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U.S. Citizenship  
and Immigration  
Services

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*File F2*

FILE:

OFFICE: CHARLESTON, SC

DATE:

**JAN 04 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Charleston, South Carolina, revoked the approval of the Application for Advance Processing of an Orphan Petition on March 9, 2007. 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 August 11, 2006; it was approved on October 2, 2006. The applicant is a forty-two-year-old married citizen of the United States, who together with his spouse, seeks to adopt one or two orphaned children from the Ukraine.

The Field Office Director determined that the applicant had failed to disclose his criminal history, and the approved I-600A Application was revoked for this reason.

On appeal, the applicant states that he had disclosed the arrest in question during the home study prior to filing the I-600A Application, and also disclosed the matter during a telephone conversation with the U.S. Department of Homeland Security investigator, explaining that it occurred over six years ago and involved a business partner. The applicant states that the investigator indicated that given the nature of the issue the petition would be granted. The applicant asserts that there was no conviction when he filed the I-600A Application, and the matter "at the time was being resolved out of court." He states that the prosecutor dismissed the Fugitive From Justice charge, as shown in the certified copies, and that the referenced dates in the denial letter are incorrect. The applicant asserts that the matter did not involve any act of violence, substance abuse, sexual or child abuse, or domestic violence and would not raise any issue as to the protection of the orphan.

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 Citizenship and Immigration Services (CIS) may not approve an I-600A application unless satisfied that the applicant will provide proper parental care to an adopted orphan.

The regulation under 8 C.F.R. § 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.

The regulation under 8 C.F.R. § 204.3(e)(2)(v) provides 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.

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 on June 16, 2006, June 29, 2006, and on July 28, 2006, by home study preparer, [REDACTED] of [REDACTED]. The Home Study Report (Report) dated September 8, 2006, reflects that the applicant was asked "whether he had ever been investigated or arrested by any police agency or arrested in any jurisdiction worldwide or had any criminal history, for any reason, even if it did not result in a prosecution." The applicant answered "Yes." The home study report stated the following:

In 2005 [REDACTED] found out that a former business partner had filed a warrant for his arrest over a dispute about some documents from a business they formerly owned together. The friend made no effort to locate Mr. [REDACTED] and apparently represented to the court that this was the only means by which he could retrieve these business documents. Once [REDACTED] explained the situation to the authorities, and upon further investigation and consultation with attorneys, all charges were dropped and the prosecution was withdrawn, as verified in certified documents from the Common Pleas [sic] Court of Philadelphia dated April 12, 2006. [REDACTED] also provided a signed and notarized letter of explanation, which is submitted along with documentation for this home study.

The certified document from the Common Pleas Court of Philadelphia, Municipal Court, dated October 2005, reflects the Fugitive From Justice charge, and the arrest date of October 2, 2005. It shows that on December 5, 2005, prosecution was withdrawn.

The applicant's notarized explanation of the arrest, witnessed on August 29, 2006, reads as follows:

I was in business with a friend from high school for more than 10 years. The company sold and serviced machinery for a manufacturer located in Europe.

I entered into a disagreement with my friend when I found out that he had made plans to eliminate me from the partnership with the European company. The disagreement escalated and we severed our business and personal relationship.

Rather than contacting me directly, he filed a report with the court for the return of documents and items he claimed I had in my possession. Although I had moved, we still had mutual friends and he could have easily contacted me by mail or phone. Out of spite, however, he convinced the authorities that I was avoiding service, which resulted in a warrant accusing me of being a "fugitive from justice." I was stopped in the Philadelphia Pennsylvania Airport while traveling on vacation.

The issue was resolved and the matter was dismissed by the prosecutor as noted in the Letter of Disposition (notarized official arrest and disposition record.) I am very sorry for this incident and I have learned to be cautious and get everything in writing when entering into a business relationship with friends:

Based in part on this information, the home study preparer found that the applicant was a suitable adoptive parent.

The record shows that the I-600A Application was filed on August 11, 2006 and approved on October 2, 2006.

The District Director issued a Notice of Intent to Revoke Approval of Orphan Petition dated January 16, 2007 stating "a petition approval notice cannot be granted to someone who has a felony warrant outstanding." The notice conveys that the applicant has an outstanding warrant issued June 22, 2006 by the Baltimore, Maryland, Police Department, and that the applicant must return to Baltimore and resolve the charges and provide CIS with an official notarized copy of the Court Disposition. The applicant was granted 30 days within which to respond to the notice.

In response, the applicant submitted a letter in which he states that the "warrant was erroneously issued in the middle of a case that I was involved with due to an appearance that was miss-scheduled." He states that the case involved a dispute with an ex-friend and business partner and that the business partner misrepresented to the district attorney that the applicant:

[W]as aware that he had an issue with the financial circumstances surrounding the break-up [sic] of our business relationship. However[,] I was not aware of the issue until 2006 when he apparently convinced the DA that I misappropriated funds prior to the dissolution of our partnership and that he could not find me to sue me in civil court.

Although now I regret not fighting the charges, I entered an Alford Plea under the advice of

my attorney with the belief that I would get probation before judgment. Instead the DA opposed a sentence of PBJ and the Judge compromised and entered a sentence with a deferred reporting date of 1/18/08 and said that if I made adequate restitution he would re-enter an order of probation before judgment and I would not have [a] record. . . .

It is my position I was entitled to the money in contention for my interest in the company. He verbally agreed to pay me the money when he sold part of the company in 1999 and I resigned. . . . However, after our falling out he convinced the DA that the checks made out to me were not authorized and were not for my interest in the company. . . .

From the disposition enclosed you can see that the Judge deferred a new hearing date for 1 year with the understanding [that] if I made restitution he would reduce the sentence to probation before judgment and I would not have a record. He did not reduce the restitution order to judgment because he believes that I will fulfill my obligation and a judgment was not necessary. It is my understanding from my attorney, the Judge[,] and the [P]robation [B]efore [J]udgment [N]otice I got with my probation packet that I will not have a permanent record if I comply with the terms of my probation[,] which I have been doing and plan to do hereafter.

The Circuit Court for Baltimore County court records reflects that a case was filed by the State of Maryland against the applicant on March 1, 2006. They show that for count 1, Theft-Scheme: \$300 Plus (Maryland Criminal Statute 27.342), a felony, the disposition is guilty, with a plea of AP on September 26, 2006; the disposition date is January 19, 2007. The start date of sentencing is shown as January 18, 2008, with a sentence of 5 years, 2 years suspended and 3 years unsuspended; the applicant is eligible for parole with 5 years probation. The restitution order was filed but not reduced to judgment; no illegal contact with the victim or the victim's business was ordered. The charge, disposition, plea, and sentencing for count 2 is the same as for count 1; the jail sentence for count 2 is concurrent with the jail sentence imposed in court 1.

The AAO finds that the submitted documentation overcomes the revocation of the I-600A Application.

Upon thorough review of the record, the AAO finds that the evidence indicates the applicant did not fully reveal his criminal history to the home study preparer and that he failed to reveal it to CIS on two separate occasions. 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 fully reveal his 2006 criminal offenses, which resulted in two felony convictions, 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 is eligible for 5 years parole and that he has no criminal history prior to, or subsequent to the discussed incidents. The AAO notes that the actions for which he was convicted took place over 7 years ago and he has had no additional criminal arrests,

and further, the record contains letters from a family member and a neighbor attesting to the good character of the applicant and his wife. The home study report reflects that the applicant has a stable home environment and has a stable job.

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.