



U.S. Citizenship
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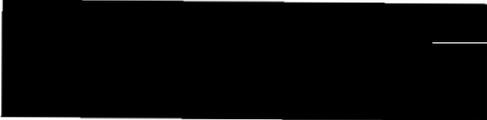
FILE:

OFFICE: HONOLULU

DATE: **MAY 11 2007**

IN RE:

Applicant:
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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Honolulu, 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 sustained.

The applicant filed the Application for Advance Processing of Orphan Petition (I-600A Application) on May 11, 2005. The applicant is a 57-year-old married citizen of the United States, who together with his spouse, seeks to adopt an orphaned child from Sri Lanka.

Upon receipt of an FBI arrest record, U.S. Citizenship and Immigration Services (USCIS) advised the petitioner (1) to submit a notarized statement of his complete criminal history and an explanation of his failure to disclose his criminal history to his home study preparer; (2) certified arrest records and certified final court dispositions for all arrests and court appearances; and (3) an amended home study addressing his complete criminal history and failure to disclose his criminal record to the home study preparer. *Request for Evidence*, July 8, 2005.

In response to the Request for Evidence, the applicant apologized for not reporting arrest records, explaining that he recalled two arrests but that he believed he had no record and noting that he was having difficulties getting court records because the incidents were over 30 years old. He also submitted an amended home study, dated May 23, 2005 (submitted with amendments July 15, 2005), concluding that the prior non-disclosure by the applicant was not a basis to deny the I-600A Application, given the fact that the incidents occurred over 30 years ago and that the applicant reasonably presumed that records were sealed or that no record existed when charges were dropped.

The district director found that the information provided in the home study failed to comport with the results of the FBI fingerprint check, which revealed three separate arrests, in 1968, 1974 and 1980; that no certified arrest records or court records had been submitted; and that the applicant had failed to disclose his criminal history to his home study agency. *District Director Decision*, July 13, 2006. The decision concluded that the applicant's "initial claim of 'no arrests' and subsequent failures to fully disclose all arrests and convictions cast serious doubts on his credibility," and that, in view of those findings, the applicant had "failed to establish [his] suitability as a parent and [his] ability to provide a proper home environment." The advance processing application was denied accordingly.

On appeal, the applicant addressed all three arrests. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated July 27, 2006. He explained that in 1968 he was arrested and charged with the misdemeanor of "being in a place where drugs were used" a charge that was considered in juvenile court, and he was placed on probation for a year. He was informed by the Ventura Sheriff's Office (California) that those records are sealed and cannot be accessed without a court order. Regarding the 1974 arrest, he submitted Court records from the U.S. District Court for the Central District of California showing (1) that he had been charged with four counts of failure to perform a duty required of him by the Selective Service Act, *i.e.*, he failed on four separate dates in 1970 and 1972, to advise of the address where mail would reach him; and (2) that all counts had been dismissed in 1974. He noted that after he was informed that a criminal record existed for him, he disclosed these arrests and they were addressed by the home study preparer. Regarding the third arrest, in 1980, he explained that he shoplifted a pair of shoes, was arrested, confessed and returned the shoes. He referred to the incident as the most shameful event in his life and stated that he had never mentioned it to anyone and hoped that he would never again be reminded of his shame. He said he made a vow 26 years ago never to steal and that he remains "remorseful, ashamed, repentant . . ." The record also contains letters indicating the applicant's numerous attempts to retrieve court records for the arrests in 1968 and 1974. The entire record was reviewed and considered in making a decision in this case.

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i) states that CIS may not approve an 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 . . . An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application.

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

The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and the Service [CIS] any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and the Service the opportunity to properly evaluate the criminal record in light of such evidence. When such information is not presented early in the process, it comes to light when the fingerprint checks are received by the Service.

“[F]ailure to disclose an arrest . . . by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service [CIS], may result in the denial of the advance processing application . . . pursuant to paragraph (h)(4) of this section.” See 8 C.F.R. § 204.3(e)(2)(iii)(D).

The statutory and regulatory provisions discussed above permit, but do not require, denial of an advance processing application based on an applicant's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to CIS discretion. The AAO notes that the CIS determination is based on protective concerns for the orphan. Complete knowledge of an applicant's arrest and criminal history is clearly essential for a proper determination regarding whether the applicant can provide a suitable home and proper care to an adopted orphan. Accordingly, denial of an I-600A Application may be justified when an applicant fails to make the required criminal history disclosures.

In this case, the record reflects that the applicant was interviewed in May 2005 by [REDACTED], a licensed social worker and executive director of [REDACTED] and [REDACTED] Inc., of Hawaii. Mr. [REDACTED] prepared a home study report, dated May 23, 2005, for submission in support of the applicant's I-600A; he amended it two times to reflect CIS's concerns that it failed to include inquiries about abuse and violence; and later that it failed to fully address the applicant's past criminal history. *Requests for Evidence from CIS*, June 10, 2005 and July 8, 2005. The final amended home study, submitted July 15, 2005

refers to the applicant's juvenile arrest record for "hanging with a group using drugs" and for draft evasion, concluding that his agency continues to recommend the applicant and his wife as adoptive parents.

