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FILE: [REDACTED] Office: PHILADELPHIA, PA Date: APR 05 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [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:

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, Director
Administrative Appeals Office

DISCUSSION: The District Director of the Citizenship and Immigration Services (CIS) Philadelphia, Pennsylvania, district office denied the Application for Advance Processing of Orphan Petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant filed the Application for Advance Processing of Orphan Petition (Form I-600A) on November 21, 2003. The applicant is a 36 year-old married citizen of the United States who, together with his spouse, seeks to adopt a child from China.

The applicant submits a timely appeal with additional documentation.

The record contains a "rap sheet" from the Federal Bureau of Investigation (FBI), which indicates the applicant has been arrested on one occasion, July 6, 1994, for simple assault, disorderly conduct, harassment, and recklessly endangering another person. The record also contains the disposition for the arrest, which shows the applicant pled guilty to the charge of simple assault on March 29, 1995, and was sentenced to one year of probation.¹ The remaining three charges were withdrawn. In addition, the record contains a letter from the Luzerne County Adult Probation/Parole Department (Department), dated April 7, 2004, which indicates that there are "no current capias, warrant, or pending court actions" in the applicant's name. The letter further indicates that the Department's records show that the applicant has "paid all fines in full" and that there is "no current record in [the applicant's] name."

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

(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

¹ Court of Common Pleas – Criminal Division, County of Luzerne, Commonwealth of Pennsylvania vs. Lance N. Borchick, case number [REDACTED]

must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

* * *

(iii)(B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. 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 home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(C) *Evidence of rehabilitation.* 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. 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), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitative 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 the 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.

(D) *Failure to disclose or cooperate.* Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents . . . to the home study preparer and to [CIS], may result in the denial of the advanced processing application or, if applicable, the application and orphan petition

The record of proceeding contains the original home study, dated January 15, 2004. As it relates to the applicant's arrest, the home study states the following:

According to [the applicant] there was a verbal altercation between him and his ex-wife, which was ultimately resolved peacefully. Following his arrest, he was awarded custody of his son and maintains a friendly relationship with his ex-wife.

On March 26, 2004, the district director issued a request for evidence to the applicant. In his request, the district director noted that the applicant's "charges seem to stem from a physical rather than a verbal altercation with another person." Due to the "discrepancies between the actual charges and the criminal conduct described in [the] home study," the district director requested an addendum to the home study which specifically indicates whether the applicant and his spouse continue to be approved as adoptive parents by the home study preparer. The district director further requested that the applicant provide the disposition for his arrest and "correctly describe all arrests, discuss what rehabilitation took place, and justify the continued approval of [the applicants' home]." Finally, the district director requested the applicants to submit their most recent tax return, plans for day care of the child, as well as a copy of the home study agency's license to conduct home studies.

In response to the district director's request, the applicant submitted the requested dispositions, as well as an addendum to the home study.

The district director denied the petition on August 19, 2004, after determining the applicant failed to establish his suitability as a parent and his ability to provide a proper home environment. Specifically, the district director found that the applicant initially failed to reveal his "complete criminal history" to his home study agency. Further, the district director found the home study agency's addendum failed to properly address the applicant's arrest and rehabilitation and also failed to discuss the applicants' plans for daycare and whether the home study agency continues to recommend the applicant and his spouse for adoption.

On appeal, the applicant states that he and his wife "asked for and received a special meeting [with the home study agency] before applying for both adoptions to be sure the agency was aware" of his arrest. The applicant further states his arrest was discussed with the agency "in detail."

The applicant's statements are corroborated by statements submitted by the home study preparer on appeal. [REDACTED] the applicant's home study preparer, verifies that she did discuss the applicant's criminal history with the applicant and his spouse during the home study process. [REDACTED] states:

Following submission of their application to adopt a second child from China, which was filed with this agency on October 7, 2003, [the applicants] met with a social worker on two occasions. I verify that [the applicant's] criminal history was discussed with [the applicants]. [The applicant] was forthcoming about the arrest that occurred on July 6, 1994, following an altercation with his former wife, . . . [The applicant] was originally charged with simple assault, disorderly conduct, harassment, and recklessly endangering another person. On March 29, 1995, [the applicant] plead guilty to simple assault, all other charges were subsequently withdrawn.

Even though [the applicant] claims that he did not physically assault [his ex-wife], he plead guilty to simple assault at the advice of his attorney. The plea was entered into in order to

avoid a drawn-out court process and to spare his son [sic], who was age eight at the time, having to witness court proceedings involving his parents.

