identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] OFFICE: MEMPHIS, TN Date: JUN 03 2009

IN RE: APPLICANT: [redacted]

BENEFICIARY:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Memphis, Tennessee approved the Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application) on February 29, 2008. Subsequently, U.S. Citizenship and Immigration Services (USCIS) became aware of additional information indicating that the applicant was not eligible for approval of the I-600A Application, and the director revoked the approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case will be returned to the director for further action.

The regulation requires that an appeal from the revocation of the approval of a petition must be filed within 15 days after the service of the notice of revocation. 8 C.F.R. § 205.2(d). If the notice was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record in this case shows that the director issued the revocation decision on July 30, 2008. USCIS received the petitioner's Form I-290B, Notice of Appeal, on August 27, 2008, which was 28 days after the director's decision was issued. Because the appeal was untimely filed, it must be rejected.

Nonetheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) directs that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Upon review, we find that the evidence submitted on appeal supports a motion to reopen and reconsider. We return the record so that the director may make a decision on the merits of the case.

Procedural History and Pertinent Facts

The applicant is a 50-year-old married citizen of the United States, who, together with his spouse, seeks to adopt one or two orphaned children from Iran. The applicant filed the I-600A Application on May 24, 2007 and subsequently submitted the required home study, dated July 16, 2007.

In the home study, the applicant explained that he had been arrested once, in Florida, because a warrant for "flagrant non-support class D Felony" in Kentucky had been issued. He explained that he had not realized that his check for child-support had not cleared, and the charge for "Theft by Deception over $300.00" was dismissed. He added that he currently pays child support on a regular basis to the court and has a positive relationship with his son, [redacted] U.S. Citizenship and Immigration Services (USCIS) issued a request for additional information on November 26, 2007, indicating that they had "received copies of your arrest [sic] however the seal or stamp from the court must be original." They specifically requested "the original court certified records/dispositions of ALL arrest [sic] and **if needed** an addendum to home study addressing ALL arrest [sic] and why it was not disclosed in the original home study [emphases in the original]."

In response, the applicant provided a court-certified copy of an Agreed Order, dated June 17, 1999, dismissing the charge of "theft by deception over $300" conditioned on his payment of $411; and a copy of an arrest warrant issued in Kentucky for the applicant in 1998 and served on him on May 25,

1999 in Florida. The charge referred to the applicant's check for child support that was not honored by his bank due to insufficient funds. His I-600A Application was approved on February 29, 2008. Subsequently, USCIS became aware of an additional charge against the applicant in 1999 for failure to pay child support and an arrest warrant for the applicant in connection with bad checks he wrote in Las Vegas, Nevada, in 2007.

While noting that the record showed that the 1999 and 2007 charges had been dismissed, the director issued an Intent to Revoke the I-600A Application on May 23, 2008, finding that the applicant had failed to disclose the events surrounding the 1999 arrest in Florida and had failed to reveal the 2007 arrest warrant. The Intent to Revoke specifically requested certified copies of all court dispositions and arrest records and evidence that the applicant was current on all child support payments. In response, the applicant provided copies of the two arrest warrants that were served on him on May 25, 1999 in Florida for the offenses he had previously revealed in the home study; a list of amounts owed to Caesar's Palace Casino in Las Vegas for cash advances made in June 2006, provided by the Clark County District Attorney's office, along with a note that he would provide court documents as soon as received from the District Attorney's office; court-certified copies of dispositions related to his arrests showing that restitution had been made in all cases and charges dismissed; and proof that he did not owe any child support payments and was currently making regular child-support payments to the court for his son, [redacted]

The applicant also provided a statement, dated June 4, 2008, in which he blamed himself for failing to provide details of his Florida arrest, but thought that he had later given [redacted], their home study counselor, all of the necessary papers; regarding the Las Vegas warrant, he stated that "it had happened after I finished the home study so I believed that it was about any thing prior to filing the application," admitting that these were his mistakes. In a follow-up statement he added that after he and his wife received the approval of their I-600A Application, they were excited and traveled to Iran and, after working very hard with different government agencies in Iran, they were finally granted custody of a little girl, [redacted]. He stated that they moved her from the orphanage to his wife's mother's home in Tehran; they provided her with needed medical care; he, his wife and his son consider her to be part of their family; and that [redacted] continues to reside in Tehran with his wife's mother, as they were unable to bring her to the United States with them. The applicant also stated that he may initially have failed to fully reveal his past arrest because he was ashamed, but that he is working on that problem and does not want his family to be punished for his mistake.

