consistently denied any history of arrest. Though 8 C.F.R. § 204.3(e)(2)(iii)(D) permits, but does not require, denial of the application or petition on the basis of the petitioner's failure to disclose an arrest or other adverse information, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.¹

On appeal, the applicant submits a letter detailing the circumstances surrounding his arrest for damaging property with firecrackers when he was a juvenile. The applicant states:

In my teenage years, I suffered from teenage stupidity in believing I was invincible & smarter than the police. I believed I was "cool" when in fact, I was a typical delinquent. I had instigated, participated in all manner of teenage mischief that included such items as spray painting graffiti, wreck-less driving (speeding), underage drinking, jumping over things on my motorcycle and smoking marijuana. I was definitely on the wrong path.

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The resulting trial was held in magistrate court (no jury), and we were convicted of a misdemeanor (personal property damage & damaging a building) and imposed a fine, which we paid (no jail time).

Astonishingly, in this letter, the applicant also admits to a second arrest. He states:

A few months after the trial, I was arrested again for simple possession, drinking under age & speeding/running from police, as a minor.

I received a strong "talking to" from [a detective], my attorney & [the judge] to straighten up my act & was then offered pre-trial intervention. I was told that since I had committed these acts as a minor, and if I successfully completed pre-trial intervention, my record would be expunged, and be able to believe none of this ever happened. Giving me a new lease on life, beginning my adulthood with a clean slate. I learned a great deal from others while I was in the process of community service, and included another portion of the PTI called the Scared Straight Program

Beyond the decision of the district director, it is noted that the record does not contain a certified disposition for either of the applicant's arrests.² Moreover, as this is the first time the applicant has indicated an arrest for simple possession, under-age drinking, speeding, and running from police, the applicant's home study is inadequate as it does not address this additional arrest. The home study preparer is required to evaluate the suitability of the applicant for adoptive placement in light of all arrests.³ For these additional reasons, the application may not be approved.

¹ See 8 C.F.R. § 103.2(b)(14).

² See 8 C.F.R. § 204.3(e)(2)(iii)(B).

³ See 8 C.F.R. § 204.3(e)(2)(iii)(B).

The burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.