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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service:
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE:

OFFICE: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

NOV 05 2013

IN RE:

Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER:

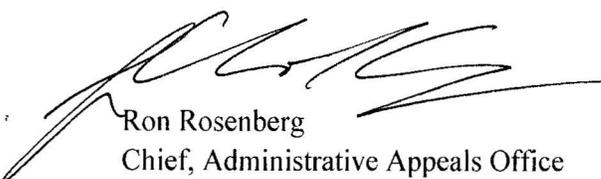
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (“the director”) initially approved the Form I-600A, Application for Advance Processing of Orphan Petition, but ultimately revoked the approval after proper notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the application will remain revoked.

The director revoked the approval of the applicant’s Form I-600A on the basis of his determination that the applicant and his wife were not capable of providing proper care to additional orphans. On appeal, the applicant submits a statement and additional evidence.

Applicable Law

Regarding the revocation of approved visa petitions, section 205 of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1155, states, in pertinent part:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 204.3(h)(14) states the following on the revocation of approved advanced processing applications:

Revocation. The approval of an advanced processing application or an orphan petition shall be automatically revoked in accordance with § 205.1 of this chapter, if an applicable reason exists. The approval of an advanced processing application or an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with § 205.2 of this chapter.

The regulation at 8 C.F.R. § 205.2 governs the procedures for revoking approved visa petitions on notice, and states, in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

The petitioner seeks to classify a child from the Ukraine as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed . . . who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption. . . . *Provided*, That the [Secretary of the Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States[.]

The purpose of the Application for Advance Processing of an Orphan Petition (Form I-600A) is to ensure that the U.S. citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for an orphan. *See* 8 C.F.R. § 204.3(a)(1)(i), 8 C.F.R. § 204.3(e). Pursuant to 8 C.F.R. § 204.3, the following supporting documentation is, in pertinent part, required with a Form I-600A:

- (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:

- (i) *Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.* The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such

potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(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. 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 will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

The regulation at 8 C.F.R. § 204.3(h) provides the following on the adjudication of the advanced processing application:

(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.

Facts and Procedural History

The record reflects that the applicant and his wife are 35-year-old citizens of the United States. They have been married since December 13, 1997, and currently have five biological children, ages 17, 15, 12, 10 and 8 years old, and two adopted children, B-Z- and H-Z-, ages 16 and 14 years old.¹ The applicant and his wife previously adopted three other children A-Z-, N-Z- and S-L-, from Ethiopia.² S-L-'s adoption took place in July 2008 and N-Z- and A-Z- were adopted in April 2010. The applicant and his wife subsequently disrupted the adoptions of S-L-, N-Z- and A-Z- due to their abuse of the applicant's younger daughter, A-R-. S-L-, N-Z- and A-Z- were eventually adopted by other families.

¹ Names withheld to protect the individuals' identities.

² Names withheld to protect the individuals' identities.

The applicant filed the instant Form I-600A on May 4, 2012, in which he indicated that he and his wife planned to adopt three more children. The Form I-600A was initially approved on June 5, 2012. On July 6, 2012, USCIS issued a Notice of Intent to Revoke (NOIR) the approval of the application because the record did not contain information related to the relinquishment of A-Z-, N-Z- and S-L-. The applicant responded to the NOIR with additional evidence, however, the director issued a second NOIR on March 6, 2013 after the applicant submitted an updated home study, dated January 14, 2013, from [REDACTED] which the director found was inconsistent with the applicant's record. The NOIR requested additional evidence related to the disrupted adoptions of A-Z-, N-Z- and S-L- and details of the applicant's financial resources. The applicant responded to the NOIR with additional evidence, which the director determined insufficient to fully overcome the reasons for the intended revocation. On April 23, 2013, the director concluded that the applicant failed to demonstrate that he and his wife are capable of providing proper care to additional orphans, and revoked the approval of the application.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant's claims and the additional evidence submitted on appeal do not overcome the director's grounds for revocation and the appeal will be dismissed for the following reasons.

Analysis

Capabilities of the Prospective Adoptive Parents to Properly Parent Additional Children

