



U.S. Citizenship
and Immigration
Services

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JUL 19 2005

[Redacted]

FILE: [Redacted]

OFFICE: Philadelphia

DATE:

PUBLIC COPY

IN RE: Applicant:
Beneficiary:

[Redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania district office denied the Application for Advance Processing of an 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 (I-600A Application) on August 26, 2004. The applicant is a 48-year-old married citizen of the United States, who together with his spouse, seeks to adopt two orphan children from Kazakhstan.

The district director determined that in 1992, the applicant was found guilty of assault against his ex-wife. The district director subsequently denied the I-600A application because the applicant failed to submit documentation relating to the final disposition and judicial action in his case. The district director determined further that the home study agency had failed to properly evaluate the applicant's rehabilitation and had failed to properly discuss its approval of the applicant's household for adoption, in light of the applicant's criminal history.

On appeal, the applicant submits a certified Lebanon County, Pennsylvania Probation Department letter and a certified copy of a page from the Lebanon County, Pennsylvania Court reflecting that he was found guilty of Simple Assault, that he received a suspended sentence on December 9, 1992, that he was placed on twelve months probation, and that restitution, fines and court costs were paid. The court document additionally remarked that the applicant must continue, and satisfactorily complete his current counseling program with Catholic Charities. The applicant asserts that his criminal incident occurred thirteen years ago and that he has no other criminal history. He concludes that the evidence establishes he is capable of providing proper care and a suitable home to an adopted orphan.

Section 101(b)(1)(F)(i) of 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 and his spouse 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. 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) states in pertinent part:

(e) **Home study requirements.** For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. . . . A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. . . . In addition to meeting any State, professional, or agency requirements, a home study must include the following:

....

(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:

....

(iii) History of abuse and/or violence.

....

(A)(2) Inquiring about abuse and violence. The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse, sexual or child abuse, or domestic violence, even if it did not result in an arrest or conviction. . . .

(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 . . . 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. . . .

(C) Evidence of rehabilitation. If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs

which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent (Emphasis added).

The record reflects that the district director informed the applicant on September 28, 2004, that his home study report did not conform to regulatory requirements as set forth in 8 C.F.R. § 204.3. The district director requested that the home study agency perform a new home study evaluation that fully discussed the applicant's rehabilitation and his ability to provide proper care to an orphan in light of his criminal history. The district director additionally requested evidence that the terms of any criminal sentence were complied with, and the district director requested a signed statement from the applicant describing the criminal incident.

On October 29, 2004, the district director denied the I-600A application because the applicant failed to submit evidence of his rehabilitation and certified copies of any final disposition and judicial action relating to the criminal incident, and because the home study agency failed to properly evaluate the applicant's rehabilitation and failed to properly discuss their approval of the applicant's household for adoption, in light of the applicant's criminal history.

The AAO notes that on appeal the applicant submitted certified copies of his criminal sentence and of his compliance with the terms of the sentence. The applicant also submitted a signed statement regarding the criminal incident.

Amongst other things, the applicant states in his November 23, 2004, personal statement that he attended Catholic Charities counseling on his own for about six months and that after six months, his Catholic Charities counselor told him he did not need to see her anymore.

The record contains a November 22, 2004, letter signed by the Associate Executive Director of Catholic Charities Diocese of Harrisburg, Pennsylvania, stating their records reflect the applicant received counseling from August 19, 1992 to May 1, 1996. The letter states that the applicant's records were destroyed and that it is therefore impossible for the agency to address the nature and success of the counseling the applicant received. The letter states further that the applicant's Catholic Charities therapist retired, but that a telephone conversation with her revealed she had no concerns about the progress of the applicant's treatment and that the applicant made progress and was discharged according to the treatment plan. According to the letter, the therapist stated further that she recalled nothing that would concern her about the applicant's desire to adopt a child.

