U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: ATLANTA, GEORGIA Date: NOV 05 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The District Director of the Atlanta, Georgia, Citizenship and Immigration Services (CIS) district office denied the Application for Advance Processing of Orphan Petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to the district director for further consideration and entry of a new decision.

The application was denied by the district director based on the finding that the prospective adoptive parent failed to demonstrate "good moral character." Upon review of the evidence contained in the record, we find that district director's decision regarding the prospective adoptive parent's good moral character cannot be supported and will remand the case to the district director in accordance with the discussion below.

The record reflects that the prospective adoptive parent was arrested on three separate occasions: April 20, 1995 for speeding and driving under the influence; November 13, 1999 for driving with a suspended license; and November 14, 2002 for theft by shoplifting.

The record further reflects that on January 22, 1996, the prospective adoptive parent pled nolo contendere to two counts of driving under the influence, was placed on 12 months probation, and sentenced to 40 hours of community service. (Docket no. [redacted] in the State court of Fulton County, Georgia). The record also reflects that, though arrested, the charge against the prospective adoptive parent for driving with a suspended license was in error and subsequently dismissed on March 22, 2000. (Police Department Case No [redacted] in Alpharetta, Georgia). Finally, the record reflects that on July 25, 2003, the prospective adoptive parent was discharged from her probation for shoplifting after successful completion of six months of probation. (Docket no. [redacted] in the State court of Forsyth, Georgia).

The prospective adoptive parent was forthright and honest in her admission to the district director and her home study preparer. Further, in her written statements, the prospective adoptive parent acknowledges her mistakes and takes full responsibility for her actions. We note that it has been nearly 10 years since she was arrested for driving under influence. Since that time, there is no evidence of further alcohol or drug related incidents. It is also important to note that the record contains no evidence that the prospective adoptive parent has any history of alcohol abuse or substance abuse. Additionally, we find the prospective adoptive parent's explanation regarding the shoplifting offense to be reasonable given the fact that she has no prior record and the amount of money involved. As such, we do not find the record supports a finding that the prospective adoptive parent lacks good moral character, that she is not suitable as a parent, or that she is not able to provide a proper home environment.

However, despite this determination, a review of the record reveals additional issues that must be addressed in order to complete adjudication of the application. Specifically, though the record reflects that the prospective adoptive parent has an additional adult who resides in her home, we find the home study does not properly or adequately assess this adult.

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

If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section.[1]

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[1] The specific section headings referred to in 8 C.F.R. § 204.3(e) are: *Personal interview(s) and home visit(s); Assessment of the physical, mental and emotional capabilities of the [additional adult member] to properly parent the orphan; History of abuse and/or violence; Previous rejection for adoption or prior unfavorable home study; and Criminal history.*

Further, the regulation at 8 C.F.R. § 204.3(2)(iii)(B) states, in pertinent part:

Information concerning history of abuse and/or violence . . . 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.**

[Emphasis added.]

In the initial home study provided by the prospective adoptive parent, the home study preparer mentions that the prospective adoptive parent "and her friend hold a mortgage on their [sic] home." Despite this acknowledgment, the home study preparer does not provide any assessment of Ms in accordance with paragraphs (e)(1), (e)(2)(i), (iii), (iv), or (v), as required by 8 C.F.R. § 204.3(e).

On February 10, 2004, the prospective adoptive parent submitted an updated home study. The updated home study reflects that Ms. was asked about a history of abuse, violence, and her criminal record, as well as her economic and financial condition. There is, however, no indication that the home study preparer assessed Ms. physical, mental, and emotional capability to properly parent in accordance with 8 C.F.R. § 204.3(e)(2)(i). Further, the record contains no evidence that any check was made regarding Ms. with any of the available child abuse registries in accordance with 8 C.F.R. § 204.3(e)(2)(iii)(A). The record also does not demonstrate that the home study preparer asked Ms. whether she had ever been rejected for adoption or had a prior unfavorable home study in accordance with 8 C.F.R. § 204.3(e)(2)(iv). Finally, though Ms. disclosed a 1985 arrest for driving under the influence, the record does not contain certified copy of the final disposition for this arrest or a signed statement by M giving details about the incident, as required by 8 C.F.R. § 204.3(e)(2)(iii)(B).

Accordingly, the case shall be remanded to the district director to request an additional update to the home study as discussed above. Further, the district director should request that M submit a certified copy of the final disposition for her arrest, as well as a signed statement giving details of the incident. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.