I. Sexual Abuse of the Applicant's Daughter

The record contains numerous statements regarding the disrupted adoptions of A-Z-, N-Z- and L-S-. The most recent home study, dated March 27, 2013, from [REDACTED] provided the following account of the events that resulted in the relinquishment of the three children. The applicant and his wife adopted L-S- and another child, H-Z- from Ethiopia in July 2008. In April 2010 they adopted B-Z-, N-Z- and A-Z- from Ethiopia. After joining the applicant's family, L-S-'s behavior deteriorated quickly and he became aggressive and angry. He was caught sexually abusing the applicant's 10-year-old daughter, A-R-, who is autistic and nonverbal, by inappropriately touching her. Over the next three years the applicant and his wife took L-S- to several doctors and counselors, but L-S-'s behavior continued to deteriorate. In 2011, L-S-'s therapist, [REDACTED] determined that because of L-S-'s continued anger, Post Traumatic Stress Disorder (PTSD), and behaviors that included sexually acting out, it was in his best interest to be placed with another family. In May 2011, L-S- was placed with another family. In June 2011, A-Z- and N-Z- were also caught sexually abusing A-R- by inappropriately touching her. The applicant and his wife sought guidance from the children's pediatrician, [REDACTED] and their adoption agency, [REDACTED]. Ms. [REDACTED] advised that even with counseling for several years and 24-hour line-of-sight supervision, A-R-'s safety would be at great risk. [REDACTED] a social worker with [REDACTED] felt that A-R- would not be safe as long as A-Z- and N-Z- were residing in the applicant's home and recommended they be placed with another family who had no young or vulnerable children. In June 2011, the applicant placed A-Z- and N-Z- in the custody of

his friend. [REDACTED] Report, dated March 27, 2013. Adoption decrees in the record reflect that L-S- was adopted by his new family on June 15, 2013 and A-Z- and N-Z- were adopted by their new family on September 28, 2012.

Although the most recent home study from Mr. [REDACTED] indicated that the applicant and his wife are capable of properly parenting additional adopted children, the facts surrounding the disrupted adoptions of L-S-, A-Z- and N-Z- reflect otherwise. The applicant and his wife recounted in their joint statement, submitted below and updated on appeal, that during the time period they were attempting to seek treatment for L-S-'s mental health problems, violence and abusive behavior towards A-R-, they adopted three additional children from Ethiopia, B-Z-, A-Z- and N-Z-, in May 2010. The applicant and his wife recounted that over one year after the adoption of the three additional children, in June 2011, they learned that A-Z- and N-Z- were also sexually abusing A-R- by inappropriately touching her. The applicant and his wife stated that they learned that this behavior had been taking place the entire time that A-Z- and N-Z- were residing in their home, which shows that A-R- was the victim of sexual abuse by A-Z- and N-Z- for over one year until it came to the attention of the applicant and his wife. The applicant and his wife were unable to protect A-R- from abuse even though they claimed that at the time they had strict supervision over her, including video cameras in the house and an alarm on her door to prevent L-S- from harming her. The applicant and his wife failed to discuss any therapy or treatment for A-R- after they discovered that she was sexually abused for a significant period of time by her three adopted brothers. The repeated incidents of sexual abuse in the applicant's home for an extended duration of time, even while the victim of the abuse was under close supervision, indicates that the applicant and his wife are not capable of supervising additional orphans in their home.

The applicant submitted below a March 28, 2013 psychological evaluation of A-R- from [REDACTED] Ph.D., a licensed clinical psychologist. Dr. [REDACTED] stated that A-R- is a child with profound delays and a diagnosis of autism. She stated that A-R- has the ability to communicate her basic wants and needs, can tolerate changes, has an easygoing temperament and exhibits few behavioral problems. Dr. [REDACTED] opined that A-R- will be minimally impacted by the addition of up to four adopted children in the applicant's home. While we are not questioning Dr. [REDACTED] expertise, her evaluation indicates that she drew her conclusions after only a 30 minute observation of A-R- and she did not have the full history of abuse in the family. Dr. [REDACTED] reported in a brief, one-sentence statement that two adopted boys were removed from the home after evidence emerged that they were inappropriately touching A-R-. Her statement indicates that she was only informed about the removal of A-Z- and N-Z- and was not aware of the removal of L-S- after his sexual abuse of A-R-. Nor did she indicate her knowledge of the timeline of events, including the fact that A-Z- and N-Z- sexually abused A-R- for a period of over one year while A-R- was supposedly under close supervision and video monitoring. Dr. [REDACTED] conclusions are therefore of minimal weight given the apparent gap in her knowledge of the family's history.

On appeal, the applicant asserts that after the disrupted adoptions of the three children, his family did not go to counseling and instead relied on their church, friends and family for support. The applicant recounts that he and his wife have a daily schedule during the week for their children with particular routines for A-R-. He states that A-R- has grown to be more engaged and she spends time with him and his wife or the other children. The applicant states that supervision is naturally

maintained in their home because his children are older and help supervise A-R-. The applicant submits his family safety plan and evidence that he and his wife have completed educational courses on pertinent issues related to adoptions. He provides four letters from his friends attesting to their knowledge of the applicant and his wife's capabilities as parents. The applicant also provides two affidavits, dated May 7, 2013, from Mr. [REDACTED], who opined that the applicant and his wife did everything they could to help L-S-, A-Z- and N-Z- and to protect A-R-. Mr. [REDACTED] stated that the applicant's children are now older and will notify the applicant and his wife if they sense anything is wrong with A-R-. He stated that A-R- has grown, matured and is better able to communicate. Mr. [REDACTED] explained that the applicant has a family safety plan in place and his home has an open floor plan. He stated that the family has talked openly about sexual abuse issues and other issues that could arise when new family members come into the home.

