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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



F₁

DATE: Office: NATIONAL BENEFITS CENTER

APR 18 2011

FILE: 
SIM 10 321 00033

IN RE: Applicant: 
Beneficiary:

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:

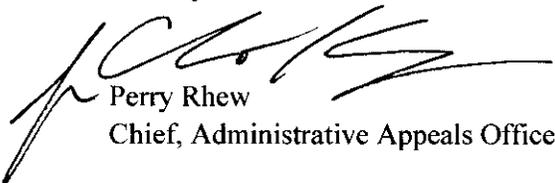
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 appeal will be dismissed.

The director denied the application because the applicant's spouse failed to disclose her prior criminal history, and the applicant did not provide an addendum to the home study addressing that criminal history. On appeal, the applicant states that the failure to disclose was the result of an honest mistake, and he requests the opportunity to file a corrected Form I-800A with a home study addendum. *See Statement in Support of Appeal*, dated Dec. 30, 2010.

Section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), governs the immigration of children who are adopted, or are coming to the United States to be adopted, by U.S. citizens under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 ("Convention"). An applicant seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must file Form I-800A. 8 C.F.R. § 204.310(a).

U.S. Citizenship and Immigration Services (USCIS) must deny a Form I-800A if:

The applicant or any additional adult member of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) about the applicant or any additional member of the household concerning the arrest, conviction, or history of substance abuse, sexual abuse, child abuse, and/or family violence, or any other criminal history as an offender; the fact that an arrest or conviction or other criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration does not relieve the applicant or additional adult member of the household of the obligation to disclose the arrest, conviction or other criminal history[.]

8 C.F.R. § 204.309(a)(1). Before denying a Form I-800A for failure to disclose criminal history, USCIS will issue a Notice of Intent to Deny (NOID) the application. 8 C.F.R. § 204.309(c). In order to rebut the NOID, an applicant must establish by clear and convincing evidence that:

(1) The applicant or additional adult member of the household did, in fact, disclose the information; or

(2) If it was an additional adult member of the household who . . . failed to disclose to the home study preparer or to USCIS . . . any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, . . . that that person is no longer a member of the household and that that person's conduct is no longer relevant to the suitability of the applicant as the adoptive parent of a Convention adoptee.

8 C.F.R. § 204.309(d). If USCIS denies a Form I-800A pursuant to 8 C.F.R. § 204.309(a) for failure to disclose criminal history, the applicant will be barred against filing a subsequent Form I-800A for one year after the date on which the decision becomes administratively final. 8 C.F.R. § 204.307(c).

The record reflects that the applicant's spouse was charged with common assault on June 11, 1999, and that the criminal charge was dismissed on August 13, 1999. The applicant and his wife filed Form I-800A, with the required home study, on August 13, 2010. The director issued a NOID on September 9, 2010, informing the applicant of the intent to deny the application based on the failure to disclose the criminal charge. In response to the NOID, the applicant stated that it did not occur to the couple to disclose the 1999 criminal charge because there was no arrest and the prosecutor dismissed the case. The director denied the application on December 3, 2010, and the applicant timely appealed.

On appeal, the applicant admits that his wife failed to disclose her criminal history to USCIS or to the home study preparer. *See Statement in Support of Appeal*. The applicant explains that because "[t]here had been no arrest, no prosecution, [and] no conviction," the couple mistakenly believed that there was no criminal record that required disclosure. *Id.* Further, given the length of time that the family has been waiting to adopt their second child from China, and the impact of the delay on the family, the applicant requests the opportunity to correctly re-file the Form I-800A and any necessary supporting documentation. *Id.*

Because the applicant has not shown by clear and convincing evidence that his wife did disclose her criminal history, or that she is no longer a member of the household, the Form I-800A must be denied pursuant to 8 C.F.R. § 204.309(a)(1). Further, the applicant is barred against filing a subsequent Form I-800A for one year after the date of this decision affirming the director's denial. 8 C.F.R. § 204.307(c). Although the applicant requests an exemption from the one-year bar, the AAO lacks authority to contravene the express language of the applicable regulations. *See, e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met the burden of proving eligibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.