Upon review of the additional evidence submitted by the applicant, the director found that the applicant had failed to fully disclose the events surrounding his 1999 arrest in Florida and failed to reveal the 2007 arrest warrant for insufficient funds and had, therefore, failed to establish eligibility for approval of the I-600A Application. On July 30, 2008, the approval of the application was revoked.

The applicant, through counsel, filed a Form I-290B, Notice of Appeal, on August 27, 2008. It was later supplemented with counsel's brief, affidavits by the applicant providing additional details about his arrests and charges, an updated home study and a psychological evaluation.

The issue on appeal is whether the applicant's past failure to disclose events surrounding his 1999 arrest in Florida and the 2007 arrest warrant justifies a finding that the applicant cannot provide a

suitable home and proper care to an adopted orphan. We note that the director did not address the prospective adoptive parents' capacity to provide proper care to an adopted child, basing the denial solely on the applicant's failure to disclose all of the requested information regarding past arrests. On appeal, the applicant submits evidence that, although he erroneously failed to disclose all of the requested information regarding his prior arrests, he came forward with details when he was aware of the need to do so; and he and his wife are well qualified to care for an adoptive child. Upon review of the evidence, including the facts surrounding the arrests and charges; the final dispositions dismissing all charges after restitution; the reasons for the applicant's failure to initially disclose all the required information; and the applicant's efforts to avoid any future problems; we find that, despite the noted failure to disclose, the applicant has established that he is capable of providing proper care to an adopted child.

Eligibility for approval of an I-600A Application

USCIS may not approve an I-600A Application unless satisfied that the applicant will provide proper parental care to an adopted orphan. Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), defines the term "orphan" in pertinent part as:

> [A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* **That the Attorney General [now Secretary, Department of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States**. . . . (emphasis added).

The regulation at 8 C.F.R § 204.3(a)(1) provides that a child is eligible for classification as the immediate relative of a U.S. citizen if the child meets the definition of orphan contained in section 101(b)(1)(F) of the Act and if the U.S. citizen seeking the child's immigration can document that the citizen and his or her spouse, if any, are capable of providing, and will provide, proper care for the child. In this regard, the regulations set forth the requirements of a home study, a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. 8 C.F.R. § 204.3(e).

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

> The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and [USCIS] 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 [USCIS] 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 [USCIS].

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 USCIS discretion. The AAO notes that the 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.

Applicant's arrest and criminal history

On appeal, the applicant asserts that he has provided all of the details and official records of his arrests, charges, and dispositions. He also provides additional explanations for his failure to provide all of the required information previously, including that he mistakenly concluded that a "quashed warrant" and dismissed charge after restitution was paid for his Las Vegas debts meant that he did not have to reveal the related warrant or arrest. He also stated that he was ashamed and, as he was not aware of the 2007 warrant until after the initial home study had been completed and submitted, he failed to properly update the home study counselor with required information. He admitted that he did not provide all of the required details of his 1999 arrest in Florida, but in response to USCIS's request for additional evidence and Intent to Revoke, he claimed that he provided all the necessary documents.

In addition to the evidence described in the previous section, the record includes the following relevant documents submitted on appeal:

> Two detailed affidavits from the applicant, dated January 21, 2009, regarding his two prior arrests. The first describes the circumstances surrounding child support; the second, his debt to Caesar's Palace.

The applicant explained the following:

His arrest in May 1999 for "Fraud" or "Theft by Deception" and "Flagrant Non Support" was based on failure to pay child support. He spent one night with M-[1] in 1996; otherwise, he had no relationship with her and she did not inform him that she was pregnant. She gave birth to D-[2] in March 1997.[3] She later told the applicant's sister that the applicant was the father, and asked him

---

[1] Name withheld to protect individual's identity.

[2] Name withheld to protect individual's identity.

