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**U.S. Department of Homeland Security**
Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

File: [redacted] Office: PHILADELPHIA, PA Date: MAR 17 2003

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]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The Director of the Philadelphia, Pennsylvania district office denied the application for advance processing of an orphan petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on July 12, 2002. The applicant is a 39-year-old married citizen of the United States, who together with her spouse, seeks to adopt a Chinese child.

The district director denied the application, in part, because he found that the applicant and her spouse did not fully disclose the latter's history of arrests, convictions and drug abuse. The district director denied the application, in part, because the home study failed to discuss any possible rehabilitation concerning the applicant's spouse's drug usage. The district director determined that the applicant's household was not suitable for the adoption of a foreign orphan.

On appeal, the applicant asserts that the home study report was internally inconsistent and that she and her spouse disclosed the latter's *approximate* arrest history.

8 C.F.R. § 204.3(a)(1) states in pertinent part:

> Petitioning for an orphan involves two distinct determinations. The first determination concerns the 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. . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

The record of proceeding contains the Form I-600A application and accompanying documentation, the initial home study report, the district director's request for additional information, the applicant's response, an addendum to the home study report, the district director's denial notice, and the appeal documents.

On September 18, 2002, the district director informed the home study agency and the applicant that he had obtained the results of a mandatory, confidential investigation of the applicant's spouse's identity and background. According to the investigation, the applicant's spouse had been arrested on more occasions than the applicant had disclosed to the home study agency. The district director requested the sealed court dispositions resulting from every arrest made against the applicant's spouse from 1977 to 1998, and evidence that all terms of any sentence imposed were successfully completed. The district director

requested a professional medical evaluation of the applicant's spouse's use of drugs and alcohol and an opinion regarding his ability as a parent. The district director further requested that the home study agency prepare an addendum to the existing home study expressing whether or not the applicant's household is still approved considering all criminal arrests.

The home study agency responded with an addendum to the initial home study report. The home study preparer states that the applicant's spouse "inadvertently neglected to discuss two additional arrests: one on June 13, 1980 for possession of a controlled substance and another arrest on October 19, 1997 for violation of the Drug and Cosmetic Act." The home study preparer stated that the applicant's spouse had "learned his lesson," and continued to approve the applicant for adoption.

The addendum included three letters from medical professionals, including the family physician, their pediatrician, and a psychologist. The first letter, handwritten by the family physician, states:

> I have been treating [the applicant's spouse since] 2000. He reports that he has not used drugs for approximately three plus years and has participated in a drug rehab program. I have evaluated him by history and physical several times in this period, including observing him with his three year 11 month old daughter. My opinion is [the applicant's spouse] would make a [sic] acceptable adoptive parent at this time.

Another letter, from the family pediatrician, states:

> I have known the [applicant's] family for the last two years. I have been the pediatrician of their child.... During that time I have found [the applicant's spouse] to be a loving father. He brought [his daughter] in for medical care as needed and has given no indication of present illicit drug use by my observation. I recommend the family as an adoption candidate.

A third letter was written by a licensed psychologist who provided the applicant and her spouse with marital counseling shortly after the birth of their daughter in October 1998. She writes:

> While under my care, [the applicant's spouse] was arrested at a football game because he was smoking marijuana. ...[His] drug and alcohol use was something he outgrew, but he made an unfortunate mistake that day at the football game. ... My evaluation ... does not indicate that his drug history has any bearing on his present lifestyle ... he states that he hasn't smoked marijuana since that incident in 1997 and rarely

> drinks.... Through evaluation [the applicant's spouse] has proven to me that his previous occasional marijuana and alcohol use is not a problem. My professional opinion is that [the applicant and her spouse] will make wonder [sic] adoptive parents.

A fourth letter was in the record from the Livengrin Foundation that verifies that the applicant's spouse was assessed for chemical dependency and abuse on November 14, 2002. The letter states that a urine test administered that day showed negative for marijuana. The letter's author also writes: "As a result of that assessment and based on information provided by you it was determined that although there was evidence of marijuana abuse in the past...there has been no evidence of chemical abuse at any point and no evidence of chemical abuse in the past four years." This letter is somewhat incongruous. In contrast to the author of this letter, the Bureau considers that the illegal use of drugs over more than 20 years, leading to multiple arrests, constitutes substance abuse.

