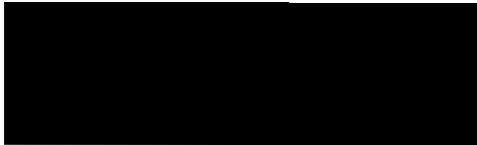




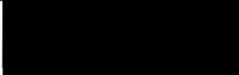
U.S. Citizenship
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Services

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FILE:



OFFICE: DALLAS, TX

DATE: JUL 12 2006

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, Dallas, Texas denied the Application for Advance Processing of an Orphan Petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant filed the Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application) on September 19, 2005. The applicant is a thirty-nine-year-old married citizen of the United States, who together with his spouse, seeks to adopt an orphaned child from Taiwan.

The district director determined that the applicant had failed to disclose his criminal history, and that he had failed to establish that he could provide proper care to an adopted orphan. The application was denied accordingly.

On appeal, counsel asserts that the applicant did not intend to deceive the home study preparer or U.S. Citizenship and Immigration Services (CIS) regarding his criminal history. Counsel asserts that the applicant misinterpreted the home study preparer's inquiry regarding his criminal history, and that the applicant believed the question was whether he had ever been convicted. Counsel asserts that although the applicant was arrested and pled guilty to operating a vehicle while under the influence (OWI) in 1986, and to possession of a controlled substance in 1996, neither of the applicant's arrests resulted in a "conviction" as defined by Texas law. Counsel asserts that the applicant's criminal history occurred over nine years ago, and that he successfully complied with all terms of his suspended sentence and deferred adjudication. Counsel asserts further that the applicant's home study report and addendum are favorable, and that the applicant has established that his I-600A application should be approved.

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

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 . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

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

The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and the Service [CIS] any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and the Service the opportunity to properly evaluate the criminal record in light of such evidence. When such information is not presented early in the process, it comes to light when the fingerprint checks are received by the Service.

“[F]ailure to disclose an arrest . . . by the prospective adoptive parents or an adult member of the prospective adoptive parents’ household to the home study preparer and to the Service [CIS], may result in the denial of the advance processing application . . . pursuant to paragraph (h)(4) of this section.” See 8 C.F.R. § 204.3(e)(2)(iii)(D).

The statutory and regulatory provisions discussed above permit, but do not require, denial of an advance processing application based on an applicant’s failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to CIS discretion. The AAO notes that the CIS determination is based on protective concerns for the orphan. Complete knowledge of an applicant’s arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide a suitable home and proper care to an adopted orphan. Accordingly, denial of an I-600A application is often justified when an applicant fails to make the required criminal history disclosures.

The record reflects that the applicant was interviewed in September 2005, by home study preparer, [REDACTED] of LoneStar Solutions. The Home Study Report (Report) dated November 8, 2005, reflects that the applicant was asked whether he had ever been arrested or convicted of a criminal offense, even if it did not result in a conviction. The applicant stated he had never been arrested or convicted of a criminal offense, even if it did not result in a conviction. The Report reflects that the applicant was also asked whether he had ever been the victim or perpetrator of substance abuse, even if it did not result in a conviction. The applicant stated he had never been the victim or perpetrator of substance abuse, even if it did not result in a conviction. The Report notes that Texas Department of Public Safety criminal background checks confirmed the information provided by the applicant. Based in part on this information, the home study preparer found that the applicant was a suitable adoptive parent.

On January 18, 2006, the district director informed the applicant that FBI fingerprint results showed the applicant had been arrested in Sioux City, Iowa in September 1989, for Operating a Vehicle While under the Influence (OWI). FBI fingerprint results reflected further that the applicant had been arrested in Kansas City, Missouri in June 1996, for Possession of a Controlled Substance with Intent to Deliver. The district director requested the police reports and court dispositions relating to the arrests, as well as a written statement from the applicant explaining the circumstances of the arrests and why the criminal history was not disclosed to the home study preparer. The district director requested further that the home study preparer reevaluate the applicant’s home study approval in light of the new adverse information.

The record contains copies of the arrest and court disposition documents submitted by the applicant. The documents reflect that the applicant was arrested for OWI on September 3, 1989, when a person in the car tried to start a disturbance, and the applicant’s car was stopped by police. The applicant pled guilty to OWI-1st on March 21, 1990. He was ordered to pay a \$500.00 fine, and he received a two day suspended jail sentence.

