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U.S. Citizenship  
and Immigration  
Services

F<sub>2</sub>

[Redacted]

FILE:

[Redacted]

OFFICE: OKLAHOMA CITY, OK

DATE: OCT 29 2008

IN RE:

Applicant:  
Beneficiary:

[Redacted]

APPLICATION:

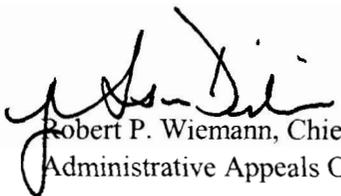
Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. 204.3(c)

ON BEHALF OF APPLICANT:

[Redacted]

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 revoked and denied the Form I600A, Application for Advance Processing of Orphan Petition (Form I600A). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I600A will be denied.

The applicant filed the Form I600A on July 25, 2006. The applicant is a 62-year-old married citizen of the United States, who together with his spouse, seeks to adopt an orphaned child from Guatemala.

The field office director initially approved the applicant's Form I600A on September 25, 2006. A subsequent consular overseas investigation revealed that, in addition to the thirteen children discussed in the applicant's home study report, two additional children of unknown immigration status are cared for by the applicant and live permanently in his home. Based on the overseas investigation information, the field office director issued a Notice of Intent to Revoke (NOIR) the approval of the applicant's Form I600A. The field office director indicated in the NOIR that the applicant had intentionally misrepresented the number of children that lived in his home, and that he was responsible for. The field office director indicated further that the applicant had failed to establish that he could provide proper financial and personalized care to an additional orphaned child. The field office director concluded that the applicant had failed to overcome the grounds for revocation set forth in the NOIR, and the approval of the applicant's Form I600A was revoked on June 3, 2008.

Through counsel, the applicant asserts on appeal that he did not intentionally mislead the home study preparer or U.S. Citizenship and Immigration Services (CIS) about the presence of two additional children living in his home, and that he did not believe the children needed to be mentioned because they were not legally his at the time of the home study review. The applicant asserts that initial, updated and addendum home study report evidence establishes that he and his wife are capable of providing a suitable home and proper care to the beneficiary, and he asks that his Form I-600A be approved.

The regulation at 8 C.F.R. § 204.3(a)(2) provides that:

[P]etitioning for an orphan involves two distinct determinations. The first determination concerns the [Form I600A] 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.

The regulation provides at 8 C.F.R. § 204.3(h)(2) that it is the:

Director's responsibility to make an independent decision in an advanced processing application. 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.

The regulatory provisions permit CIS denial of a Form I600A based on a petitioner's failure to disclose an arrest, conviction, or material adverse information. Complete knowledge of 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. Denial of a Form I600A is therefore 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.

In the present matter, the applicant submitted a July 25, 2006, Home Study Report prepared by [REDACTED], L.M.S.W. ([REDACTED] approving the applicant and his wife and their household as suitable for the adoption of two orphaned children between the ages of infant to 8 years old, healthy or special needs.<sup>1</sup> Ms. [REDACTED] states in the July 2006, home study report that, in addition to the applicant and his wife, the following 13, biological and adopted children family members live with, and are cared and provided for, by the applicant:

(Biological)

[REDACTED] born 2/6/84 (24 years old)  
[REDACTED], born 5/30/87 (21 years old)  
[REDACTED] born 3/15/89 (19 years old)  
[REDACTED] born 1/28/91 (17 years old)  
[REDACTED], born 2/27/94 (14 years old)

(Adopted internationally)

[REDACTED] born 1/22/98 (10 years old)  
[REDACTED] born 5/15/98 (10 year old)  
[REDACTED], born 10/25/98 (9 years old)  
[REDACTED], born 7/7/99 (9 years old)  
[REDACTED]), born 8/10/01 (7 years old)  
[REDACTED] born 9/10/01 (7 years old)  
[REDACTED] born 11/09/02 (5 years old.)  
[REDACTED], born 12/20/04 (3 years old)

[REDACTED] notes the following special needs of three of the applicant's adopted children:

[REDACTED] was adopted by the applicants after a very difficult and traumatic beginning in Guatemala. She still acts a bit young for her age, but she has made wonderful progress.