It is noted that 8 C.F.R. § 204.3(e)(2)(iii)(D) permits, but does not require, denial of the application or petition on the basis of the petitioner's failure to disclose an arrest or other adverse information. Whether to deny the application, therefore, is a matter entrusted to CIS' discretion. In this instance, however, we do not find the record supports the contention that the applicant failed to fully reveal his arrest history. First, given the fact that the original home study contains the phrase, "following his arrest," it is clear that the home study preparer was aware that the applicant had been arrested. The next question is whether the home study preparer was fully aware of the details surrounding the applicant's arrest. In his decision, the district director's contention is that the applicant's conviction for simple assault implies a physical assault and, as such, was inconsistent with the applicant's description and the home study preparer's discussion of the arrest as a "verbal altercation."

We do not agree with the district director's reasoning. The Commonwealth of Pennsylvania provides the following definition for simple assault²:

- (a) Offense defined - - A person is guilty of assault if he:
1. attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
 2. negligently causes bodily injury to another with a deadly weapon; or
 3. attempts by physical menace to put another in fear of imminent serious bodily injury

Given that the crime of simple assault contains as an element the "attempt to cause" bodily injury, no actual, physical contact is necessary in order to commit the crime. Thus, the applicant's contention that he did not physically assault his ex-wife is plausible and is not incompatible with being found guilty of the crime of simple assault. Accordingly, we find there is no evidence to establish the applicant failed to fully provide all details of his arrest. Further, based upon the evidence contained in the record and the additional statements submitted on appeal, we find the home study preparer's discussion of the applicant's arrest is sufficient to meet the requirements of the regulation.

In addition to finding the applicant was truthful and forthright when revealing his arrest history, we find no evidence to show that such an arrest has any negative impact on the applicant's suitability as an adoptive parent.

In her statement submitted on appeal, [REDACTED] noted the applicant spoke openly about his past history, as well as the counseling he received, which dated back to his arrest in 1994. [REDACTED] emphasized the fact that the applicant has had no further criminal history for the past ten years, that he has been in a solid marriage for seven years, and a devoted father to his adopted daughter. [REDACTED] states that she continues to

² See 18 Pa.C.S. § 2701.

recommend the applicant and his spouse for adoption, with full knowledge of the details surrounding the applicant's arrest and subsequent conviction for simple assault. [REDACTED] elaborates on her continued approval:

Adoptions From the Heart approved the [sic] family for a second adoption of a daughter from China at that time of their original [h]ome [s]tudy. The agency continues to recommend the family for the adoption of a foreign orphan based on the following considerations: [the applicant's] arrest was based on a single incident; police were not called to the [applicant's] home at any other time. The incident occurred at a time when [the applicant] and his former wife were in the process of separating due to [the ex-wife's] unfaithfulness to the marriage, and emotions were escalated. [The applicant] plead guilty to simple assault in order to expedite the legal process and to relieve his son from legal haggling between his parents. [The applicant] voluntarily participated in counseling to help him process this period of his life. [The applicant] was involved in no other incidents of criminal behavior; he is not judged to be a violent man or a person with anger issues. [The applicant] has been happily married to his current wife for seven years. They are the adoptive parents of a three-year old daughter, who was born in China and adopted [sic] on April 12, 2002. [The applicants] are responsible parents to their daughter; the family is stable. [The applicant] has been gainfully employed throughout his adult life; he is well-regarded by family and friends, was favorably recommended as a[n] adoptive resource, he is active in church, and is a productive member of his community.

I continue to believe that the [applicants'] home is a suitable home for the placement of another child adopted from China. [The applicant] has demonstrated appropriate rehabilitation and his is and will be able to provide good care for a child throughout his lifetime.

The remaining ground for the district director's denial is the fact that the applicants' home study failed to detail their plans for daycare. The home study preparer provides the following statement on appeal:

[The applicants] are both employed outside the home. [The applicant's spouse's] parents provide childcare to the [applicants'] daughter, [sic], and this is a sound a workable situation. [The applicants] plan that [the applicant's spouse's] parents will also provide childcare to their second daughter, upon her arrival from China and following a period of time during which [the applicant's spouse] will take family leave from her place of employment.

Based upon the above discussion, the applicant has overcome the objections of the district director. The district director did not raise any other objections to the approval of the application; therefore, the appeal shall be sustained. The burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has met that burden.

ORDER: The appeal is sustained. The application is approved.