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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

F1

[redacted]

FILE: [redacted] Office: BOISE, IDAHO Date: APR 19 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600A, Application for Advance Processing of Orphan Petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the matter remanded for further processing and adjudication of any remaining issues.

The field office director denied the applicant's Form I-600A on the basis of his determination that an updated home study submitted by the applicant had "misrepresented information vital to proper evaluation." On appeal, the applicant submits additional information and testimony.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), states that U.S. Citizenship and Immigration Services (USCIS) may not approve an orphan petition unless satisfied that the petitioner will provide proper parental care to the adopted orphan.

The regulation at 8 C.F.R. § 204.3 states, in pertinent part, the following:

> (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. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children . . . In addition to meeting any State, professional, or agency requirements, a home study must include the following:
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> (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:
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> (i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. . . .*
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> * * *
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> (ii) *Assessment of the finances of the prospective adoptive parents. . . .*
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> * * *
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> (3) *Living Accommodations.* The home study must include a detailed description of the living accommodations where the prospective adoptive parents currently reside. . .

(4) *Handicapped or special needs orphan.* A home study conducted in conjunction with the proposed adoption of a special needs or handicapped orphan must contain a discussion of the prospective adoptive parents' preparation, willingness, and ability to provide proper care for such an orphan. . . .

* * *

(h) *Adjudication and decision.*—

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(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. If such consultations are unsatisfactory, the director may request a review and opinion from the appropriate State Government authorities.

The applicant is a forty-four-year-old citizen of the United States. Her husband is a forty-six-year-old citizen of the United States. They have been married since July 21, 1994, and have six biological children. The applicant filed the instant Form I-600A on September 11, 2009.

Upon finding the initial home study inadequate, the field office director issued a request for additional evidence on September 17, 2009. In particular, he found that the initial home study failed to properly evaluate the special needs of the petitioner's biological children and the suitability of the home to accommodate up to four additional children with special needs.

The applicant responded to the field office director's request for additional evidence on November 2, 2009, and submitted a new home study. Finding the applicant's response insufficient, the field office director denied the application on November 18, 2009. Citing several differences between the first and second home studies, the field office director stated that the second home study had "been altered from the original in such a way that it misrepresents information vital to proper evaluation."

The applicant submitted a timely appeal on December 18, 2009. On appeal, the applicant submits additional testimony and documentation.

In conducting its *de novo* review of the entire record of proceeding, the AAO notes first and foremost that whether to deny the Form I-600A is a matter entrusted to the discretion of USCIS, and

that this determination is based on protective concerns for the orphan. Having made that observation, the AAO turns to the specific discrepancies between the first and second home studies highlighted by the field office director in his November 18, 2009 decision. The discrepancies identified by the field office director fall into two categories: (1) discrepancies regarding the special needs of the applicant's biological children; and (2) discrepancies regarding the residence of the family. On a separate matter, the field office director found further that the applicant had failed to explain where the adopted child, or children,[1] would sleep.

With regard to discrepancies between the two home studies regarding the special needs of the applicant's biological children, the field office director noted that although the first home study stated that the biological children had been diagnosed with cerebral palsy and other special needs at birth, and that such special needs had required government services, due to such services, none of the children currently qualified for a diagnosis of cerebral palsy. That information, however, was absent from the second home study. With regard to the October 16, 2009 letters from regarding each of the biological children, which had been sent with the second home study, the field office director stated that because had not seen the children recently, USCIS could not consider his statements as an accurate description of the children's current medical or developmental needs. Finally, the field office director stated that USCIS had contacted the Idaho Department of Health and Welfare (IDCW), and that the IDCW had explained that although the symptoms of cerebral palsy can be improved significantly, cerebral palsy is a condition that cannot be cured. As such, the statement that the children once had cerebral palsy but no longer qualify for that diagnosis could not be accurate.

With regard to discrepancies between the two home studies regarding the residence of the applicant and her husband, the field office director noted that the first home study described the home as a three-story residence of 5,000 square feet, with four bathrooms, two kitchens, two living rooms, and two laundry rooms. The second home study, however, described the home as a two-story residence of 3,500 square feet, with three bathrooms, one kitchen, one living room, and one laundry room. Such discrepancies were not explained.

