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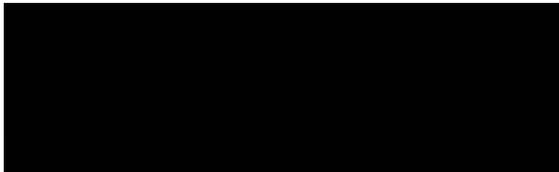
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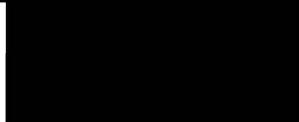
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FILE:



OFFICE: FRESNO, CA

DATE: FEB 10 2009

IN RE:

PETITIONER:  
BENEFICIARIES:



PETITION:

Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

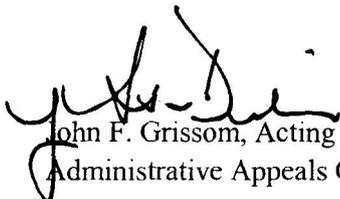
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Fresno, California, denied the Forms I-600, Petitions to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act (I-600 Petitions), on October 24, 2008. The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO notes that, though there are three separate petitions and three separate files for the beneficiaries, the petitions were addressed in a single decision by the director. As there is a single appeal, the AAO will also address the three petitions in this decision.

The petitioner is a 55-year-old unmarried (divorced) citizen of the United States who seeks to adopt the beneficiaries, who currently reside in the United Kingdom. The beneficiaries are the children of the petitioner's deceased sister. The petitioner filed the I-600 Petitions on or about October 16, 2007.

The director found that a review of the petitioner's record revealed a history of violent behavior towards women and children. *Director's Decision*, October 24, 2008. The director specifically noted an investigative report by the Stanislaus County Juvenile Court Commissioner in California on January 11, 1991 that indicated the petitioner struck his children with a rolling pin, television cord and a leather belt; and that he was arrested twice for spousal abuse, first on April 4, 1991, which resulted in a conviction for inflicting corporal injury on his spouse; and later on January 15, 2006, which resulted in a dismissed charge, as the victim failed to testify. *Id.* Based on this record, and despite a positive recommendation from a home study preparer, the director concluded that the petitioner had failed to establish that he would provide proper care to the beneficiaries as required under the definition of "orphan" at section 101(b)(1)(F) of the Act. *Id.* The I-600 Petition was denied accordingly.

On appeal, the petitioner asserts, through counsel, that although he was arrested, "some of the cases were dismissed" or the arrest did not result in a conviction; he attended counseling classes and received a good recommendation for his performance and completion of the counseling program; and the home study did not take issue with his suitability to provide for the beneficiaries. *Brief*, dated November 12, 2008, filed in support of the *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, November 19, 2008. The petitioner also notes that his work with the San Joaquin County Child Protective Services as an Immediate Response Social Worker involved child protection and counseling, and that his prior arrests and conviction did not prove to be a problem; and that his second daughter from his second marriage lived with the petitioner and maintained a good school record. *Id.* The petitioner claims that "[t]he incidents used to deny the petition are isolated incidents" and occurred almost 18 years ago. *Id.*

The issue on appeal, therefore, is whether the petitioner has established by a preponderance of the evidence that, despite his past record of child abuse and domestic violence, he is able to provide proper care to the beneficiaries. The AAO finds that he has failed to meet this burden.

U.S. Citizenship and Immigration Services (USCIS) may not approve an I-600 Petition unless satisfied that the petitioner will provide proper parental care to an adopted orphan. Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), defines the term "orphan" in pertinent part as:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) [of the Act], who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: ***Provided, That the Attorney General [now Secretary, Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States.*** . . . (emphasis added).

The regulation at 8 C.F.R. § 204.3(a)(1) provides that a child is eligible for classification as the immediate relative of a U.S. citizen if the child meets the definition of orphan contained in section 101(b)(1)(F) of the Act **and if the U.S. citizen seeking the child's immigration can document that the citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for the child.** In this regard, the regulations set forth the requirements of a home study, a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. 8 C.F.R. § 204.3(e).

