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FILE: AAO 05 08650 016 Office: ATLANTA, GA Date:

AUG 16 2005

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:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Atlanta, Georgia District office denied the Application for Advance Processing of an Orphan Petition (I-600A Petition). The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant filed the I-600A petition on October 16, 2003. The applicant is a 34-year-old married citizen of the United States, who together with her spouse, seeks to adopt a Russian child.

The district director denied the I-600A application based on the applicant's husband's criminal and substance abuse history. The district director found that the applicant failed to submit documentation relating to the final disposition and judicial action of two of her husband's arrests in 1978 and 1982. The district director additionally found that the applicant failed to submit evidence establishing that her husband was rehabilitated, and that she and her husband could provide proper care and a proper home environment to an orphan.

On appeal, the applicant submits a certificate stating that her husband completed a four-week Alcohol and Substance Abuse Program while he was in jail. The applicant additionally submits court documents relating to her husband's (Mr. [REDACTED] 1978 and 1982 arrests. The applicant asserts that Mr. [REDACTED] presently works with their church and that children naturally flock to him. The applicant indicates further that Mr. [REDACTED] has become a born again Christian and that he is a changed man.

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. (Emphasis added).

The fingerprint evidence contained in the record reflects that Mr. [REDACTED] has the following criminal history:

1) Arrested November 1978. September 1979 conviction for Burglary. 360 day confinement sentence suspended. Received two years probation and paid fine. (The AAO notes the applicant's submission of a February 5, 2005, certified letter from the Ramsey Municipal Court stating that the November 1978 complaint against Mr. [REDACTED] was referred to the prosecutor's office, that the office retained jurisdiction and that an indictment was returned against Mr. [REDACTED] on May 21, 1979. The letter contains no other information relating to the judicial disposition of this case.)

2) Arrested April 1982. February 1983 conviction for Trespassing. Sentenced to 3 months confinement. (The record contains a certified disposition from the Township of Mahwah, Bergen County Municipal Court reflecting that Mr. [REDACTED] was found guilty of Criminal Trespass on February 10, 1983.

3) Arrested July 1982. December 1982 convictions for Burglary and Attempt to Commit Burglary. An indeterminate/up to 5 year sentence of confinement. (The record contains a certified Judgment of Conviction and Order for Commitment from the Superior Court of New Jersey, County of Bergen, reflecting that Mr. [REDACTED] was found guilty of two counts of Attempted Burglary and four counts of Burglary.)

4) Arrested July 1984. Conviction for Driving Under the Influence. 30 day confinement sentence and fine.

5) Arrested January 1991. Convictions for Fraudulent Checks and two counts each of Burglary and Grand Larceny. Sentenced to 15 years confinement. (The record indicates that Mr. [REDACTED] was also found guilty of several traffic violations including Unsafe Motor Vehicle, No Drivers License in Possession, Operation of Uninsured Vehicle, Disregard of a Stop or Traffic Sign, and Open Container.)

The record contains an August 28, 2003, Certificate of Pardon from the South Carolina Department of Probation, Parole and Pardon Services, absolving Mr. [REDACTED] of all legal consequences for crimes and convictions related to his July 1984, DUI conviction, and his January 1991, Worthless Check, Burglary and Grand Larceny convictions, effective August 26, 2003.

The record additionally contains several statements written by Mr. [REDACTED] addressing the nature of his criminal and substance abuse history. With regards to his substance abuse history, Mr. [REDACTED] states in an April 23, 2004 statement that, since the age of fourteen or fifteen, he had an ever changing substance abuse problem, beginning with cigarettes, then beer drinking and marijuana, and later Class A, casual or recreational drug use. Mr. [REDACTED] states that his social acquaintances and his use of drugs and alcohol greatly influenced his decision to break into a doctor's office and on a different occasion a pharmacy in order to steal drugs. The AAO notes that these break-ins resulted in Mr. [REDACTED] subsequent 1991 convictions for Burglary and Grand Larceny.

