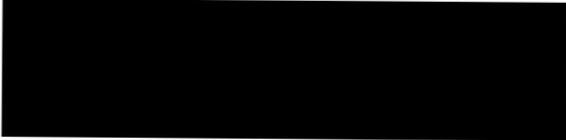




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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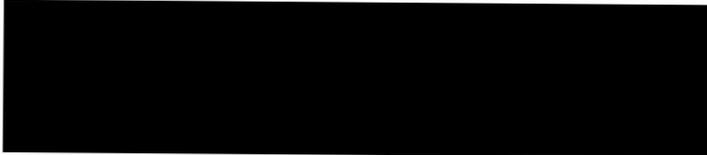
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FILE: [REDACTED] OFFICE: OKLAHOMA CITY, OK DATE: **AUG 20 2008**

IN RE: APPLICANT: [REDACTED]
BENEFICIARY: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Oklahoma City, Oklahoma denied the Form I-600A, Application for Advance Processing of an Orphan Petition (Form I-600A). The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action consistent with this decision.

The applicant filed the Form I-600A in May 2007. The applicant is a 64-year-old, married citizen of the United States, who seeks to adopt one orphan child from Ethiopia.

The field office director determined that the applicant and his wife failed to reveal the following information to their adoption home study preparer: 1) that the applicant had been arrested in San Diego, California in 1986, for Driving While Intoxicated (DWI); 2) that the applicant was previously married to a woman named [REDACTED] in Ethiopia; 3) that the applicant had another child in Ethiopia named [REDACTED]; and 4) that the applicant's wife had two adopted children in Ethiopia, named [REDACTED] and [REDACTED]. The field office director determined that the applicant and his wife were not completely truthful with the home study preparer. The Form I-600A was denied on this basis pursuant to 8 C.F.R. § 204.3(h).

On appeal the applicant asserts, through counsel, that he was not given an opportunity to address his inadvertent omission of a twenty-year-old DWI arrest, and that he was given no opportunity to address the other issues discussed in the field office director's denial decision. The applicant asserts that although he had a relationship with [REDACTED] and had a child with her ([REDACTED]), the two were never married, and [REDACTED] died about 10 years ago. Through counsel, the applicant requests an additional 60 days to provide a brief and updated home study report information and evidence. No brief or evidence was received by the AAO within the requested time period.¹

[P]etitioning for an orphan involves two distinct determinations. The first determination concerns the [Form I-600A] 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. 8 C.F.R. § 204.3(a)(2)

The regulatory provisions permit U.S. Citizenship and Immigration Services (CIS) denial of a Form I-600A based on an applicant's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the Form I-600A application is a matter entrusted to CIS discretion, based on protective concerns for the orphan. The AAO notes that complete knowledge of an applicant's criminal history and any material adverse information is essential to a proper determination about whether an applicant can provide a suitable home and proper care to an adopted orphan. The AAO notes further that denial of a Form I-600A application is justified when an applicant fails to make required disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide a suitable home and proper care to an orphan.

¹ The AAO notes that it subsequently faxed a request for copies of any documents that may have been submitted by counsel in the applicant's case. Counsel was advised to respond to the faxed AAO request within five business days. The AAO received no response from counsel.

8 C.F.R. § 204.3(h)(2) provides in pertinent part that it is the:

[D]irector's responsibility to make an independent decision in an advanced processing application [Form I-600A.] 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. . . .

A review of the record reflects that the applicant was arrested in Texas for Driving While Intoxicated on April 18, 1983, and on September 7, 1984. The applicant was found guilty and received one-year probation for the 1983 arrest. The 1984 charge was dismissed. The home study report contained in the record discusses the applicant's April 18, 1983, and September 7, 1984, DWI arrests and the dispositions in each case. The record additionally contains a California Department of Motor Vehicle document reflecting that the applicant was arrested in September 1986 for Driving While Under the Influence, in violation of California Vehicle Code section 23152(a). The document reflects that the applicant was convicted of the offense. The home study report contains no information relating to this arrest and conviction. The home study report also contains no discussion relating to the applicant's child, [REDACTED], or to prior adoptions by the applicant's wife.

The field office director determined that the applicant and his wife did not reveal criminal history and family-related information to the home study preparer, and the field office director indicates that the home study preparer therefore did not properly evaluate the applicant and his wife's suitability for adoptive placement of an orphan. The applicant's Form I-600A was denied on this basis. There is no indication in the record, however, that the field office director attempted to resolve the criminal history or family-related issues with the home study preparer or the applicant prior to denial of the Form I-600A, as set forth in 8 C.F.R. § 204.3(h)(2). The AAO thus finds it necessary to remand the present matter to the field office director so that he may attempt to resolve the above issues with the home study preparer and the applicant. The field office director shall then issue a new decision which, if adverse to the applicant, will be certified to the AAO for review.

ORDER: The matter is remanded to the field office director for further action consistent with this decision.