Although the evidence submitted below and on appeal reflects that the applicant and his wife are committed, dedicated and loving parents to their seven children, the preponderance of the evidence does not demonstrate that they are capable of providing proper care to additional orphans. The applicant has not demonstrated that he and his wife will be able to keep a safe and secure environment in his home if he added additional children to his household. In the applicant and his wife's joint statement they recounted the numerous security measures they placed in their home to keep A-R- safe from L-S-, yet during this time they were still unaware that A-R- was repeatedly sexually abused by two other children in the applicant's household for over one year. The couple did not show that they took any steps to seek therapy or treatment for A-R-, who was the victim of repeated abuse by three of her adopted brothers. The couple also failed to provide a detailed account of their efforts to address the impact of the three disrupted adoptions on their other children. In the couple's joint statement, they discussed their current relationship with N-Z- and A-Z- and explained "[i]t is very doable with four adults to keep [A-R-] safe while in the same room as [N-Z- and A-Z-] for a period of a few hours, it is just not possible to do it at home 24/7." This statement indicates that even in the present time, A-R- remains vulnerable and the applicant and his wife need additional adult supervision to protect her safety when more children are in their home. The director correctly determined that the applicant failed to demonstrate his ability to handle similarly challenging issues that may arise with the adoption of additional children.

II. The Prospective Adopted Parents' Financial Ability to Parent Additional Children

The record also reflects that if the applicant and his wife added four additional children to their current family of nine, the family would fall below 125% of the federal poverty line based on the poverty guidelines published by the U.S. Department of Health and Human Services for the year 2013. The federal poverty guidelines for 2013 provide that a family of 13 would need to earn \$74,662 to meet 125% of the federal poverty line. According to the most recent home study from Mr. [REDACTED] the applicant's net income in 2012 was \$67,346 and his gross income was \$70,072. The applicant rents his home for \$2,250 per month, he has monthly payments of \$179 for an automobile, and he has monthly household expenses totaling \$2,700. He has assets of \$43,200, \$16,000 in savings, and a net monthly income of \$710. The director correctly determined that with only a net monthly income of \$710, the applicant's family would be compromised by the addition of four adopted children.

On appeal, the applicant provides: evidence of his ownership of two vehicles and an internet print-out of the vehicles respective values; his bank statements; and a letter from his licensed tax preparer, [REDACTED]. The applicant previously submitted his U.S. Individual Tax Returns for the last three years. The bank statement dated April 16, 2013 reflects that the applicant had a total of \$21,734.97 in savings. [REDACTED] provided the following account of the applicant's net profit for his painting business for the previous four years: \$74,979 in 2009; \$41,331 in 2010; \$33,494 in 2011; and \$43,569 in 2012.

On appeal, the applicant asserts that the director only considered the income from his individual tax return, but did not consider the \$20,400 in liquid assets and \$22,500 from the vehicles that they own. The applicant states that it is normal for small business income to fluctuate and it is more accurate to consider the average income over a period a few years. The applicant's ownership of two vehicles is of little consequence to his ability to meet his monthly expenses as the record indicates that the family requires the use of both vehicles. A full review of the evidence submitted below and on appeal does not demonstrate that the applicant, who is the family's sole income earner, is financially capable of adding any additional children to his household. The record shows that the applicant's net profit from his business has significantly declined over the last four years along with his income. In 2012, the applicant had a monthly income after expenses of \$710 for family of nine. With the addition of one to four children, the applicant's household expenses would increase and the preponderance of the evidence does not show that even with the depletion of his savings, the applicant would be able to provide proper care to additional orphans in his home.³

Conclusion

The director found deficiencies in the record that provided him with good and sufficient cause to revoke approval of the Form I-600A. Whether to deny the application is a matter entrusted to USCIS discretion, and that determination is based upon protective concerns for the orphan. See 8 C.F.R. § 204.3(h)(2). *De novo* review of the record of proceeding fails to establish that the applicant would be able to provide proper care to additional adopted orphan(s), as set forth in section 101(b)(1)(F)(i) of the Act and 8 C.F.R. § 204.3(a)(1)(i). Consequently, the appeal will be dismissed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. Approval of the application remains revoked.

³ On the Form I-600A, the applicant requested approval to adopt three additional children, but the home study and the applicant's subsequent statements provide that he intends to adopt four additional children.