Mr. [REDACTED] indicates in a statement written November 12, 2004, that during the first five years of his 1991 confinement he continued his substance abuse vices. Mr. [REDACTED] indicates that after the fifth year of his incarceration, he became an active, born-again Christian, and that his desire for, and motivation to use drugs and alcohol subsequently ceased. Mr. [REDACTED] states further that his faith and the support he received in and out of jail from family, friends and a loving church family have led to his rehabilitation and his changed life.

In addition to the statements written by Mr. [REDACTED] regarding his substance abuse history and rehabilitation, the record contains a November 5, 1991, South Carolina Department of Corrections, Statement of Participation stating that Mr. [REDACTED] participated in a four week Alcohol and Drug Education program and that his level of participation was good. The Statement of Participation reflects that it is not a statement of progress and that progress reports are available upon request by appropriate officials. The record additionally contains letters from Mr. [REDACTED] mother, the applicant, the applicant's parents, and four friends attesting to Mr. [REDACTED] acceptance of the Christian faith, his changed lifestyle, and his ability to provide proper parental care to a child.

8 C.F.R. § 204.3(e)(2)(iii)(C) states, in pertinent part:

If a prospective adoptive parent has a history of substance abuse ... 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), convictions(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.

The record contains the applicant's initial Home Study report, dated October 4, 2003, and an undated Home Study Addendum. The October 2003, Home Study report (Report), prepared by [REDACTED] discusses Mr. [REDACTED] criminal history. The home study preparer refers to Mr. [REDACTED] pardon, the personal reference letters provided on Mr. [REDACTED] behalf, Mr. [REDACTED] written statements and the home study preparer's own observation of his behavior. The home study preparer concludes that through his strong Christian faith Mr. [REDACTED] has turned his life around and that he now lives a changed life. The home study preparer concludes further that Mr. [REDACTED] is physically, emotionally, mentally and financially capable of parenting a child.

A Home Study Addendum prepared by [REDACTED] refers to the circumstances of Mr. [REDACTED] 1984 DUI arrest, his January 1991 worthless check arrest, and the March 1991, Possession of Controlled Substance charges initially brought against Mr. [REDACTED]. The home study preparer states that Mr. [REDACTED] written statements acknowledge his past history of substance abuse, and reflect that he began smoking cigarettes at around sixteen, and then began drinking beer, smoking marijuana, and using alcohol and recreational drugs prior to and including the first five years of his 1991 incarceration. The home study preparer states that Mr. [REDACTED] has been drug-free since May 2, 1996, when he became a born again Christian. The home study preparer states further that Mr. [REDACTED] rehabilitation is evidenced by the responsible life style he now lives, and that his life change is validated by his wife, family and friends in their written testimonies of Mr. [REDACTED] character and lifestyle.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i) states that CIS may not approve a Form I-600A unless satisfied that the applicant and his spouse will provide proper parental care to an adopted orphan.

The AAO finds that the record as presently constituted contains insufficient evidence that the applicant's spouse has demonstrated appropriate rehabilitation.

The evidence in the record reflects that Mr. [REDACTED] has had a lengthy and serious criminal and substance abuse history. The AAO finds that Mr. [REDACTED] Certificate of Pardon does not, in and of itself establish that Mr. [REDACTED] s rehabilitated for immigration orphan petition purposes. The AAO also finds that the reference letter statements made on Mr. [REDACTED] behalf do not discuss the details of Mr. [REDACTED] criminal or substance abuse history, and that they do not qualify as expert statements regarding Mr.

██████████ criminal or substance abuse rehabilitation. The AAO additionally finds that the South Carolina Department of Corrections, Statement of Participation provides no details regarding Mr. ██████████ rehabilitation and that it specifically says that it is not a statement of progress in the program. The AAO finds further that the Home Study Report and Addendum (Home Study Reports) lack professional evidence of rehabilitation by Mr. ██████████. The home study reports additionally lack an informed discussion relating to the nature, treatment and success of any rehabilitation program received by the applicant.

Based on all of the above factors, the AAO finds that the applicant has failed to establish that she and Mr. ██████████ would be able to provide proper parental care to an adopted orphan.

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.