The record indicates that in response to CIS inquiries the applicant provided complete information regarding two of his arrests and explained why he had not provided it sooner. He stated that in the first incident he had been tried as a juvenile and was placed on probation; that in attempting to obtain court records he had been informed by a lawyer at the Ventura County Court House in California (the jurisdiction where charges were filed), that he could legally state that he had no record of juvenile offenses because such records are permanently sealed. *Letter from Applicant to US CIS*, undated. He also explained in the same letter that the second offense was for failure to report for Selective Service in 1974, that the case was dismissed with all charges dropped, and he thought his record had been expunged. He added that the government later granted unconditional amnesty to all draft evaders, which had helped past efforts of his family to get his record expunged. He added that he mentioned these events to his home study preparer and told him that as records had been expunged or sealed, he had no record. He also stated that upon finding out that he still had a record, he had been working very hard to retrieve court records, which were over 30 years old and archived. *Letter from Applicant to US CIS*, dated June 12, 2006.

On appeal, the applicant provided additional evidence that he had not been able to provide previously due to the difficulty of securing archived records from California, explained that his juvenile record was sealed and not accessible without a court order, and provided details regarding both arrests. He also explained that the reason he did not disclose his arrest for shoplifting a pair of shoes was his shame and desire to never be reminded of that event.

Upon thorough review of the record, the AAO finds that the evidence indicates that the applicant did not intend to hide his past juvenile arrest nor the arrest for violation of selective service law. He reasonably believed that a juvenile sentence to probation in 1968 and dismissed charges in 1974 indicated that he had no criminal record. The record also reflects that he made good faith efforts to provide CIS with the requested court documents, provided court records for his 1974 arrest, and provided a full explanation of why he has been unable to access his sealed juvenile record. The applicant did, however, fail to disclose to CIS and to his home study provider the third arrest listed on his FBI RAP sheet, which states, "Arrested or received 1980/04/16 . . . Agency – Police Department Wellington (NZ . . .), Charge 1 – Theft." FBI RAP Sheet Printout, June 17, 2005. Once he received the district director's decision indicating that this charge appeared on his record, the applicant provided the explanation on appeal noted above, that he had been too ashamed to reveal it before. Although the applicant did not fully reveal his criminal history to the home study preparer, the reasons behind this failure to provide complete information are clearly explained, and his actions are mitigated by his full disclosure of his criminal history on appeal.

The applicant has provided evidence of the difficulties he has encountered retrieving official documents from California courts for offenses committed over 30 years ago, and the AAO recognizes the potential difficulties in retrieving such documents from a New Zealand court for an offense committed 27 years ago. Given those circumstances, the applicant's good faith efforts to retrieve documents, and his reasons for failure to provide all of the requested information in a timely manner, the AAO finds that the applicant has responded fully to concerns regarding his criminal history. Although neither FBI nor court records show any convictions, the applicant has admitted and explained convictions that resulted from juvenile proceedings and shoplifting charges.

As previously noted, the CIS determination regarding whether or not to approve an I-600A application is based on protective concerns for the orphan. It is relevant that in this case the applicant's offenses were committed over 30 years ago in two instances and 27 years ago in the other; one was a juvenile offense and one resulted in dismissed charges. The applicant continues to feel shame and remorse over the one crime, shoplifting, that he failed to disclose to his home study preparer. The applicant has no criminal history for the last 27 years, and neither he nor his wife has any history of abuse or violence. He and his wife were married in 1986 and have lived together in California and Hawaii since then. The home study indicates that the applicant and his wife have the love and praise of their families and friends and have formed close relationships in Hawaii; they are regarded as people of character and are esteemed as assets to the community. Knowing of the applicant's juvenile conviction and for violating selective service law, the home study preparer continued to highly recommend the applicant and his wife as adoptive parents. The AAO agrees with this assessment and finds that the applicant's criminal history, including the theft offense that was not addressed in the home study, does not diminish the couple's ability to provide a proper home environment or their suitability as parents.

The AAO finds that the applicant's failure to fully disclose his criminal history at the time of the home study is serious and cannot be condoned, as is the adoption agency's failure to adequately investigate and report on this history. Nevertheless, the AAO finds that, in spite of the applicant's arrests and convictions as he reported them and failure to fully disclose the details of his offenses and convictions during the initial home study, a review of the totality of evidence in the record 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)(2).

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. In the present matter, the AAO finds that the evidence in the record sufficiently establishes that the applicant can provide proper parental care to an adopted orphan. The applicant has therefore met his burden, and the appeal will be sustained.

ORDER: The appeal is sustained.