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FILE:



OFFICE: KANSAS CITY (ST. LOUIS), MO DATE: SEP 28 2007

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:



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

The applicant filed the Form I-600A application on July 25, 2006. The applicant is a 48-year-old divorced citizen of the United States, who seeks to adopt one orphan child from Guatemala.

The district director concluded that the evidence contained in the record failed to establish the applicant would be able to provide a proper home and proper care to an infant or young child.

On appeal the applicant asserts, through counsel, that the conclusions contained in the district director's decision are not supported by the home study report or other evidence contained in the record. Counsel indicates that the applicant's due process and equal protection rights were denied because the district director did not notify the applicant of the concerns presented in the denial letter, and because the district director did not request an expert opinion or other evidence to address the concerns raised in the denial letter. The applicant requests, through counsel, that his Form I-600A application be approved, or in the alternative that the Form I-600A application be reconsidered. The applicant submits a new letter from the home study preparer. The applicant also submits a letter evaluating the applicant's suitability as a parent, prepared by a licensed clinical social worker.

Counsel for the applicant also requests oral argument before the AAO. Under 8 C.F.R. § 103.3(b), counsel must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument, and 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 request will therefore be denied.

The applicant indicates on appeal that the district director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence from the applicant before denying the application. The cited regulation requires the district director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The AAO notes that the district director is not required to issue a request for further information in every potentially deniable case. If the district director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The AAO notes further that even if the district director did commit a procedural error by failing to solicit further evidence from the applicant, it is not clear what remedy would be appropriate beyond the appeal process itself. In the present matter, the applicant has in fact supplemented the record on appeal. It would therefore serve no useful purpose to remand the case to afford the applicant the opportunity to supplement the record with new evidence.

The regulations provide in pertinent part 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 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. (Emphasis added.)

Based on a review of the petitioner's July 26, 2006, Home Study Report and a subsequent November 2006, phone conversation with the home study preparer which clarified that the applicant was involved in a same-sex relationship with his roommate, [REDACTED] the district director found that the applicant was "in the developmental stages of establishing his own sexual and emotional identity," that he was "in a transitional and unstable period physically and emotionally," and that he failed to demonstrate that he would be able to provide proper care to an adopted child. The district director noted that the applicant had been divorced for less than a year, and that in the last two years he had become involved in a same sex-relationship which led to tensions and distant contact with his family. The district director noted that the adopted child's bedroom would be located across the hall from the applicant and his partner's bedroom. The district director noted further that the applicant had not yet informed his grown daughter of his adoption plans because she has bipolar disorder and is emotionally vulnerable. The district director found that an adopted infant or young child would need to receive acceptance within the applicant's immediate and extended family, as well as from the community at large, and the district director concluded that the evidence reflected that the applicant was not currently capable of providing the stable home and family life an adopted infant or young child would need.

The AAO notes that a subsequent letter from the home study preparer, and an assessment letter by a licensed clinical social worker submitted on appeal, reflect that the applicant was found to be a suitable candidate for adoption of a child, and that the applicant's same-sex relationship with [REDACTED] did not alter the determination that the applicant would be able to provide proper care and a suitable home to an adopted child.

The record contains the following evidence relating to the applicant's ability to provide proper care and a suitable home to an adopted infant or young child:

A July 26, 2006, Home Study Report prepared by Children of the World, Inc., home study preparer, [REDACTED], reflecting in pertinent part that the applicant was married for over 20 years before separating from his wife in 2001, and obtaining a divorce in September 2005. The applicant has two children, a son (19 years old, and in college) and a daughter (23 years old, and a college graduate.) The applicant's daughter has a history of bipolar disorder and is on medication. She presently lives with her mother and has regular contact with the applicant. The home study report notes that the applicant has not informed his daughter of his plans to adopt an infant or young child due to her vulnerable emotional state. The home study preparer states that the applicant has regular contact with his son, and that his son supports the applicant's adoption plans. The home study report notes that since his divorce, the applicant has had a distant relationship with his parents and three siblings. The home study report indicates that the applicant has lived with a roommate/friend [REDACTED] for over two years. [REDACTED] owns the home and the applicant contributes rent. The applicant has no health issues and no criminal history or history of abuse. [REDACTED] has no health issues, however he was arrested in July 1999, and found guilty of Misdemeanor Possession of Controlled Substance (Marijuana) in May 2000. The home study preparer states that [REDACTED] criminal history does not affect the approval of the applicant as a suitable adoptive

parent. The home study preparer notes that [REDACTED] provided a written explanation of the circumstances of his arrest and conviction, that he successfully completed an adult drug education program, and that he no longer uses marijuana. The home study report indicates that the applicant has a parenting support system in place made up of many close friends, and the home study preparer refers to five letters of reference from family and friends recommending the applicant as an adoptive parent (not included in the record.) The home study preparer additionally notes that the applicant has extensive parenting experience through the raising of his own children. The home study report indicates that the applicant wants to adopt a male infant or young child up to one years old from Guatemala. The home study preparer concludes that the applicant is a "responsible, caring man who is appropriately motivated to adopt from Guatemala," and the applicant is approved to adopt a child between the ages of newborn to two years from Guatemala.