#### Home Study Evaluation

A home study must include an “[a]ssessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.” 8 C.F.R. § 204.3(e)(2)(i). Any history of abuse must also be investigated, and the home study preparer must ask each prospective adoptive parent if 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. 8 C.F.R. § 204.3(e)(2)(iii). 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. *Id.* 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, along with documentation showing the final disposition, if any, of the incident; the petitioner must also submit a signed statement giving details including mitigating circumstances, if any, about each incident. *Id.* Despite a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may make a favorable finding if the petitioner has demonstrated appropriate rehabilitation; in such a case, the home study must include a discussion of the rehabilitation that demonstrates that the petitioner is able to provide proper care for the orphan. *Id.*

In this case, the petitioner submitted a home study prepared by [REDACTED], of African [REDACTED], an adoption agency licensed in California. The home study was based on an intake interview with the petitioner on April 12, 2007 and an individual interview and home visit on May 4,

2007; it was submitted to USCIS on December 11, 2007. The report discusses the petitioner's record as follows:

Fingerprint clearance by the Department of Justice reveals [the petitioner] has a criminal record of spousal abuse in April 9, 1991 [sic]. He attended anger management classes and the charge was dismissed after attending the diversion program (as verified by court documents, letters by [the petitioner] and a letter from Family Services written by [REDACTED]). Fingerprint clearance by the Department of Justice revealed that [the petitioner] was charged with spousal abuse on January 15, 2006 the [petitioner] was exonerated and the case dismissed. (as verified by court documents) [sic].

The child abuse clearance by the Department of Justice received on May 31, 2007 revealed a positive match for child abuse. The child abuse report was filed on October 25, 1990 by the Child Protective Services of Stanislaus County. Because of confidentiality issues and various Penal Codes, this agency has had difficulty obtaining an incident report from the Stanislaus County Child Protective Services. However this Social Worker has spoken to [the petitioner] about the incident, at length and read through other court documents to gain an understanding of the situation.

Clearly a child abuse incident had occurred on October 25, 1990 involving [the petitioner] and his daughter . . . for a full account see the attached document titled "Dispositional Report" filed March 18, 1991 . . . According to the report, the father did admit to striking his child. According to [the petitioner], his daughter was skipping out of school and things in their home had gotten out of hand. For this act, [the petitioner] was sent to counseling to learn about alternative parenting methods. Please see a letter from Family Service Agency written by [REDACTED]. According to the counselor, some of [the petitioner's] parenting methods and issues were culturally motivated. In the letter the counselor expresses the changes [the petitioner] had under gone through counseling and in his parenting ability.

According to [the petitioner] the case was closed and he was granted his children.

The home study's final "Evaluation and Recommendation" states in its entirety, "[The petitioner] is ready to adopt. He is a strong individual who is physically and emotionally stable, and has the financial means to raise children. He will provide a physically safe and loving home for his children and will give them the best education possible. [REDACTED] recommends [the petitioner] as an adoptive parent."

The information provided by the home study is neither complete nor accurate, and minimizes the seriousness of the petitioner's actions that resulted in findings of child abuse and two arrests, one of which resulted in a conviction, for domestic violence. While making a favorable finding, the home study fails to include the required discussion of rehabilitation that demonstrates that the petitioner is able to provide proper care for the beneficiaries. Moreover, the "Dispositional Report" referred to in

the home study makes it clear that the petitioner was involved in two separate child abuse incidents, in 1990 and again, in 1991, after being counseled and warned about using appropriate discipline. Failure to address these findings raises questions about the value of the home study's recommendation.

#### Evidence of Child Abuse and Domestic Violence

The official court records regarding the findings of child abuse in this case include Juvenile Dependency Petitions filed on January 16, 1991 by the Stanislaus County Department of Social Services on behalf of the petitioner's three minor children, in which the Department of Social Services petitioned the Juvenile Court to order that the children be detained on grounds of "immediate and urgent necessity for protection of minor." *Petitions to the Superior Court of California, County of Stanislaus, Sitting as the Juvenile Court*, January 16, 1991. The Department of Social Services alleges, in the case of each of the petitioner's three children:

That the minor . . . is at substantial risk of suffering serious physical harm inflicted nonaccidentally by the minor's father due to the father's pattern of corporal punishment in that approximately two weeks ago the father struck the [two female siblings] on the arm with a rolling pin. And, that in October of 1990, the father struck the [two female siblings] on the back and arm with a television cable cord. And, that prior to October 1990, the father had struck the [two female children] on several occasions with a television cable cord and a leather belt.

