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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [Redacted] Office: DALLAS, TEXAS
AAO 09 196 50015

Date: OCT 14 2009

IN RE: Applicant: [Redacted]
Beneficiary: [Redacted]

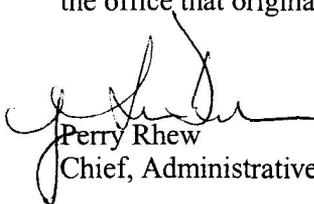
PETITION: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF PETITIONER:

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600A, Application for Advance Processing of Orphan Petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The field office director denied the applicant's Form I-600A on the basis of her determination that the applicant had failed to disclose his criminal history. On appeal, the applicant asserts that such failure of disclosure was not intentional, and requests that the application be approved.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. § 1101(b)(1)(F)(i), states that U.S. Citizenship and Immigration Services (USCIS) may not approve an orphan petition unless satisfied that the petitioner will provide proper parental care to the adopted orphan.

The regulation at 8 C.F.R. § 204.3(e) states, in pertinent part, the following:

- (e) *Home study requirements.* For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country . . . In addition to meeting any State, professional, or agency requirements, a home study must include the following:

* * *

- (2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.* The home study must include a discussion of the following areas:

* * *

- (v) *Criminal history.* The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and [USCIS] 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 [USCIS] 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 [USCIS]. By that time, the prospective adoptive parents are usually well into preadoption proceedings of identifying a child and may even have firm travel plans. At times, the travel plans have to be rescheduled while the issues raised by

the criminal record are addressed. It is in the best interests of all parties to have any criminal records disclosed and resolved early in the process.

The regulation at 8 C.F.R. § 204.3(h) states, in pertinent part, the following:

(h) *Adjudication and decision.*—

* * *

(4) *[A]pplication denied for . . . failure to disclose a criminal history . . . Failure to disclose . . . a criminal history to the home study preparer and to [USCIS] in accordance with paragraphs . . . (e)(2)(v) of this section may result in the denial of the advanced processing application, or if applicable, the application and orphan petition filed concurrently.*

The statutory and regulatory provisions discussed above permit, but do not require, denial of a petition based upon an applicant's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to the discretion of USCIS, and that determination is based on protective concerns for the orphan. Therefore, complete knowledge of an applicant's arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide proper care and a suitable home environment to an adopted orphan. Accordingly, denial of an application is often justified when an applicant fails to make the required criminal history disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide proper care and a suitable home and to an orphan.

The applicant is a fifty-year-old citizen of the United States. His wife is a forty-seven-year-old citizen of the United States. **They have been married since May 9, 2008. The applicant filed the Form I-600A on July 30, 2008, and submitted a July 12, 2008 home study in support of the application. The AAO notes that, at page 5 of the home study, the preparer stated that the couple "did not report ever being arrested or convicted of a crime."**

The field office director issued a request for additional evidence on October 21, 2008. Among other findings, the field office director noted that the home study stated merely that the couple "did not report" having been arrested or convicted of a crime. The field office director requested an addendum to the home study which indicated that they had been questioned about any arrests or other criminal history. If the applicant or his wife had such a history, complete documentation of each incident was to be submitted. Furthermore, the preparer of the home study was to provide an evaluation as to whether any individual with a criminal history had been rehabilitated.

The applicant responded to the field office director's request for additional evidence on December 17, 2008. Among other items, the applicant submitted an addendum to the home study

and information regarding the criminal history of his wife. The home study preparer found no indication that the criminal history of the applicant's wife impacted her current state of functioning, and reiterated her previous recommendation that a child be placed with the couple.

The field office director denied the petition on February 17, 2009. The field office director noted that although the applicant's December 17, 2008 response to the request for additional evidence contained "proper documents" regarding the applicant's wife,¹ no such documentation was submitted regarding the applicant.

In particular, the field office director stated the following:

[USCIS] records indicate that [the applicant] has had an arrest. You were given the opportunity to disclose this information, but you failed to do so.

The results of the applicant's fingerprinting indicate that the applicant was arrested for, and charged with, "burglary" by the Oklahoma City Police Department on April 27, 1987. The document also states that he was "released to liberty." A March 10, 2009 document from the Oklahoma State Bureau of Investigation (OSBI), which the applicant submits on appeal, and was therefore not before the field office director at the time she issued her decision states the disposition of the case as of April 27, 1987 as "released, exonerated."

The petitioner also submits a copy of the 1987 arrest report on appeal. The document describes a call made regarding "a burglary in progress," and named the applicant as the suspect. The arrest report states that police officers reported to the applicant's home, entered his home, and arrested him. The arrest report goes on to state that the applicant was transported to the Oklahoma City Police Department jail, advised of his Miranda rights, and booked.

In his March 13, 2009 letter, the applicant claims to be "absolutely astonished that there had been a prior record of arrest for myself," and that he did not intend to conceal his arrest. He states that the incident occurred 22 years ago, and that he remembers very little of it. He states that he and his ex-wife were separated at the time of the arrest, and he believes that she made this charge against him in an effort to "get even," as the two were separated at the time she made the report. The applicant apologizes to USCIS for his failure of disclosure.

The applicant also submits a second addendum to the home study on appeal. In her March 15, 2009 addendum, the home study preparer states that the applicant told her that he "had no recollection of an arrest in his past." She states that the applicant told her that he had no intention of hiding any information, and that he did not remember the arrest before viewing the March 10, 2009 document from the OSBI. The preparer of the home study concludes by stating her belief that there are no

¹ The AAO agrees with the field office director's implicit finding that, in this particular case, the criminal history of the applicant's wife does not preclude a finding that she 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).

indications that the applicant remembered this arrest, and that it seems reasonable that he would have put the event out of his memory.

Upon review of the entire record of proceeding, the AAO finds the evidence of record to indicate that the applicant intentionally failed to reveal his criminal history. The AAO does not find credible the applicant's explanation that he failed to remember an event during which police officers came to his home, arrested him, placed him in a police car, transported him to a jail, and booked him into jail.

The statutory and regulatory provisions discussed previously 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 USCIS discretion, and that determination is based upon protective concerns for the orphan. Therefore, complete knowledge of an applicant's arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide proper care and a suitable home environment and to an adopted orphan. Accordingly, denial of a Form I-600A is often justified when an applicant fails to make the required criminal history disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide proper care and a suitable home and to an orphan.

The AAO finds that the applicant's failure to disclose his arrest is very serious and cannot be condoned. Nevertheless, the AAO finds that, despite the applicant's failure to reveal his 1987 arrest for burglary, a review of the record of proceeding 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 USCIS determination regarding whether or not to approve a Form I-600A is based upon protective concerns for the orphan. The AAO notes that the applicant's arrest occurred over 22 years ago. As noted previously, the document from the OSBI states that the applicant was "exonerated" and "released" on the same day he was arrested. The matter, therefore, was not pursued in court.

The applicant has no criminal history prior to, or subsequent to, this incident. The home study 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, holds a stable job, and has a stable marriage.

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 the evidence submitted below and on appeal 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.