An October 2, 2006, Addendum to Adoption Home Study clarifying that the applicant is "approved to adopt ONE child of either gender, between the ages of newborn to two years from Guatemala," and that he "satisfactorily met all guidelines and pre-adoption requirements."¹

A December 28, 2006, letter from the home study preparer stating in pertinent part that she was contacted telephonically by a CIS employee on November 3, 2006. The home study preparer indicates that she was asked to clarify the relationship between the applicant and his roommate, [REDACTED] and that she confirmed that, although not specifically stated in her home study report, the applicant is involved in a same-sex relationship with [REDACTED]. The home study preparer states that she offered to prepare a home study addendum addressing and/or clarifying the relationship and its affect on her approval decision, but that the CIS employee told her it was not necessary to prepare an addendum. The home study preparer states her belief that she prepared her home study report in accordance with regulations, and she states that she informed the CIS employee that she continues to recommend the applicant as a suitable prospective adoptive parent, and that no evidence indicates that he and his home would not be suitable.

A December 26, 2006, letter prepared by licensed clinical social worker (LCSW) [REDACTED] stating in pertinent part that she first met with the applicant and [REDACTED] in 2005, when they discussed the possibility of adoption, the adoption process, and other life and home changes necessary to provide a stable and loving environment for a child. [REDACTED] states that she reinterviewed the applicant and [REDACTED] after the denial of their Form I-600A application, and she states that the present letter focuses on the issues and concerns raised in the CIS decision letter. Based on her interview, [REDACTED] notes that many of the applicant's choices to stay married were made out of his concern for the best interests of his children. [REDACTED] notes further that the applicant's relationship with [REDACTED] is over two years old, and the letter states that the applicant's relationship with [REDACTED]

¹ The record reflects that the district director requested clarification on this issue based on the fact that the applicant stated in his Form I-600A application that he wanted to adopt two children.

[I]s not a whim, or a result of instability or lack of clarity in his identity or personality. [REDACTED] is very comfortable in his sexual identity and in his choice of life and relationships. He speaks deeply about the honesty and problem-solving capacity he and [REDACTED] both share. He is clear that this is the best relationship he has had and one that he expects to last for the rest of his life.

[REDACTED] expresses no concern over the location of the applicant and [REDACTED] bedroom in relation to the bedroom of an adopted child, and she states that:

[I]t would be inconvenient for the child to be located elsewhere in the house. [REDACTED] [REDACTED] are two mature adults who, like any heterosexual couple, would be mindful of the presence of any child and would behave appropriately at all times. There is research that indicates that same-sex couples living in a committed long-term relationship provide an excellent upbringing for any child that they raise. Further, all the research indicates that sexual identity is not affected by the sexual identity of the parents.

[REDACTED] states that the applicant:

[H]as a large supportive community around him to assist with the raising of a child. Next door is the couple whom he has chosen as guardians in case of need. He has many friends at his work and in his social life who support this decision. [REDACTED] has a large and loving family who would be a part of the life of this child. [REDACTED] son is supportive of this adoption and is very sad that it may not happen. His daughter is presently unaware of the plans, but [REDACTED] has been working with a therapist to help him deal with any upset she may have while adjusting to this potential change in his life.

[REDACTED] concludes that it is her impression that the applicant is an excellent adoptive parent candidate.

The regulation provides in pertinent part at 8 C.F.R. 204.3(h)(2):

Director's responsibility to make an independent decision in an advanced processing application. 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.

Whether to deny the application is a matter entrusted to CIS discretion. The CIS determination is based on protective concerns for the orphan.

While the district director has the responsibility to make an independent decision, the AAO finds that the district director's concerns regarding the location of the prospective adoptive child's bedroom, as well as the district director's conclusions that the applicant is in the developmental stages of establishing his own sexual and emotional identity, and that he is in a transitional and unstable period emotionally, are unsupported by the evidence. The AAO finds that the district director's concerns regarding the permanence and stability of the applicant's home environment and of the applicant's parenting support network, and his ability to provide proper care are, however, derived from the evidence and valid.

The home study report reflects that since his divorce, the applicant has had a distant relationship with his parents and three siblings, and that only one of the applicant's two children is aware, and supportive of the applicant's adoption plans. Rather than relying on a family-based parenting support network, the letter from [REDACTED] and the home study report and subsequent letter reflect the applicant's strong reliance in parenting support, on a large, unspecified, network of close friends, and on [REDACTED] and [REDACTED] family. The home study report reflects further that the applicant does not own the home where he lives, nor is he the primary leaseholder or renter of his home. Rather, the applicant has lived in [REDACTED] home for approximately two years, and he pays monthly rent to [REDACTED]. The applicant is thus strongly reliant on [REDACTED] to provide a home environment for an adoptive child. The record additionally indicates that the applicant works full time. The record contains no discussion, however, of the applicant's child care plans. It is noted that in the present matter, the applicant seeks to adopt an infant or a young child up to one year of age. Given the age of the child that the applicant seeks to adopt, and an infant or very young child's demands and needs, the AAO finds the district director's concerns about the permanence and stability of the applicant's home and parenting support network to be justified.

The AAO finds that the record as presently constituted contains insufficient evidence to establish that the applicant is presently able to provide proper care and a suitable home environment to an adopted infant or young child, as required by 8 C.F.R. § 204.3(a)(2).

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. 1361. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.

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