The record contains a second Catholic Charities letter, dated November 24, 2004, stating that the dates of counseling service discussed in the November 22, 2004 letter, reflect the opening and closing dates of the applicant's record. The letter additionally states that it is the Associate Executive Director's understanding that the applicant did not actually receive services for that length of time and that his case was closed several years after he finished services.

The AAO finds that the Catholic Charities letters and personal statement information contained in the record fail to provide details regarding the nature of the counseling that the applicant received or the success of the counseling. The evidence fails to demonstrate or discuss any diagnosis made during the applicant's treatment, the extent and type of progress made during treatment, the exact length of his treatment, or any professional information relating to whether or not the applicant was found to be rehabilitated.

The record additionally contains the applicant's initial Home Study report, dated July 24, 2004, an Adoption Home Study Addendum, dated October 4, 2004, and an Adoption Home Study Addendum Update, dated November 19, 2004.

The July 2004, Home Study Report (Report), prepared by [REDACTED] Adoption Social Worker, states in its "Police and Child Abuse Clearances" section that the applicant has one incident of criminal behavior that occurred on January 5, 1992. The report states that the applicant struck his ex-wife in the face during a heated argument, that he was arrested, that he pled guilty, that he received probation from 12/9/92 to 12/9/93, and that he paid a fine. The report states that the applicant regrets the incident and that the applicant sought religious counseling at the time. The report contains no other discussion about the applicant's criminal history or rehabilitation. The report subsequently states that the home study agency highly recommends and approves the applicant and his family for the adoption of two orphan children.

The October 2004, Home Study Addendum (Addendum), prepared by [REDACTED] repeats in its "Police and Child Abuse Clearances" section that the applicant struck his ex-wife in the face during a heated argument on January 5, 1992. The Addendum states that the applicant was arrested for simple assault and that he pled guilty and received a fine and one year probation. The Addendum repeats that the applicant regrets the incident and that he sought religious counseling. The Addendum adds that the counseling was performed through Catholic Charities for a six-month period in 1992, and that the applicant is presently requesting a state pardon. The Addendum additionally states that the applicant is open to any post placement counseling if necessary, and it adds the applicant's present wife's statement that she has no history of domestic violence with the applicant. The addendum contains no other discussion about the applicant's criminal history or rehabilitation, and the agency restates that it highly recommends and approves the applicant and his family for the adoption of two orphan children.

The November 2004, Home Study Addendum Update (Update) prepared by [REDACTED] repeats the "Police and Child Abuse Clearances" information mentioned above. The Update adds that in light of the applicant's criminal history, he was "counseled about the past incident with the agency to the extent that he clearly explained the circumstances and he regretted his actions." The Update states further that the applicant believes the counseling he received from Catholic Charities helped him deal with his feelings towards his ex-wife. The Update subsequently provides the home study preparer's impressions that during her interactions with the applicant, he presented himself as calm and in control of his emotions, that he loves and adores his family, and that he has done a wonderful job parenting their previously adopted Vietnamese son. The Update concludes that the agency highly recommends and approves the applicant and his family for the adoption of two orphan children. The Update contains no evidence relating to any counseling provided to the applicant by the home study agency, and the Update contains no other discussion or evidence relating to the applicant's rehabilitation or criminal history.

The AAO finds that the Home Study Report, the Home Study Addendum and the Home Study Addendum Update (Home Study Reports) lack a detailed or meaningful discussion of the applicant's criminal offense.

The home study reports also lack an informed discussion relating to the nature, treatment and success of any counseling received by the applicant, and they lack evidence of rehabilitation by the applicant. Accordingly, the AAO finds that the applicant has failed to submit a home study report that properly evaluates the suitability of the applicant's home for adoptive placement of an orphan in light of the applicant's criminal history, as set forth in 8 C.F.R. § 204.3(e)(2)(iii)(B). The applicant additionally failed to submit a home study report that satisfies the evidence of rehabilitation requirements set forth in 8 C.F.R. § 204.3(e)(2)(iii)(C).

In visa petition proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. 1361. The applicant has failed to present sufficient evidence to overcome the district director's decision to deny the I600A application. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.