Finally, the field office director found that the information submitted by the applicant failed to explain which bedrooms were currently occupied, and which bedrooms the beneficiaries of the eventual orphan petition would eventually occupy. Absent such information, USCIS had no basis on which to make a determination that the applicant could provide proper care and support for up to four children with special needs.

The AAO will address each of the field office director's three areas of concern in turn.

I. Discrepancies between the two home studies with regard to the special needs of the applicant's biological children

The discrepancies identified by the field office director with regard to the special needs of the applicant's biological children were set forth above. On appeal, the applicant submits several items.

[1] The applicant has requested approval of up to four children.

First, the applicant submits what appear to be therapy notes. As these handwritten notes are not signed by anyone, and there is no indication as to who wrote them, they are of limited probative value. Nonetheless, the AAO notes that they indicate that all six of the applicant's biological children were released from Early Intervention (EI) services by the age of three with the exception of one child who continued speech therapy until the age of three and a half years.

Second, the applicant submits six letters (one for each child) from , of the Idaho Physical Medicine and Rehabilitation Center. The record indicates that saw each child on December 10, 2009. In each letter, discusses the child's past medical history and current state of development. The AAO takes particular note of the following language, which appears within the text of each letter:

> [The child] has an initial diagnosis of cerebral palsy. However, with review of [the child's] records and [the child's] history [the child] was given a diagnosis at birth of cerebral palsy secondary to some very mild physical attributes . . . which [the child] has easily outgrown.
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> ASSESSMENT:
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> 1. Normal development and physical abilities for a [each child's age]-year-old-child.
>
> PLAN:
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> 1. Recommend follow up on an as-needed basis only. [The child] is obviously very healthy and active and is doing very well in [the child's] current home environment.

Third, the applicant submitted letters from other medical services providers, who all attested to the children's good health.

Finally, the applicant submitted a December 16, 2009 letter in which she stated, in pertinent part, the following:

> For years our family room was turned into a therapy play room where we worked with our children following home therapy plans that were given to us as well as receiving the physical, occupational, and speech therapies in office. It became a way of life for us for many years that most of what we did was with a therapy purpose. The children thought they were just playing but it was "play with a purpose" as we were working on bring[ing] up their [muscle] tone, on posture, and proprioception or working on feeding issues and sensory issues.

> Most important to note [is that] our children were each given a good prognosis, when they were diagnosed with cerebral palsy as infants, of being able to overcome their issues and function normally if we worked hard with their therapies. Through early intervention, all kinds of therapies and a lot of hard work this goal was reached for each of our children by the time they were 3 years of age.

The AAO finds the applicant's submissions on appeal sufficient to satisfy the concerns of the field office director, and specifically withdraws his statements regarding misrepresentation on the part of the applicant. As the AAO noted earlier, whether to deny the application is a matter entrusted to the discretion of USCIS, and that determination is based on protective concerns for the orphan. While the AAO agrees that the statements made by the applicant in the first home study conflicted with other evidence of record, the record does not indicate that the applicant made those statements in a purposeful attempt to mislead USCIS about her children's medical conditions. To the contrary, the applicant disclosed the children's diagnoses at the time the petition was filed and, although such diagnoses were not referenced in the second home study, the letters from she submitted with that second home study did discuss cerebral palsy openly. The record, therefore, does not indicate that the applicant was attempting to misrepresent her children's health status.