The documents reflect that the applicant was arrested a second time on June 18, 1996 for Possession of Narcotic Paraphernalia. The related police report indicates that the applicant acted suspiciously and extremely nervously when he exited a Greyhound Bus in a bus station where the police were conducting drug searches. The applicant agreed to a police search of his bags, and the police discovered 1.9 pounds of marijuana which the applicant stated he was delivering to a friend in Iowa for a \$2000.00 payment. The applicant pled guilty to Possession of a Controlled Substance, a Class B Felony on July 2, 1996. He received a suspended sentence, and was placed on probation for three years subject to drug screening and treatment as recommended, and forty hours of community service. The applicant was also ordered to pay a \$68.00 fine. The record reflects that the applicant successfully completed the terms of his probation and that his file was closed on July 2, 1999.

The record additionally contains an explanatory letter written by the applicant accepting responsibility for his failure to disclose his arrests and stating that he misunderstood the home study preparer's question to be whether he had any criminal convictions. The applicant indicates he answered the home study preparer's question in the negative based on his belief that he did not have any convictions, and his belief that this record had been expunged.

The applicant states that he was 22-years-old on September 1, 1989, when police stopped his car after a friend he was with started a disturbance with another driver. The applicant indicates that he had been drinking and that he had an open container of alcohol in the car. The applicant was subsequently arrested for OWI. The applicant states that he pled guilty to the charge, that he spent the night in jail, that he paid a fine, and that he was able to remove the offense from his record. The applicant states that he made a second, and last big mistake on June 18, 1996, when he took marijuana on a Greyhound bus from Texas with the intent to deliver it to a friend in Iowa for payment. The applicant was arrested based on his extremely nervous behavior at a bus stop, and he was charged with sale and possession of a controlled substance. The applicant states that he pled guilty to the charges and that he was fined and sentenced to three years probation, drug screening, and forty hours of community service. The applicant states that he realizes that he made bad decisions in both 1989 and 1996, and he states that he has learned from his mistakes, and that his life now is positive and free from drugs and alcohol.

A February 17, 2006, Home Study Addendum prepared by [REDACTED] of LoneStar Solutions re-approves the applicant as a suitable adoptive parent. The home study preparer states that his continued approval is based on the information contained in the applicant's letter. The home study preparer states that he believes the applicant's letter does a good job of explaining the reasons that the applicant did not disclose his criminal history during the home study visit. The home study preparer additionally notes that the applicant voluntarily underwent a hair analysis test in February 2006, which reflected negative findings for drug presence in the applicant's system. The home study preparer states that the applicant successfully completed the terms of his probation and that he has a stable marriage and home environment, and stable employment. The home study preparer concludes that the applicant would be an excellent adoptive parent.

The record contains an additional affidavit signed on March 26, 2006, by home study preparer, [REDACTED]. The affidavit clarifies that during the home study interview with the applicant, the home study preparer asked whether the applicant had any prior criminal history. The home study preparer notes that the applicant had previously undergone a criminal background check by the local police department, and that the background check showed that the applicant had no prior criminal history. The home study preparer states he does not believe that the applicant tried to deceive him, and that he believes the applicant was under the impression that successful completion of deferred adjudication probation erased the criminal history from the applicant's record, and that it need not be disclosed.

Upon thorough review of the record, the AAO finds that the evidence indicates the applicant intentionally did not reveal his criminal history to the home study preparer or to CIS until specifically asked about it by the district director. The AAO finds the applicant's explanation that he believed his record had been expunged, and that he misinterpreted the home study preparer's question regarding his criminal history to be unpersuasive, given the circumstances and nature of the arrests and court sentences, and the lack of evidence of expungement of the applicant's criminal history.

The AAO finds that the applicant's failure to disclose his criminal history is very serious and cannot be condoned. Nevertheless, the AAO finds that, in spite of the applicant's commission of, and failure to reveal his 1989 and 1996 criminal record for OWI and Possession a Controlled Substance, a review of the totality of

evidence in the record 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)(2).

As previously noted, the CIS determination regarding whether or not to approve an I-600A application is based on protective concerns for the orphan. The AAO notes that the applicant's arrests and convictions occurred fourteen, and ten years ago, respectively. The applicant has no criminal history prior to, or subsequent to the discussed incidents. The AAO notes further that the record contains February 2006, hair follicle test results reflecting negative drug use in the applicant. The Home Study Report information reflects that the applicant was approved by the home study preparer as a suitable parent. In addition, the home study report reflects that the applicant has a stable home environment, that he holds a stable job, and that personal references believe the applicant possesses strong moral values and generosity, and that a child would be fortunate to have the applicant as a parent.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. In the present matter, the AAO finds that the evidence in the record sufficiently establishes that the applicant can provide proper parental care to an adopted orphan. The applicant has therefore met his burden, and the appeal will be sustained.

ORDER: The appeal is sustained.