[3] The initial home study failed to indicate that D- was the petitioner's biological child.

what he planned to do about the situation. He was not aware of child support laws and sent checks directly to M-; he was also ordered to pay $389 monthly. Towards the end of 1997, he moved to Florida; his business was bankrupt and he had lost his home and car. He closed his bank account, unaware that the last child-support check had not cleared; this resulted in a warrant for his arrest for "Fraud" or Theft by Deception." He was arrested in Florida in May 1999 after a traffic stop and served with the warrant. He voluntarily returned to Kentucky. He fully disclosed this arrest during the home study interview and submitted the Agreed Order showing that in June 1999, he paid the amount due in full. The arrest also resulted in a second charge for "Flagrant Non Support." He had fallen 18 months behind on his payments for child support; with his sister's help, he paid back child support of $7,585, medical expenses for birth and delivery and the cost of DNA testing; on August 10, 1999, the court entered an Agreed Order for Dismissal. In June 1999, M-'s husband served the petitioner with a Petition for Adoption for D-, to which he consented. He takes parenting seriously; his son [redacted] was born in 1993, and he has given him financial support, time, guidance and love.

His arrest on October 22, 2007 was for failure to pay his debt to Caesar's Palace in Las Vegas. He went to Caesar's Palace in June 2006 and, while there, was offered a line of credit of $20,000; he asked for an extension, and was given an additional $20,000. He completed the credit applications with the understanding that the casino could withdraw money from his bank account; when he realized how much he owed, he worked out a payment plan with them and made several installments. They later demanded that he pay the balance in the next two installments, and he told them he could not afford to. Although a warrant for his arrest had been issued because of this line of credit, he was not aware of this when he provided information for his first home study on July 16, 2007. He received the District Attorney's letter of July 4, 2007 in August 2007, which advised him of the warrant; he called the District Attorney's office, but no new arrangements were concluded. He was arrested in Miami when returning from an overseas visit on October 22, 2007 as a fugitive from Nevada; he paid his debt in full, and on October 24, 2007, the case was dismissed and the District Attorney's office filed a motion to quash the arrest warrant. He mistakenly concluded that the arrest had been removed from his record. He did not withhold this information during the home study because he was unaware of the charges at that time; he now knows that he needs to advise the agency of any changes.

- A second home study, dated December 2, 2008, prepared by [redacted], an Adoption Counselor for Jewish Family Service in Tennessee.

The home study is based on several meetings with the applicant and his wife and a home visit on September 20, 2008; it notes that the couple adopted a daughter in Iran after the prior home study had been submitted and the I-600A Application approved, and that the couple hopes to be able to bring their daughter home to the United States. The home study includes a discussion of the applicant's relationship to his wife and the couple's five-year-old son; his relationship with his 15-year-old son, [redacted], for whom the applicant pays child support; and the applicant's account of his other child, D-, who was born in 1997 and for whom he also paid child support. Regarding the applicant's criminal record, a full account of the applicant's responses to questions is provided; the applicant explained his two arrests consistent with his affidavits, noted above. He further stated, "I really messed up my life by not telling the entire truth or thinking that something has no bearing on what I am doing. Life was good until I messed up and [redacted] could not come to the United States. I

have hurt my wife, my son, and my daughter. I want my family to all be together. I will never make those mistakes again."

The home study refers to three letters of reference, including two from individuals who have known the applicant and his family for eight and ten years respectively and who recommend the couple as adoptive parents. In the summary and recommendation, [redacted] the Adoption Counselor, notes that the couple shows unconditional love and acceptance for their child and [redacted] and will do so for any child they adopt. She concurs with the assessment of [redacted], noted below, that the applicant is credible; that he made some unwise choices and assumptions in the first home study, from which he has learned; that he was candid and open with all requests for information; and he clearly desires to be a father to the couple's adopted daughter.

- A Confidential Report of Psychological Evaluation by [redacted] Licensed Psychologist, based on examinations on October 15, 2008, October 30, 2008 and November 4, 2008.