*Id.* In response, the Juvenile Court issued a Dispositional Report, referred to in the home study, *supra*. *Dispositional Report*, March 19, 1991. It described the circumstances leading to the filing of the Juvenile Dependency Petitions, finding that (1) previously, in October 1990, the eldest daughter, \_\_\_\_\_ had reported that her father had struck her with a television cable cord and that he had also struck her and her sister in the past with a leather belt; and (2) the petitioner had admitted to striking \_\_\_\_\_ with the television cord. *Id.* During the pending investigation \_\_\_\_\_ told Child Protective Services that her father had struck her and her sister with a rolling pin. *Id.*

In 1990, the parents were counseled and warned about using appropriate discipline, and the case was closed. *Id.* In 1991, however, the petitioner stated, "Punishing with love doesn't mean abusing. That's why I forgave them many times before I spanked them. When I spanked them, I spanked them in consciousness, not under the influence of drugs or alcohol, with care. They said I went overboard. I did it with care. I love my children. I did it with love. Whoever is judging should think if they would discipline the children or let them slide." *Id.*

The Juvenile Court's evaluation in the Dispositional Report noted that the petitioner's three minor children, age fourteen, thirteen and five years, were "before the Court on petitions alleging that they come under Section 300(a) of the Welfare and Institutions Code<sup>1</sup> due to the father's pattern of

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<sup>1</sup> Section 300(a) refers to a child who falls within the jurisdiction of the Juvenile Court who may be adjudged to be a dependent of the Court because "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."

corporal punishment putting the minors at risk of injury in that on different occasions he had struck the daughters with a rolling pin, television cord and leather belt.” *Id.* The evaluation also noted that the children’s mother pled no contest to the petitions on February 5, 1991, and their father pled no contest on March 1, 1991, adding that “[p]lacement preventive services were provided in the past; however, these services were unsuccessful in preventing the removal of the minor from the parents’ custody.” *Id.* Both parents were ordered not to use corporal punishment in disciplining the minors and to participate in appropriate counseling or therapy; Jackie was removed from the custody of her parents, and the two younger children were released to the custody of their parents under supervision of the Department of Social Services. *Id.*

After the Juvenile Court findings of child abuse, the petitioner was arrested, on April 5, 1991, and charged with a misdemeanor violation of Section 273.5 of the California Penal Code, “in that the [petitioner] did willfully, unlawfully, and feloniously inflict a corporal injury resulting in a traumatic condition upon [his spouse].” *Criminal Complaint*, Stanislaus County Municipal Court, April 12, 1991. While the record of proceedings lacks some of the court’s findings, the record includes a letter from the Chief Probation Officer to the Stanislaus County Municipal Court judge noting that the petitioner had been placed on diversion for domestic violence and recommending that “diversion be terminated as satisfactorily completed.” *Probation Officer Letter*, March 24, 1992. The record also shows that the petitioner was arrested a second time for domestic violence on January 15, 2006, and that no charges were filed. *Advisory from Office of the District Attorney, Stanislaus County*, January 23, 2006.

Although again, court records are absent, there is evidence that after the 1991 domestic violence conviction a court ordered the children to reside with their mother and have liberal visitation with the petitioner; the petitioner was placed in a diversion program; and, upon completion of the program, a visitation schedule between the petitioner and his children was established. *Letter from Children’s Welfare Services to Petitioner*, January 10, 1992.

#### Evidence of Rehabilitation

There is little evidence of rehabilitation in this case. In fact, the petitioner’s actions indicate that he has engaged in a pattern of abuse despite warnings and counseling, and despite successful completion of a court-ordered diversion program. A letter from Family Service Agency of Stanislaus County is included in the record, noting that the petitioner had attended nine counseling sessions regarding parenting issues and as part of the court diversion program for domestic violence. *Letter from [REDACTED] Registered MFCC Intern, to Department of Social Services*, January 21, 1992. The counselor stated that she had seen very significant growth and shifts, that the petitioner had separated from his wife and “has set up a stable household . . . and is in a satisfying relationship,” and that the counselor felt that the children were well cared for. *Id.* In 2006, however, the petitioner was again going through a divorce and was arrested after an altercation involving his wife and their child.