[REDACTED] has muscle weakness down one side of her body, a mild form of cerebral palsy, for which she receives physical therapy. She is in physical and speech therapy twice a week and is doing well.

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<sup>1</sup> The home study report indicates that the applicants contacted [REDACTED] independently regarding their plans to adopt two children through the adoption agency, A Family Journey. The home study report does not indicate that [REDACTED] works for the adoption agency.

██████████ has a vision impairment (Septo Optic Dysplasia), and is also tiny and takes growth hormones. She is in physical and speech therapy and is progressing well.

The home study preparer states generally in the July 25, 2006, home study report that the applicant's house has 5 bedrooms, 3 bathrooms, a living room, a family room, a kitchen and a dining room. Ms. ██████████ states that the applicant has a construction business which he does full time, and that he earns \$85,000. Ms. ██████████ states further that the applicant has mortgage and car payments in the amount of \$1054 a month, and she states that the applicant has \$5000 in a checking account, and over \$900,000 in investment and bond assets. Ms. ██████████ indicates that the applicant has medical insurance that would cover the adopted children, and she concludes that the applicant and his wife have the financial and emotional means to be suitable parents to an adopted orphan.

Information obtained during the September 2006, overseas consular investigation revealed that: two additional children (██████████ and ██████████) from Guatemala, and of unknown immigration status, were claimed on the applicant's 2004 and 2005 federal income tax returns as foster children; the two children have lived permanently at the applicant's home since 2004; and the children were in the process of being domestically adopted by the applicant and his wife. When asked why ██████████ and ██████████ were not included in the applicant's July 2006, home study report, the applicant stated that he considered the children to be foster children and not his own children. The applicant explained further in a written statement that ██████████ and ██████████ were not included in his July 25, 2006, home study report because they were simply in his care at the time of the home study interview, and they were not yet in his legal custody. Specifically, the applicant stated:

[T]he children were not legally our children and could have been reclaimed by their adoptive parents at any time as parental rights were not yet surrendered. . . . like "foster" children at least in our minds. . . . There was no deliberate misinformation, as their future with us was not certain.

The AAO finds the applicant's explanation as to why he failed to disclose the presence of two additional children living in his home to the home study preparer, and to CIS, to be unconvincing given that: the applicant had claimed the children as foster children for two years for federal income tax deduction purposes; the applicant had been the children's caretaker for two years and he was in the process of adopting the children; the applicant had gone through several international adoptions in the past and should reasonably have been aware of the home study disclosure requirements. The AAO finds further that the omitted information is material to a determination regarding whether the applicant and his wife can provide a proper home and proper care to another orphaned child.

In the present matter, the field office director revoked approval of the applicant's Form I600A based on a determination that the applicant failed to establish he would be able to provide proper care and a proper home environment to an orphaned child. The AAO agrees with the field office director's determination.

In addition to the July 25, 2006, home study report and the September 2006, overseas investigation information, the record contains an Adoption Home Study Addendum prepared by ██████████ on May 21, 2007, reflecting that in addition to the children discussed in the July 2006, home study report, the following *three* children, born in Guatemala, also live at the applicant's home (a total of 16 children):

born 1/1/03 (5 years old)  
born 10/25/02 (5 years old)  
born 9/23/05 (3 years old).

states that was to be adopted by another family in the U.S., but that due to her special needs, the family decided not to adopt. Ms. indicates that's final court hearing for a domestic adoption by the applicant and his wife, is scheduled in May 2007. has ADHD, sensory and delayed language issues, and she is in therapy twice a week.

The May 21, 2007, addendum reflects that has cerebral palsy, and that he is in a wheelchair and has braces on his legs. Most colds will also cause pneumonia. Ms. states that does not talk, and that he cannot sit or stand alone. She indicates that is in physical and speech therapy twice a week, and he is, and will always be, totally dependant on a caregiver. The addendum contains no information regarding's origins or how he came to live at the applicant's home. However, an unsigned Adopted Family Assessment update prepared by on September 4, 2007, indicates that was initially adopted in Guatemala by a family in Ohio. Ms. states that the family in Ohio disrupted the adoption due to the severity of cerebral palsy. She states that the applicant and his wife are currently the permanent managing conservators of

's May 21, 2007, addendum states that arrived at the applicant's house from Guatemala in December 2006. has Sento Optic Dysplasia and is blind, and, like, he has weak muscle tone and is not walking. Ms. states that does not say words, and that it is not known for sure whether he will need growth hormones.

also adds, in her May 21, 2007, addendum, that wears a brace on her leg, and clarifies that came to the applicant's home "when she was seven years old after being severely abused by her uncle after her father killed her mother and then died of AIDS."

