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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

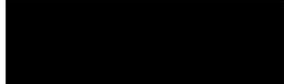


U.S. Citizenship and Immigration Services

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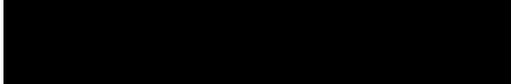


Office: ATHENS, GREECE

Date: JUN 03 2010

IN RE:

Applicant:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600A, Application for Advance Processing of an Orphan Petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the matter remanded for further processing and adjudication of any remaining issues to ensure that all other grounds of eligibility are met.

The field office director denied the applicant's Form I-600A on the basis of her determination that the home study submitted by the applicant had failed to properly evaluate the applicant's financial situation. On appeal, the applicant submits additional information and testimony.

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 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. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children . . . 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:

* * *

- (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. ***A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included.*** . . . [emphasis added].

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

- (h) *Adjudication and decision.*—

* * *

- (2) *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. If such consultations are unsatisfactory, the director may request a review and opinion from the appropriate State Government authorities.

The applicant is a sixty-two-year-old citizen of the United States. She filed the Form I-600A on October 9, 2008. The field office director denied the application on January 13, 2010. Citing to 8 C.F.R. § 204.3(e)(2)(ii), the field office director found the applicant's home study insufficient. In particular, the field office director made two findings: (1) that the home study preparer failed to specifically list the evidence she had consulted in evaluating the applicant's financial capability to adopt; and (2) that the home study preparer appeared to make statements unsupported by the evidence submitted by the applicant regarding her finances. On appeal, the applicant submits additional testimony and documentation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has overcome the grounds of the field office director's decision.

In rendering its decision, the AAO turns to the specific findings made by the field office director in her January 13, 2010 decision. As noted by the field office director, although the home study preparer found the applicant in possession of the financial capability to parent a child, she failed to specifically list the evidence she had consulted in evaluating the applicant's financial capability to parent a child. Such a listing of the exact evidence considered by the home study preparer is specifically required by 8 C.F.R. § 204.3(e)(2)(ii). The regulation does not require that this list contain any specific items; it simply requires the preparer of the home study to inform USCIS of the documentation that he or she consulted.

The updated home study submitted by the applicant satisfies 8 C.F.R. § 204.3(e)(2)(ii). The home study preparer states that she reviewed information submitted from Ms. [REDACTED] Acting Executive Director of Human Resources for the applicant's employer and Mr. [REDACTED] Director of Personnel Affairs for the applicant's employer, both of whom verified the applicant's salary and work history. The home study preparer included a copy of a financial statement completed by the applicant, which was also used in assessing her financial capability to parent a

child. Accordingly, the AAO finds the updated home study in compliance with 8 C.F.R. § 204.3(e)(2)(ii), and withdraws that portion of the field office director's decision to the contrary.

With regard to the second ground of the field office director's decision – that the preparer of the home study appeared to make statements unsupported by the evidence submitted by the applicant regarding her finances – the applicant submits additional evidence and testimony on appeal. In particular, she submits a detailed monthly budget of her income and expenses. The applicant earns a salary of \$8,900 per month, which is not taxed.¹ Her monthly expenses are between \$5,124.50 and \$5,234.50 per month, depending upon the time of year.² In her monthly expenses, the applicant included \$520 for childcare and \$100 for a child's clothing. In addition, she has assets worth approximately \$75,000. The applicant submits a February 23, 2010 letter from her employer verifying her employment and salary, as well as housing, utilities, transportation and other allowances paid by her employer. The applicant's income is also verified by a copy of her 2009 U.S. federal income tax return, which states her adjusted gross income as \$106,000. The evidence of record indicates clearly that the applicant has the financial capability to parent a child, and the AAO finds the information submitted by the applicant on appeal to overcome the concerns of the field office director in this regard, and her testimony reasonable. The applicant, therefore, has overcome this ground of the field office director's decision, and the AAO withdraws that portion of the field office director's decision.

In accordance with the previous discussion, the AAO finds the applicant to have adequately addressed each of the concerns raised in the field office director's decision. The AAO finds the record of proceeding, as it currently stands, to raise no protective concerns for the beneficiary, or beneficiaries, of the eventual orphan petition. The home study reflects that the applicant was approved by the home study preparer as a suitable parent and, in addition, the home study reflects that the applicant has a stable home environment. 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)(1)(i). Accordingly, the AAO withdraws the field office director's January 13, 2010 decision denying the petition, and remands the petition for further processing and adjudication of remaining issues, if any. The field office director must afford the applicant reasonable time to provide evidence pertinent to the resolution of any remaining issues. The field office director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

¹ She will soon earn an additional \$1,100 per month, which will bring her total income to \$10,000 per month, of which \$8,900 would not be taxed.

² The AAO notes that \$2,259 of the applicant's monthly expenses is for a personal loan (for a 2006 medical procedure), the current balance of which is \$56,392. As such, it appears as though this loan will be paid in full relatively soon, which will reduce the applicant's monthly expenses even further.

ORDER: The field office director's January 13, 2010 decision is withdrawn. The matter is remanded for further processing and adjudication of any remaining issues to ensure that all other grounds of eligibility are met. The field office director shall then enter a new decision, which, if adverse to the applicant, is to be certified to the AAO for review.