The petitioner submitted an “Explanation of Arrest Record” along with the home study in 2007. *Petitioner’s Statement*, May 3, 2007. Regarding the 1991 arrest and conviction for domestic violence, the petitioner stated that he was going through a divorce from his first wife in 1992, who

had previously claimed that he had bit her on her hand; he said he was arrested and charged for that and “there was evidence enough that I was asked to do some anger management classes.” *Id.* Regarding the 2006 arrest, he stated that he was going through a second divorce when his wife came to pick up their daughter “on a day that she was supposed to be with [the petitioner],” and, while protecting his daughter from being dragged away, “the mother fell outside of the door. . . . The mother called the Sheriff and [the petitioner] was arrested” but no charges were filed. *Id.* The petitioner’s explanations indicate that he takes no responsibility for his actions that resulted in two separate arrests and one conviction for domestic violence. He does not mention that he had a problem with anger management or needed any behavior modification; he does not claim to have made any behavior modification. His second arrest, in 2006 for domestic violence, and his failure to admit any responsibility for the incident are also troubling in light of his history.

In another statement, also submitted with the home study regarding the child abuse cases, the petitioner claims that his daughter was suspended from school and told the investigating social worker that he had hit her with a rolling pin, adding that there were no injuries documented on her and, at the time, he was going through a divorce with her mother. *Request for Review of Child Abuse Investigation*, June 18, 2007. He states that his daughter was taken from his home and added, “I agreed to counseling with a promise that after I did the counseling, everything will be dropped and no further action was warranted. I did the counseling and successfully completed all I needed to. I never revisited the issue because after I enrolled into counseling my children came to live with me and [have] lived with me ever since that time.” *Id.* He adds, “I feel that the truth was not told to me as I could have fought for what was true then that I had not abused my daughter [at] the time. No bruises or lacerations were found on any of the children. Law enforcement was not involved and above all my two younger children were left at home as there was no risk to them.” *Id.* The petitioner’s statement contradicts the home study findings and the Dispositional Report of the Juvenile Court of California, *supra*. As noted, the petitioner admitted, on two occasions, in 1990 and 1991, to having abused his children.

As with his explanation of his arrest record, his current statements regarding findings of past child abuse indicate that he takes no responsibility for his actions and fails to recognize the seriousness of his actions. He now contradicts his former admissions, stating that he agreed to undergo counseling so that charges would be dropped, but without mention of the need for anger management or other behavior modification. Indeed, the only evidence of rehabilitation in the record is the January 1992 letter to the Department of Social Services from a social worker who counseled him and a statement from a probation officer that the petitioner completed his diversion program in March 1992. *Letter from [REDACTED]*, *supra*; *Probation Officer Letter*, *supra*. This evidence has little weight in light of the petitioner’s repeat child abuse in 1991, after receiving counseling against corporal punishment; and, subsequently, two arrests for domestic violence.

### Conclusion

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The “preponderance of the evidence” standard requires that the evidence demonstrate that the petitioner’s claim is

“probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989) If the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring).

As noted above, a home study must include an “[a]ssessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.” 8 C.F.R. § 204.3(e)(2)(i). It must also contain an evaluation of the suitability of the home for adoptive placement or an orphan in light of any adverse history. 8 C.F.R. § 204.3(e)(2)(iii). In this case, the home study fails to meet these regulatory standards and fails to assess the petitioner’s ability to provide proper care to the beneficiaries in light of his history of child abuse and domestic violence. Moreover, evidence of rehabilitation is lacking, especially in light of the petitioner’s retractions of prior admissions of child abuse as well as his failure to take responsibility for his actions. Given his history of child abuse and domestic violence and his failure to take responsibility or acknowledge the seriousness of his actions, the petitioner’s 1992 completion of a diversion program and a social worker’s assessment that he had made changes in his life are insufficient to support a conclusion of rehabilitation or a positive recommendation by the home study preparer.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. Upon review of all of the evidence contained in the record, and for the reasons noted above, the AAO finds that the petitioner has failed to establish by a preponderance of the evidence that proper care will be furnished to the children if admitted to the United States. The beneficiaries, therefore, do not meet the definition of “orphan” as set forth in section 101(b)(1)(F)(i) of the Act, and the appeal will be dismissed

**ORDER:** The appeal is dismissed.