With regard to the applicant's ability to provide proper care to another adopted orphan child, states in the May 21, 2007, addendum that the applicant and his wife have the means to hire help with cooking and cleaning so that the applicant's wife can tend to the children. She states that the applicant and his wife are committed to providing the different therapies necessary for the special needs of all of their children, and she states that she continues to approve the applicant and his wife as suitable adoptive parents for two additional young orphaned children in Guatemala (specifically an infant boy born without an anus, in need of surgery, and a young girl (the beneficiary) who was turned down by another adoptive family because of her dark skin.)

The record contains a second, June 20, 2007, Addendum to the applicant's July 2006 home study report, and prepared by, indicating that was adopted domestically on May 30, 2007.

A third home study report addendum, prepared by on July 1, 2007, reflects that adoption is in process. The July 2007, addendum additionally discusses the living arrangements of all of the children at the applicant's home, stating that there are five bedrooms divided as follows: five girls are in one room; three young boys in one room; three older boys in one room; five more girls in one room – with teenagers on one end and school age girls on the other. Ms. concludes that there is enough room to accommodate the needs of the applicant's family, and that there is enough hired help to keep the home clean

and meals on the tables so the parents can attend to the children. Ms. continues to approve the applicant and his wife for the adoption of up to two children from Guatemala, aged birth to 8 years of age.

The regulation provides at 8 C.F.R. § 204.3(e)(2)(ii) that a home study report must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan, and that the home study must include an:

[A]ssessment 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. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. 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. The Service [now CIS] will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service [CIS] reserves the right to ask for such detailed documentation.

8 C.F.R. § 204.3(e)(4) states that:

[A] home study conducted in conjunction with the proposed adoption of a special needs or handicapped orphan must contain a discussion of the prospective adoptive parents' preparation, willingness, and ability to provide proper care for such an orphan.

The record reflects that there are currently sixteen children living with the applicant and his wife in their 5 bedroom home. All of the children are cared for predominantly by the applicant's wife. The children are between the ages of 3 and 24, and five of the youngest children have serious special needs requiring ongoing care, treatment and therapy. The home study preparer does not address in detail how the applicant's wife is able to provide proper care and attention to all of her children. The AAO notes further housing space concerns, and overseas investigation comparative information stating that Texas foster parent requirements do not allow more than six children in a foster home, including the foster parent's own children, and that a foster parent must have adequate sleeping space (<http://www.teprs.stat.tx.us/>).

It is noted that under 2008 Federal Poverty Guidelines the annual 100% poverty level for a family of nineteen persons is \$75,200. See U.S. Department of Health & Human Service website at: <http://aspe.hhs.gov/poverty/05fedreg.htm>. The applicant's July 25, 2006, home study report contains only a general statement that the applicant earns \$85,000 from a full time construction business. The record contains no corroborative information or evidence of this fact, however. Furthermore, although the July 25, 2006, home study report indicates the applicant's mortgage and car payment expenses are \$1054 a month, medical insurance and treatment, and physical and speech therapy costs are not discussed, nor are the costs of food and clothing for nineteen people, or the cost of having a full-time cook and housekeeper.

The home study does not discuss adoption subsidies or medical aid for the applicant's children. The AAO notes, however that the regulation provides at 8 C.F.R. § 204.3(e)(2)(ii) that any income designated for the

support of another child may not be counted towards the financial resources available for the support of a prospective orphan. Accordingly, any monthly adoption or medical subsidies received by the applicants for other children may not be counted towards the financial resources available to support the beneficiary.

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 record as presently constituted contains insufficient evidence to establish that the applicant is able to provide proper care and a suitable home environment to an adopted orphan child, as required by 8 C.F.R. § 204.3(a)(2). The appeal will therefore be dismissed and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.