

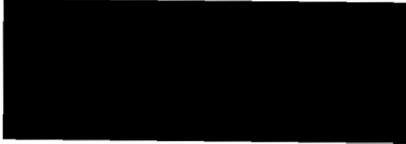
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U.S. Citizenship
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FILE: [REDACTED] OFFICE: HELENA, MONTANA (BOISE, ID) DATE **MAY 23**

APPLICANT: [REDACTED]
BENEFICIARY: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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, Helena, Montana (Boise, Idaho) denied the Form I-600A, Application for Advance Processing of an Orphan Petition (I-600A application). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant filed the I-600A application on May 3, 2005. The applicant is a forty-five-year-old married citizen of the United States, who together with his spouse, seeks to adopt an orphaned child from China.

The district director determined that the applicant had failed to fully disclose his criminal history, and that the applicant's home study report failed to sufficiently analyze the applicant's criminal history information. The I-600A application was denied accordingly.

On appeal, counsel asserts that the home study preparer neglected to include criminal history information disclosed by the applicant in her home study report. Counsel asserts further that the passage of time and the circumstances surrounding his arrests and criminal history demonstrate that the applicant did not intentionally deceive U.S. Citizenship and Immigration Services (CIS) or the home study preparer.

8 C.F.R. § 204.3(e)(2)(iii)(D) states in pertinent part that, "failure 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 [now CIS], may result in the denial of the advance processing application . . . pursuant to paragraph (h)(4) of this section."

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

(v) 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 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.

The regulatory provisions discussed above permit, but do not require, denial of an I-600A application based on a applicant's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to CIS discretion, and an orphan petition cannot be approved unless CIS makes a favorable determination on the advance processing application. The AAO notes that petitioning for an orphan involves a CIS determination of the prospective adoptive parents' ability to provide a proper home environment and on their suitability as parents. This determination is based primarily on the home study report and fingerprint check results, and it is essential for the protection of the orphan. 8 C.F.R. § 204.3(a)(2). Knowledge of an applicant's arrest and conviction information is clearly essential for a proper CIS decision regarding whether an applicant will provide proper care to an adopted orphan. Thus, although not mandatory, a denial of an advance processing application is often justified when an applicant fails to make the required disclosures. The AAO notes further that 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 a determination regarding whether the applicant and his or her spouse can reasonably be expected to provide proper care to an orphan.

In the present matter, the record reflects that the applicant has the following criminal history:

5/14/81, Burglary – Boise, Idaho
6/28/86, Failure to Appear – Boulder, Colorado
2/17/88, Driving Under the Influence (DUI) – Boulder, Colorado
2/2/91, Criminal Damages – Prescott, Arizona
2/2/91, Criminal Nuisance – Prescott, Arizona.

It is noted that in the case of the Burglary charge against the applicant, the applicant plead guilty to misdemeanor Trespassing and Malicious Injury to Property charges. The charges were dismissed with prejudice on February 18, 1982. It is further noted that in the case of the DUI charge against the applicant, the applicant plead guilty to Reckless Driving in July 1988.

The district director's decision states that the applicant failed to disclose his criminal history to CIS or the home study preparer, and that the applicant's initial home study report states simply that the applicant has two driving infraction arrests.

Specifically, the May 2, 2005, Home Study Report prepared by Sherie Borgquist of A New Beginning Adoption Agency, Inc. states that the Department of Health and Welfare (DHW) criminal background check results for the applicant reflected two arrests for driving infractions from 1993 to 2000. The home study preparer states that the criminal background check incidents were minor events that happened several years ago and the applicant learned from his mistakes and is now a responsible citizen who makes a positive contribution to his community and qualifies as an adoptive parent.

In response to CIS concerns regarding the applicant's failure to fully disclose his criminal history, a June 3, 2005 Home Study Update (Update) prepared by Sherie Borgquist of A New Beginning Adoption Agency, states that the applicant did disclose his arrest for burglary in an Idaho State Department of Health and Welfare (DHW) criminal history check request. The home study preparer states that the applicant additionally disclosed the incident to her during the home study review process, but that she overlooked the information when completing the home study report. The home study preparer states that the applicant also disclosed his February 1988, DUI arrest in his DHW criminal history check application. The home study preparer states further that the DUI arrest was also disclosed to her during the home study interview process. The home study preparer states that the DUI charge was reduced to a Reckless Driving charge, and the home study preparer states that her report discusses the reduced Reckless Driving offense. In addition to the above information, the home study preparer states that the applicant also informed her during the home study interview process that he was in trouble a lot when he was younger, and she states that the applicant informed her that he had been arrested a number of times but did not recall each instance or the date of each offense.

