



U.S. Department of Justice

Immigration and Naturalization Service

FD

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File:



Office: San Antonio

Date:

NOV 20 2000

IN RE: Petitioner:



Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

M. C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The application for advance processing of an orphan petition was denied by the District Director, San Antonio, Texas. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the application remanded for further consideration.

The Application for Advance Processing of Orphan Petition (Form I-600A) was filed on July 16, 1999. The applicant is a 39 year-old married citizen of the United States, who wishes to adopt two children from Russia. The children have not been identified by the applicant. The district director determined that the applicant had failed to disclose his extensive criminal history record and therefore had not demonstrated appropriate rehabilitation.

On appeal, the applicant submits additional documents regarding his criminal history record. The applicant argues that his record was inadvertently kept from the Service, that he has had no criminal arrests since 1986, and that he is rehabilitated. Additional evidence has been submitted with the appeal.

The regulation at 8 C.F.R. 204.3(e)(2)(iii)(C) states that:

If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation.

The regulation at 8 C.F.R. 204.3(e)(2)(iii)(D) states, in pertinent part:

Failure to disclose an arrest, conviction, or history of substance abuse...by the prospective adoptive parent or an adult member of the prospective adoptive parent's household to the home study preparer and to the Service, may result in the denial of the advance processing application...pursuant to paragraph (h)(4) of this section.

According to the original home study report, dated September 20, 1999, the home study preparer checked criminal and child abuse records, and neither the petitioner nor his wife had "been referred for child abuse, nor do they have an arrest record in the State of Texas." In an addendum to her study, the preparer stated that the petitioner "reported that he was arrested twice and served some time in jail" in California. One arrest was in 1979 or 1980 for breaking into a house, and the other was in 1986 for selling cocaine.

On September 23, 1999, the Service requested that the petitioner submit arrest records and certified copies of final court dispositions for the two admitted arrests in California.

In response, the petitioner submitted the requested information and noted that he has committed no criminal offenses since his final arrest in 1986. The petitioner also stated that he attends weekly Alcoholics Anonymous (AA) meetings and that he volunteers and speaks at a local treatment center.

In a letter dated October 28, 1999, the petitioner was requested to contact the home study preparer and "ask her to prepare an addendum to the original home study that explains why she felt that it was only necessary to discuss arrests that resulted in a conviction and sentence."

The petitioner submitted a November 15, 1999 letter from the agency that prepared the petitioner's initial home study. The vice president of the agency advised that the initial home study preparer had resigned and explained, in her behalf, that she had mentioned only two arrests in her addendum because "it was her judgment that they were the most important."

The director denied the application, finding that "[w]hether you hid the extent of your criminal history from...[the home study preparer] or whether she did so on her own (after having it revealed to her by you) is not known." The director stated that the petitioner allowed the home study preparer to submit an incomplete report and concluded that "[t]he fact that you have attempted to hide an extensive amount of your criminal past calls into serious question the sincerity and depth of your rehabilitation."

On appeal, the petitioner submits a new home study from a different agency discussing the petitioner's criminal history record in detail. The home study preparer concludes that the beneficiary had made no attempt to hide his criminal past, that he had been forthcoming in his discussion of his prior criminal record and substance abuse, and that he "has shown proof of rehabilitation." The home study preparer notes that the petitioner has not been arrested in 14 years, that he attends AA meetings, and that he volunteers as a motivational speaker for others who are in rehabilitation. The petitioner also submits the results of a psychological evaluation dated April 3, 2000, and a letter dated April 25, 2000, from the initial home study preparer. In her statement, the initial home study preparer claims that the petitioner had discussed his other arrests with her at the time of the initial interview but that she "did not include that information in my home study as I did not have the full facts and I felt that unless he was adjudged guilty of these crimes it was not proper to write about them."

Documents contained within the record indicate that the petitioner did discuss his criminal history, to the best of his recollection, at the time of the interview with the first home study preparer but that the preparer chose not to include this information in her report. Since this omission was first brought to the petitioner's attention, the petitioner has made every attempt to produce requested arrest records, final court dispositions, and letters from the appropriate agencies with jurisdiction over certain offenses. Further, the petitioner has submitted affidavits and letters from the agency and home study preparer explaining why this information was not included in the first report. Therefore, it does not appear that the petitioner intentionally withheld information concerning his criminal history.

The petitioner has submitted additional documentation discussing his recovery from substance abuse, his attendance in a substance abuse program, and a current psychological evaluation. It is noted that the petitioner's last arrest was in 1986. The home study preparer has properly concluded that the petitioner has submitted sufficient documentation to establish that he has been rehabilitated within the meaning of 8 C.F.R. 204.3(e)(2)(iii)(C). Accordingly, the petitioner has overcome the deficiencies cited in the director's decision.

However, the petition may not be approved for other reasons. 204.3(e)(2)(iii)(B) states, in pertinent part:

A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident.

The petitioner's most recent home study preparer states that:

Requests for copies of [the petitioner's] arrest record and criminal history were made to the Santa Cruz County District Attorney's office, the Santa Cruz Police Department, and the County Court Clerk's Office in an effort to comply with requests for more information from the INS office after the original home study was submitted. Additionally, the [redacted] was contacted in an effort to obtain as much information as possible. All information received was submitted previously in the INS office in San Antonio and an effort to be completely honest and to comply with their requests for information.

The petitioner submitted a Form SC 464 report from the [REDACTED] Police Department showing that he was arrested or picked up on outstanding warrants on at least 21 occasions. The petitioner also submitted arrest records and dispositions for an additional two offenses of robbery and selling cocaine that do not appear on the Form SC 464. The petitioner submitted certified letters from the Superior Court of [REDACTED], County of [REDACTED] showing that the records of eight unspecified offenses have been purged. The records do not demonstrate which records out of the 21 offenses appearing on the Form SC 464 were purged. Even if the records for eight of the offenses appearing on the Form SC 464 have been "purged," the petitioner still has not submitted the final court dispositions for the other arrests. The petitioner submitted a letter dated October 7, 1999, from the [REDACTED] Police Department stating that "a criminal history check between the dates of 1979 and 1981 [revealed that] no criminal felony or misdemeanor conviction record was identified FOR THOSE DATES ONLY." The petitioner has submitted no evidence that he attempted to obtain the final court dispositions for his arrests in Santa Cruz in 1980, 1982, 1983, 1984, 1985, and 1986. Further, while the petitioner has submitted signed statements concerning the circumstances of some of his arrests, he has not submitted a signed statement giving details about each incident.

It is noted that in his letter dated September 23, 1999, the director requested that the petitioner submit detailed information regarding only two arrests, and requested that the petitioner "tell us" about any other records. The petitioner has complied with the request as stated. Nevertheless, absent the final dispositions of all arrests and a personal signed statement giving details about each incident, the home study report may not be considered to be complete. Since these deficiencies were not reflected in the district director's decision, the petitioner will be afforded an opportunity to submit such evidence. As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The district director's decision is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.