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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

F2

APR 24 2007

FILE: [REDACTED] Office: PHILADELPHIA, PA

Date:

IN RE: Petitioner:  
Beneficiary:

Application: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Philadelphia, denied the Application for Advance Processing of an Orphan Petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (I-600A application) on June 2, 2006. The applicant is a 62-year-old married citizen of the United States, who, together with his wife, seeks to adopt a child from Viet Nam.

The district director determined that the applicant had not demonstrated the financial ability to provide proper care for an orphan and had also failed to divulge information regarding a prior arrest as required by Title 8 of the U.S. Code of Federal Regulations (8 C.F.R.). *District Director Decision*, August 21, 2006. The I-600A application was denied accordingly.

A Notice of Entry of Appearance as Attorney or Representative (Form G-28) was submitted in this case by an individual who is not an attorney or other person recognized as an accredited representative by the Board of Immigration Appeals. The applicant is therefore considered to be self-represented.

On appeal, the applicant addresses both of the grounds of denial in the District Director's Decision, *supra*. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, September 21, 2006. He asserts that the family's financial status will allow them to raise an additional adoptive child because the cost of living is considerably less in Belleville, a rural community; where the family moved from a Chicago suburb; they have raised their own beef and lamb and have chickens and a garden; and friends help them in many ways, including with processing fruit and vegetables and by cutting a pasture and shoveling snow. *Letter in Support of Appeal*, September 21, 2006. The applicant also submits the deed to the family residence in Belleville and states that his realtor assessed its current value at \$350,000. Referring to the instructions on the Affidavit of Support (Form I-864), he states that his assets are therefore sufficient to overcome any failure to meet the minimum income requirement. *Id.* Regarding his failure to disclose his past arrests and conviction, he states that he recognizes his error; and explains the circumstances surrounding two arrests in 1991 for criminal trespass which resulted in charges that were dismissed and another arrest in 1992 for resisting or obstructing a peace officer, for which he plead guilty and was given two months supervision. *Id.* He also submits an affidavit by the home study preparer which indicates that the applicant did disclose that he had been arrested for blocking access to an abortion clinic, but that "since [it] was a misdemeanor and . . . the charge was discharged, it was decided not to include it in the home study write up. *Addendum to Homestudy for Terry Thiel and Judy Thiel (Addendum)*, signed by [REDACTED] A Field of [REDACTED] September 20, 2006. The Addendum makes no mention of the two additional arrests or the conviction.

Also included in the record is the Home Study by A Field of Dreams Adoption Services, indicating that the applicant is employed as a school bus driver and driver for the Amish, earning \$15,000 in 2005; he and his wife have no mortgage, and their home was valued at \$350,000; that "the family receives \$55,360.46 annually of non-taxable income from Supplemental Security Income, regular Social Security and state and county subsidies"; and that "[t]he family's monthly expenses are \$950.00 per month, which are for food and clothing in addition to general household operation." *Home Study*, prepared by [REDACTED], June 27, 2006. The home study also indicated that the applicant had denied that he "had a history of or had ever been arrested, fingerprinted, tried, charged, convicted for or of any form of criminal activity." *Id.* The entire record was reviewed and considered in reaching a decision on this appeal.

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 the U.S. Citizenship and Immigration Service (CIS) may not approve a Form I-600A application unless satisfied that the applicants will provide proper parental care to an adopted orphan.

8 C.F.R. § section 204.3 states, in pertinent part:

(a)(2) *Overview*

[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).

(e)(2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.*

(ii) *Assessment of the finances of the prospective adoptive parents.* . . . The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. . . . Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan.

No I-600A application shall be approved unless CIS is satisfied that proper care will be provided for the orphan. 8 C.F.R. § 204.3(h)(2). The AAO notes that the CIS determination is based on protective concerns for the orphan.

