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**U.S. Citizenship
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Services**

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FILE:



Office: DENVER, CO
(SALT LAKE CITY, UT)

Date: **OCT 24 2005**

IN RE: Petitioner:

Beneficiary:



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

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Denver, Colorado, 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 (I-600A application) on December 1, 2003. The applicant is a fifty-four-year-old unmarried citizen of the United States. He seeks to adopt a child from China.

The district director determined that the applicant's home study was not based on complete and accurate information, and that he had failed to establish he could provide proper care and a suitable household to an adopted orphan. The application was denied accordingly.

On appeal, the applicant asserts that he misunderstood CIS requests for additional information and that he did not intentionally deceive the home study preparer or U.S. Citizenship and Immigration Services (CIS) regarding his criminal or other relevant personal history. The applicant maintains he was unaware that he was involved in criminal activity, and he asserts that he did not provide full court documentation relating to his criminal history because he believed CIS only wanted the final outcome of the case. The applicant indicates that he did not fully inform the home study preparer about having a child because he is not sure that he has a child. The applicant asserts that although he was ordered to take DNA paternity tests, there is a resemblance between himself and the child, and he is required to pay child support for a daughter, he is not actually sure that the child is his because the child's mother never provided him with the DNA results. The applicant asserts further that he did not discuss any mental health treatment with the home study preparer because, although he was ordered by the court to attend a 12-week course at the Valley Mental Health Clinic, a clinic evaluator informed him after a 90-minute interview that he only needed to attend one, six hour, Saturday course. The applicant asserts that on this basis he did not know how to respond to CIS requests for Valley Mental Health Clinic evaluation and diagnosis information, and that he thus hired his own psychologist to conduct an evaluation in order to comply with CIS requests. The applicant additionally asserts that the district director misread and misinterpreted DEA investigative report information contained in the record, and the applicant disagrees with the district director's conclusion that evidence contained in the record establishes he was aware of the criminal nature of his activities.

The AAO will not consider the assertion that the applicant was unaware the activity he was convicted of was illegal. Nor will the AAO consider or accept an inference that the applicant was innocent of the two counts of "Operation of a Clandestine Laboratory" charges against him. The evidence in the record reflects that the applicant pled "No Contest" to two counts of Operation of a Clandestine Laboratory". The AAO notes that "[c]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of [the applicant's] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) The record contains no evidence that the applicant's convictions were overturned, and the AAO may not go behind the judicial record to determine the guilt or innocence of the applicant. *Id.*

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i) states in pertinent part that CIS may not approve a Form I-600A application unless satisfied that the applicant will provide proper parental care to an adopted orphan.

Title 8 of the Code of Federal Regulations (8 C.F.R.) section 204.3(a)(2) states, in pertinent part, that:

[P]etitioning 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.

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). 8 C.F.R. § 204.3(e) provides further that a home study must include an assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.

8 C.F.R. 204.3(h)(2) provides in pertinent part that it is the:

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.

The above statutory and regulatory provisions permit CIS denial of an I-600 application based on a petitioner's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to CIS discretion. The CIS determination is based on protective concerns for the orphan. The AAO notes that complete knowledge of an applicant's criminal history and any material adverse information is clearly essential to a proper determination about whether an applicant can provide a suitable home and proper care to an adopted orphan. The AAO notes further that denial of an I-600A application is justified when an applicant fails to make required disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide a suitable home and proper care to an orphan.

The record contains a February 3, 2004, Home Study prepared by [REDACTED] of "Focus on Children". The home study states that the applicant "provided documentation of two felony charges for operation of a clandestine laboratory which was reduced to a Class A misdemeanor in May 2001." The home study states further that the applicant described the incident as a sting operation, and the home study states that the applicant insists he did not sell anything illegally, and that he complied with his legal sentence. The home study provides no other information regarding the applicant's criminal history, and the home study does not discuss the applicant's court-ordered mental health treatment and states that the applicant has no biological children. The home study concludes that the applicant is approved to adopt a child "[o]n the premise that he has accurately reported everything used in this report."

A letter signed on April 9, 2004 by [REDACTED] of "Focus on Children", states that the applicant's home meets Utah state requirements. The letter states further that the applicant attended Love and Logic Parenting classes and that he continues to be approved for adoption.

A June 24, 2004 letter signed by [REDACTED] of Focus on Children points out that her February 3, 2004 home study recommendation was conditioned on the applicant having provided correct and accurate information.

The evidence contained in the record reflects that the applicant failed to reveal material information to the home study preparer and to CIS, and the evidence reflects that the applicant's home study was approved based on incomplete and inaccurate information. The Home Study reflects the applicant indicated he had no history of mental health treatment and that he had no children. The record contains evidence, however, that as part of his criminal sentence, the applicant was ordered to attend Valley Mental Health Clinic classes. The record reflects further that the applicant attended and completed the "Six Criminal Errors Thinking Class" at Valley Mental Health Clinic on September 29, 2001.

The AAO finds the applicant's explanation that he was required to attend only a one-day course rather than the court ordered, twelve weeks of courses at the Valley Mental Health Clinic does not adequately address or explain the applicant's failure to tell the home study preparer about his court-ordered Valley Mental Health Clinic course requirement. Moreover, the AAO notes that the Valley Mental Health Clinic prepared an evaluation of the applicant on September 14, 2001, and subsequent to his September 29, 2001 course, and the AAO finds that the applicant failed to explain his failure to provide this information to the home study preparer. The AAO notes further that the applicant's explanation on appeal that he never obtained DNA results relating to his paternity over a daughter; does not address or explain his failure to discuss with the home study preparer the fact that he pays child support.

In addition to not containing a discussion of the applicant's child or regarding his mental health treatment history, the AAO finds that the home study lacks a detailed or meaningful discussion of the applicant's criminal offense, and offers no explanation regarding why the home study preparer recommended the applicant's household for the adoption of an orphan, taking into consideration the applicant's criminal history. The home study thus does not properly evaluate the suitability of the applicant's home for adoptive placement of an orphan in light of the applicant's criminal history, as set forth in 8 C.F.R. § 204.3(e)(2)(iii)(B).

The Act provides that in visa petition proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.