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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

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[redacted]

FEB 2 5 2010

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date:
SIM 09 258 10019

IN RE: Applicant:
Beneficiary: [redacted]

APPLICATION: Application for Determination of Suitability to Adopt a Child from a Convention Country Pursuant to 8 C.F.R. § 204.310

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director denied the Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for continued processing of the applicant's the I-800A application.

The director denied the application on the basis of his determination that the applicant had failed to comply with 8 C.F.R. § 204.311(c)(12). Specifically, the director found inadequate a statement submitted by the applicant regarding a 1985 incident during which she was arrested for operating a motor vehicle without a license. On appeal, the applicant submits a supplemental statement regarding the incident.

Section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), states, in pertinent part, the following:

> a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993,[1] or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age–
>
> (i) if–
>
> (I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;
>
> (II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;
>
> (III) in the case of a child having two living natural parents, the natural parents are incapable of providing care for the child;

[1] *See Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (May 29, 1993). The United States signed the Hague Convention on March 31, 1994 and ratified it on December 12, 2007, with an effective date of April 1, 2008.

(IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer status on one or both of such natural parents) [.]

The regulation at 8 C.F.R. § 204.311 states, in pertinent part, the following:

Convention adoption home study requirements.

(a) ***Purpose.*** For immigration purposes, a home study is a process for screening and preparing an applicant who is interested in adopting a child from a Convention country.

* * *

(c) *Study requirements.* The home study must:

* * *

(12) Include 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 for anyone subject to the home study and a written statement submitted with the home study giving details, including any mitigating circumstances about each arrest, signed, under penalty of perjury, by the person to whom the arrest relates.

In the May 20, 2009 home study, the preparer disclosed that the applicant had been arrested in 1985 for having driven a motor vehicle after the revocation of her driver's license. However, the preparer did not submit a certified copy of the documentation showing the final disposition of the incident, as required by 8 C.F.R. § 204.311(c)(12). Nor did the applicant submit a written statement, signed under penalty of perjury, providing the details of the arrest, along with any mitigating circumstances, as is also required by 8 C.F.R. § 204.311(c)(12). As such, the director issued a request for additional evidence on July 22, 2009 and requested, among other items, the aforementioned evidence and information.

The applicant responded to the director's request for additional evidence on August 12, 2009. Although the applicant's submission of a certified copy of the court proceedings pertaining to the 1985 arrest satisfied the first half of 8 C.F.R. § 204.311(c)(12), her undated letter, which consisted of two sentences, did not satisfy the second half of that regulation. The applicant's

discussion of the incident consisted of a single sentence, and she did not provide any mitigating circumstances or explain why she failed to include such a discussion. Nor did she sign the letter under penalty of perjury. As the applicant's letter was deficient, the director denied the application on August 24, 2009.

The applicant submitted a timely appeal on September 16, 2009. On appeal, the applicant submits a September 14, 2009 letter, which she signed under penalty of perjury, and in which she discusses the circumstances surrounding her arrest as well as the mitigating circumstances. The applicant, therefore, has now satisfied 8 C.F.R. § 204.311(c)(12).

As indicated previously, the USCIS determination regarding whether or not to approve a Form I-800A is based upon protective concerns for the orphan. The regulation at 8 C.F.R. § 304.311(d)(1)(ii) specifically states that a "person with a criminal history may be able to establish sufficient rehabilitation," and the AAO finds that the applicant has made such a demonstration. The applicant's arrest for driving a motor vehicle with a revoked driver's license occurred nearly 25 years ago, when she was twenty years of age. The record indicates that the applicant has no criminal history prior to, or subsequent to, that incident. The home study reflects that the applicant was approved by the preparer as a suitable parent. In addition, the home study report reflects that the applicant has a stable home environment and holds a stable job. Although the AAO does not wish to discount the seriousness of driving a motor vehicle without a license, in this particular case the evidence of record does not indicate that the petitioner's 1985 arrest for that crime reflects negatively upon her ability to parent a child in 2010.

The AAO, therefore, finds that the applicant has satisfied both the technical requirements of 8 C.F.R. § 204.311(c)(12) in that the record has now been supplemented with an adequate statement from the applicant regarding her 1985 arrest, as well as the substantive requirements of 8 C.F.R. § 304.311(d)(1)(ii) in that she has demonstrated sufficient rehabilitation.

The director's decision, therefore, will be withdrawn

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for further processing of the application to ensure that all other areas of eligibility have been met.