As for the specific language contained in the first home study to which the field office director objected, which stated that her children no longer qualified for a diagnosis of cerebral palsy,[2] the AAO acknowledges that cerebral palsy cannot be cured. However, language contained at the website of the National Institute of Neurological Disorders and Stroke, which is operated by the National Institutes of Health, supports the proposition that although cerebral palsy cannot itself be "cured," its effects can be ameliorated:

> Cerebral palsy can't be cured, but treatment will often improve a child's capabilities. Many children go on to enjoy near-normal adult lives if their disabilities are properly managed. In general, the earlier treatment begins the better chance children have of overcoming developmental disabilities. . . .[3]

The AAO notes further statements regarding the children's original diagnoses of cerebral palsy at birth which, in his words, were made "secondary to some very mild physical attributes . . . which [they have] easily outgrown," which may even indicate some doubt on his part as to whether the original diagnoses were in fact accurate. The home study reflects that the applicant was approved by the home study preparer as a suitable parent. The AAO finds nothing in the record pertaining to the discrepancies between the two home studies with regard to the special

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[2] The AAO notes that this statement was made in the first home study, which was before the field office director at the time the request for additional evidence was issued. The field office director, however, did not address it in his September 17, 2009 request for additional evidence. The November 18, 2009 denial was the first occasion on which the field office director questioned that statement.

[3] National Institute of Neurological Disorders and Stroke, National Institutes of Health, *NINDS Cerebral Palsy Information Page*, http://www.ninds.nih.gov/disorders/cerebral_palsy/cerebral_palsy.html (accessed April 6, 2010).

needs of the applicant's biological children that would raise protective concerns for any future adopted children. That portion of the field office director's decision is, therefore, withdrawn.

II. Discrepancies between the two home studies with regard to the residence of the applicant and her family

The discrepancies identified by the field office director with regard to the residence of the applicant and her family were set forth above. Again, the first home study described the home as a three-story residence of 5,000 square feet, with four bathrooms, two kitchens, two living rooms, and two laundry rooms. The second home study, however, described the home as a two-story residence of 3,500 square feet, with three bathrooms, one kitchen, one living room, and one laundry room.

On appeal, the applicant submits a December 15, 2009 addendum that purports to explain the discrepancy between the first and second home studies. In the introductory paragraph to the addendum, the preparer states that "this worker did not clearly define the separate living spaces in the home," and that "[t]here was an inaccurate bedroom count in the first home study." The preparer explained further that although the square footage of the residence totals 5,000 square feet, a walkout basement, in which the applicant's husband's parents are living, is utilized as a separate residence (with its own kitchen, living area, etc.) and consists of 1,500 square feet. Thus, the applicant and her family live in 3,500 square feet of the home. The home consists of either two or three stories depending upon how the walk-out basement is counted. A physical layout of the home is also submitted on appeal.

Again, whether to deny the application is a matter entrusted to the discretion of USCIS, and that determination is based on protective concerns for the orphan. Here, the AAO finds that the applicant's submissions on appeal resolve the discrepancies identified by the field office director with regard to the applicant's residence, and finds them to have raised no protective concerns for any future adopted children. That portion of the field office director's decision is, therefore, withdrawn.

III. Proper living accommodations for up to four adopted children

The field office director also found that the applicant had failed to explain where the adopted child, or children, would sleep. The applicant submits such an explanation on appeal. The AAO finds the applicant's explanation reasonable, and finds no reason why the family cannot house another four children within their residence. That portion of the field office director's decision is, therefore, withdrawn.

IV. Conclusion

In accordance with the previous discussion, the AAO finds the applicant to have adequately addressed each of the three concerns raised in the field office director's decision. Whether to deny the application is a matter entrusted to USCIS discretion, and that determination is based upon protective concerns for the orphan. The AAO finds the record of proceeding, as it currently stands, to raise no protective concerns for the beneficiary, or beneficiaries, of the eventual orphan petition.

The home study reflects that the applicant was approved by the home study preparer as a suitable parent and, in addition, the home study reflects that the applicant has a stable home environment and a stable marriage. Review of the record of proceeding establishes that the applicant would be able to provide proper care to an adopted orphan, as set forth in section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(a)(1)(i). Accordingly, the AAO withdraws the field office director's November 18, 2009 decision denying the petition, and remands the petition for further processing and adjudication of any remaining issues.

The field office director may afford the applicant reasonable time to provide evidence pertinent to the resolution of any remaining issues. The field office director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The field office director's November 18, 2009 decision is withdrawn. The petition is remanded to the field office director for continued processing and eventual entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.