[redacted] states that the applicant was referred for a psychological evaluation by his attorney to evaluate his current psychological and emotional status and "his prior legal history and to rule out possible psychological, emotional or behavioral barriers which would be contraindicated to his adoption of [the child in Iran]." [redacted] administered tests and interviewed both the applicant and his wife; they responded to questions about, *inter alia,* their children, and the circumstances surrounding the two arrests at issue in this case. Notably, [redacted] concluded that while the applicant admittedly made mistakes, he expressed the desire to learn from his mistakes; and the applicant "did not present as an impulse dominated personality and there was no evidence of addiction to gambling or substances. . . . He did not present with evidence of addictive personality features. . . . [and] did not present with any significant psychological findings which would preclude his capacity to serve as a parent for the proposed adoption." [redacted] found the applicant credible and his responses candid.

- Certified copy of court record from the Justice Court, Las Vegas Township, regarding [redacted], State v. Danesh, Ali; Letter from Clark County District Attorney's Office, Bad Check Diversion Unit, dated July 4, 2007; and Criminal Complaint.

These documents show that a criminal complaint was filed on July 3, 2007 against the applicant for "drawing and passing a check without sufficient funds in drawee bank with intent to defraud" to obtain cash and/or gaming chips from Caesar's Palace Hotel and Casino, between June 16 and 20, 2006; and a letter, dated July 4, 2007, was sent to the applicant advising him that, due to his failure to make restitution arrangements with the District Attorney's office, a criminal complaint had been filed and a warrant for his arrest had been issued. The court record shows that on October 24, 2007, restitution of $41,250 was paid and a motion by the state to quash the arrest warrant and dismiss the case was granted.

These documents appear to have been submitted for the first time on appeal. The applicant had previously provided the information contained in them in response to the director's Intent to Deny; and the director acknowledged that the charges stemming from the two arrests had been dismissed.

Conclusion

The record reflects that the couple was married in Iran on March 10, 1999, and they have a five-year-old son; it reflects a good marriage and that their son is happy and well cared for. It also indicates that the applicant has a 15-year-old son, [redacted], who does not live with him, but who visits regularly; the applicant pays child support for [redacted]; and the applicant and his family have a close relationship with him. Upon thorough review of the record, the AAO finds that the applicant did not initially fully disclose to the home study provider the details surrounding his arrest in 1999, although he did disclose the arrest, the charges and disposition of the charges at that time. He later provided more details and full documentation. He did not initially provide information regarding his 2007 arrest for failure to pay his gambling debt, but he has explained that he was unaware of the warrant that had been issued in that case until after the home study had been submitted. He later provided all of the required information. In both cases, with the help of his family, he was able to pay his debts promptly and all charges were dismissed.

Assessments by a psychologist and the adoption counselor in this case, both of whom are fully aware of the circumstances surrounding the applicant's past arrests and his prior failure to divulge these circumstances, find nothing in his past or in his personality that would interfere with his capacity to serve as a parent for the proposed adoption. The home study of December 2, 2008, which takes into consideration the applicant's arrest history, continues to recommend the applicant as an adoptive parent.

As previously noted, the USCIS determination regarding whether to approve an I-600A Application is based on protective concerns for the orphan. It is relevant that in this case all of the charges filed against the applicant were dismissed after the applicant provided full restitution. The explanations given for the initial failure to provide the required information are reasonable under the circumstances of this case. Neither the applicant nor his wife has any history of abuse or violence, and the applicant has recognized his past mistakes and provided full restitution.

The home study indicates that the applicant and his wife have the support of their families and friends. Knowing of the applicant's past arrests, the home study preparer continued to highly recommend the applicant and his wife as adoptive parents; and a psychologist found no basis for concern. The AAO agrees with these assessments and finds that the applicant's history 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 history at the time of the home study is serious and cannot be condoned. Nevertheless, a review of the circumstances of his past experiences and totality of evidence in the record indicates that he 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).

Upon review of the evidence, as summarized above, the AAO finds that the applicant's untimely appeal meets the requirements of a motion to reopen and reconsider. Accordingly, the case will be returned to the director to treat the untimely appeal as a motion to reopen and reconsider the application on the merits.

ORDER: The appeal is rejected and returned to the director for treatment as a motion to reopen and reconsider. Should a new decision, taking into account the new evidence, be adverse to the applicant, it shall be certified to the AAO.