The record in this case reflects that the prospective adoptive parents have ten children and one adult daughter in their household, all of whom were adopted, and all of whom are dependent on them. Eight household members have special needs, and the applicant and his wife are trained in their care, according to the home study. They have a yearly income of \$15,000. According to the home study, they have monthly expenses of \$950. As noted in the District Director's Decision, *supra*, any funds received, such as Supplemental Security Income or county or state subsidies for another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. *See* 8 C.F.R. § 204.3(e)(2)(ii), *supra*. Moreover, although the applicant and his wife do not have a mortgage, there is no evidence in the record, such as a tax basis, of the value of the house. A statement that a realtor has made an assessment is not evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless of the value of the house, it does not make up for the lack of income in this case. The applicant's analogy to the requirements of an Affidavit of Support is misplaced. The AAO is not considering whether an Affidavit of Support shows sufficient income or assets, but rather whether a family of 14 can be supported on an income of \$15,000 and how this affects whether

the applicant can provide a proper home environment to an adopted orphan. The lack of a mortgage is one factor to be considered. The AAO also notes that the expenses listed in the home study "food and clothing in addition to general household operation," do not include, *inter alia*, education supplies or any of the expenses associated with health care or entertainment for the children or for raising animals or food crops. In that regard, the expenses listed by the applicant are not credible. The AAO also notes that expenses will increase with the adoption of another child.

Although clearly some families are able to live more frugally than others, and whether a family owns their home is a factor for consideration when looking at income in relation to expenses, it is not reasonable to conclude that the applicant can provide a proper home environment to a family of fourteen on his income of \$15,000. As noted in the District Director's Decision, *supra*, the poverty guidelines that are published annually by the U.S. Department of Health and Human Services (HHS) are relevant in this case. These guidelines are an indicator of the **minimum** income needed to maintain a family above the poverty line. In this case, with the adoption of a child, the family would then comprise 14 members. The 2007 HHS Poverty Guidelines list \$55,450 as the minimum income requirement for a family of fourteen. See <http://www.aspe.hhs.gov/poverty/07poverty.shtml>, last revised January 24, 2007. Maintaining a family at poverty level or even slightly above would not support a conclusion that income is sufficient for the proper care of family members. In the present case, the applicant's income falls below the minimum.

Regarding the applicant's failure to disclose his criminal history, 8 C.F.R. § 204.3(e)(2)(v) states in pertinent part:

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 may be justified when an applicant fails to make the required criminal history disclosures.

In this case, the record reflects that the applicant was interviewed in May 2006 by I [REDACTED], a licensed social worker and home study preparer for A Field of Dreams Adoptions Services. The completed home study indicated that the applicant denied any prior arrest or conviction. After an FBI record came to light, the applicant apologized for having allowed incorrect information to be included in the home study and explained the circumstances of three arrests and one conviction. The applicant stated that the three arrests were for "peaceful and non-aggressive blocking of access to" abortion clinics. The record reflects that he was charged with criminal trespass twice, charges which were later dismissed; and resisting or obstructing a peace officer, for which he was convicted and sentenced to a term of supervision. Upon thorough review of the record, the AAO finds that the applicant intended to hide his past arrests. He was aware of the requirement to disclose and chose not to. The AAO also finds that A Field of Dreams Adoption Agency and the home study preparer failed to properly advise the applicant or to investigate and report on this past history in the completion of the home study. In addition, the home study Addendum, which was written after the applicant's criminal record was revealed in the FBI report, did not address the applicant's complete criminal record nor mention that the applicant had been convicted, thereby failing to properly evaluate the applicant's criminal history. The home study, therefore, does not meet the requirements set forth at 8 C.F.R. § 204.3(e)(2)(v). In addition, the applicant has not provided sufficient evidence for the AAO to assess whether the criminal acts for which the applicant was arrested and/or convicted would have an impact on his ability to provide proper care to an adopted child.

Upon review of all the evidence contained in the record, the AAO finds that the applicant has not demonstrated his ability to provide proper financial care to the orphan requested in the I-600A application. The AAO finds further that the home study preparer's recommendation of the applicant does not meaningfully address the lack of sufficient income and the actual costs associated with raising children; that the home study preparer knowingly misinformed the applicant on the importance of disclosing all information regarding past arrests and convictions; and that the applicant failed to make the required criminal history disclosures. Accordingly, denial of the I-600A application is justified.

The Act provides clearly that, 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 AAO finds that the applicant and his spouse have failed to demonstrate that they can provide a suitable home and proper care to an adopted orphan. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.