Based on a second interview with the applicant, the home study Update that the June 1986, Failure to Appear charge against the applicant resulted from a previous citation he received for riding a bike in a mall. The home study preparer states that the applicant forgot about the citation and failed to appear at court. The applicant paid a fine to resolve the matter. The home study preparer states further in her update that the February 1991 criminal damage and nuisance charges against the applicant stemmed from his driving an off-

road vehicle on private property and running into farmers' fences, and playing a joke on roommates by pretending to have burglarized their home and speeding off in a car when they returned home. The Update states that the applicant's failure to disclose his 1986 and 1991 arrests were the result of his not recalling the events.

The home study preparer states in her Update, that the offenses committed by the applicant occurred more than thirteen years ago and that the applicant has since been a law-abiding citizen who has learned from his past mistakes. She states that the applicant became a commercial airline pilot who was entrusted with the lives of thousands of people, and that he has a real estate license and has mentored troubled youth for over nine years. She concludes that the totality of factors support a recommendation of the applicant for adoption of a child.

In a statement written on June 5, 2005, the applicant states that he plead guilty to misdemeanor trespassing and petty vandalism charges for an event that occurred during his last year of high school. The applicant states that at the time, builders were constructing a home next to his house, and had placed an outhouse on top of a grave he had recently dug for his dog. The applicant states that he was upset and stupidly took some of the builder's tools with the thought that he could stop the building, or get even. The applicant states that the charges against him were dismissed after he stayed out of trouble for a year, and he believed his record had been expunged. The applicant states further that he informed the home study preparer about the incident, and that he does not know why it was not mentioned in the home study report. The applicant indicates that he also told the home study preparer that he had gotten into trouble with the law on several occasions while he was in college, for driving too fast, and on one occasion for driving under the influence. The applicant states that he plead guilty to a charge of Reckless Driving in the Driving Under the Influence case, and he states that he is not sure why this information was not contained in the home study report. The applicant states that he also told the home study preparer that he:

[H]ad been on probation for some misdemeanors many years ago, had paid some fines, and that the cases had been dismissed. This was the extent to which I was asked to provide any detailed account of these incidents. I was never told to provide actual court records, nor did I think it important since a great many years have passed since I got into trouble.

The applicant indicates that although he had previously forgotten the matters, upon review of the district director's decision, he recalled receiving a citation for riding his mountain bike at a mall, and receiving citations for criminal nuisance and criminal damages in Arizona. The applicant states that in one of the cases he played a practical joke on some roommates that resulted in a citation for disturbing the peace, and that the criminal damages case resulted from his driving over a fence on private property after he became lost while four wheel driving on the back roads. The applicant states that he believed the disturbing the peace case was dismissed. He paid damages and a small fine for the criminal damage case.

The applicant states that he did not intend to withhold any information about his past from CIS or the home study preparer. The applicant states further that after his graduation from college in 1991, he commenced employment as a commercial pilot for which he received an extensive federal background check, and that in 2001, he started a business as a contractor and real estate investor. The applicant states that his past mistakes were made during high school and college, that he is now active in positive community projects, and that he looks at his past indiscretions with some regret.

The record also contains several letters of recommendation from the applicants' friends and family stating that the applicant is a responsible and capable person who would make a good parent.

Upon thorough review of the evidence, the AAO finds that the applicant has established that he did not intentionally withhold information concerning his criminal history from CIS or the home study preparer. The evidence demonstrates that the home study preparer's initial report did not include or discuss several incidents the applicant had mentioned to her during the home study interview process, and incidents that the applicant had disclosed to the Idaho State Department of Health and Welfare. The AAO notes further that the remaining criminal incidents which the applicant failed to disclose to the home study preparer occurred more than thirteen years ago, and were misdemeanors. The AAO notes the nature of the offenses committed by the applicant, as well as the mitigating circumstances surrounding the applicant's criminal record, and the AAO notes that the applicant has not been involved in criminal activities since that time. Based on the totality of the evidence, the AAO finds that the applicant's past criminal history does not materially affect the decision regarding whether the applicant can reasonably be expected to provide proper care to an orphan, and the AAO finds the applicant has established that he is a suitable parent who can provide a proper home environment and care to a child.

The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. The AAO finds that the applicant has met his burden in the present matter. The appeal will therefore be sustained.

ORDER: The appeal is sustained.