8 C.F.R. § 204.3(e)(2)(iii)(C) states, in pertinent part:

> If a prospective adoptive parent has a history of substance abuse ... the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), convictions(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent.

What is noticeably absent from the record is a letter from the treatment facility where the applicant's spouse underwent court ordered substance abuse rehabilitation (Accelerated Rehabilitative Disposition Program) on two different occasions. The record as presently constituted contains insufficient evidence that the applicant's spouse has demonstrated appropriate rehabilitation.

According to a letter written by a representative from the Philadelphia District Attorney's Office, the applicant's spouse was placed into the Accelerated Rehabilitative Disposition (A.R.D.) Program twice. According to the letter's author:

> There is no guilt associated with the A.R.D. program. A defendant is placed on probation without verdict. If the defendant completes the program successfully, the case would be expunged. In [the applicant's spouse's] case, he was placed into A.R.D. for the 1980 drug case on 7/7/80 and on 11/17/97 for the 1997 drug related case. Both cases have been expunged from the local Philadelphia Police Department and should be expunged from the state and federal records as well.... The expunging of ... records is an indication that he complied and completed whatever program he had completely."

Based upon the evidence on the record, the applicant's spouse has the following criminal history:

1) 1977 - possession of marijuana
2) 6/13/80 - presumably possession of marijuana -expunged
3) 1981 - possession of marijuana
4) 8/6/82 - possession of marijuana - fine paid
5) 8/14/82 - charges unknown - fine paid
6) 1989 - DUI
7) 10/19/97 - violation of the Drug and Cosmetic Act - expunged
8) 1998 - possession of marijuana - final disposition unknown

The district director stated in his decision that "the initial home study ... informs that you denied the existence of any arrests, convictions, abuse and drug abuse. It further stated that your husband...admitted [to four arrests]." This portion of the district director's decision is withdrawn. The home study report lacked clarity. It states that the applicant and her husband denied any arrests and that they disclosed arrests. Nonetheless, the record is still incomplete as to a full accounting of all of the applicant's spouse's arrests and charges.

An applicant is required to disclose all arrests, including those that have been expunged or removed from the applicant's criminal record. As noted in the regulations, an applicant's failure to disclose an arrest or conviction may result in the denial of the advanced processing application. 8 C.F.R. § 204.3(e)(2)(iii)(D).

It is noted that 8 C.F.R. § 204.3(e)(2)(iii)(D) permits, but does not require, denial of the advance processing application on the basis of the applicant's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application, therefore, is a matter entrusted to the Bureau's discretion. The information required by 8 C.F.R. §

204.3(e)(2)(iii)(D), however, is essential to a proper decision on whether an applicant will provide proper care to an adopted orphan. For this reason, this office concludes that, although not mandatory, a denial of an advance processing application, in most cases, is the proper decision when an applicant fails to make the required disclosures. That is to say, an advance processing application should not be approved, if 8 C.F.R. § 204.3(e)(2)(iii)(D) justifies a denial, unless the applicant clearly shows that the information that he or she failed to disclose was immaterial to the decision whether the applicant and his or her spouse can reasonably be expected to provide proper care to an orphan.

According to the regulations, a home study must include an assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. 8 C.F.R. § 204.3(e)(2). In the instant case, one of the prospective adoptive parents has a criminal history. The history encompasses eight arrests over the course of twenty-one years. The charges include possession of marijuana, driving while under the influence, using marijuana, possession of a controlled substance, and violation of the Drug and Cosmetic Act. The most recent arrest occurred in 1998, less than five years ago. The updated home study fails to give accurate detailed information about the arrests, and offers no explanation as to why the home study agency recommended the applicant's household for the adoption of an orphan, taking into consideration the complete record of the applicant's spouse's criminal past, other than to say that the applicant's spouse has "learned his lesson." Accordingly, the applicant has not submitted a home study report that meets the requirements of 8 C.F.R. § 204.3(e).

The applicant failed to submit a signed statement giving details including mitigating circumstances, if any, about each arrest as is required by the regulations at 8 C.F.R. § 204.3(e)(iii)(B)

The applicant has failed to overcome the objections of the director. It is determined that the evidence of record is not sufficient to establish that the applicant and her spouse will provide proper care to an adopted orphan. For this reason, the application must be denied. 8 C.F.R. § 204.3(h)(2).

In visa petition proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

**ORDER:** The appeal is dismissed.