

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

F2

[REDACTED]

FILE:

OFFICE: MEMPHIS, TN

DATE:

JAN 16 2009

IN RE:

APPLICANT:  
BENEFICIARY:

[REDACTED]

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

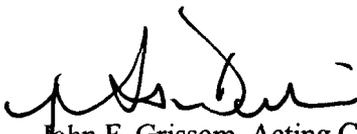
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Memphis, Tennessee denied the Form I-600A, Application for Advance Processing of Orphan Petition (I-600A Application). The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to allow the applicant to provide additional evidence and an amended home study.

The applicant is a 47-year-old married citizen of the United States, who, together with his spouse, seeks to adopt one or two orphaned children from Russia. The applicant filed the I-600A Application on October 11, 2007.

The director found that the applicant's spouse, [REDACTED], had failed to disclose her arrest record in its entirety to the home study preparer or to U.S. Citizenship and Immigration Services (USCIS) and issued a Notice of Intent to Deny (NOID) on December 14, 2007. In response, [REDACTED] provided a statement explaining the circumstances of an arrest in 1999 and her understanding that all charges had been expunged, and court records indicating that charges had been either dismissed or expunged as of November 6, 2007. *Response to NOID*, December 19, 2007. The director found that the applicant had submitted insufficient information to overcome the finding in the NOID and concluded that, therefore, he had failed to establish eligibility for approval of the I-600A Application. *Director's Decision*, April 4, 2008. The application was denied accordingly. The applicant, through prior counsel, filed a Motion to Reopen along with a statement from [REDACTED] explaining her reason for failing to fully disclose her arrest record, and reference letters as evidence of her good moral character. *Motion to Reopen (Form I-290B) and Brief*, April 24, 2008. The motion was denied on July 29, 2008, and the applicant filed the instant appeal.

On appeal, counsel asserts that [REDACTED] was under the impression that her 1999 record had been expunged or charges dismissed and that she did not, therefore, have a criminal record for purposes of disclosure and that, despite the failure to fully disclose her 1999 arrest, the prospective adoptive parents are able to provide proper care to an adopted child as required. *Brief in Support of Appeal*, dated December 3, 2008; *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed August 28, 2008. In support of this assertion, counsel notes that the director did not address the prospective adoptive parents' capacity to provide proper care to an adopted child. The applicant submits evidence to establish that, although his wife erroneously failed to disclose information about a prior arrest, she came forward with details as soon as she was aware of the need to do so and he and his wife are well-qualified to care for an adoptive child. Also submitted in support of the applicant's appeal is an updated home study noting that [REDACTED] has undergone psychological evaluation and testing in regard to a history of trauma that came to light on appeal. *Home Study Update*, November 10, 2008. In this regard, two sealed evaluations of [REDACTED] were submitted on appeal, described below.

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).

A home study must include an “[a]ssessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan.” 8 C.F.R. § 204.3(e)(2)(i). If the home study preparer determines that there are areas beyond his or her expertise that should be addressed, the home study preparer must refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for evaluation; the home study must include the home study preparer's assessment of any such potential problems areas, a copy of any outside evaluations, and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. *Id.* Any history of abuse must also be investigated, and the home study preparer must ask each prospective adoptive parent he or she has a history of substance abuse, sexual or child abuse, or domestic violence, 8 C.F.R. § 204.3(e)(2)(iii). The home study report must contain an evaluation of the suitability of the home for adoptive placement or an orphan in light of this history. *Id.*

Regarding any criminal history, 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 the Service [CIS] 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.

“[F]ailure 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 [USCIS], 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)(iii)(D).

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, history of substance abuse, sexual or child abuse, and/or domestic violence 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.

The issue on appeal is, therefore, whether the applicant's failure to disclose a past arrest justifies a finding that the applicant cannot provide a suitable home and proper care to an adopted orphan. The AAO finds that upon consideration of all the evidence in this case, including the facts surrounding the arrest and the failure for initially disclosing this information, the failure to disclose does not justify such a finding. Additional information has been provided on appeal regarding Mrs. [REDACTED]'s history, including possible substance abuse and sexual abuse that she suffered as a child. Given the circumstances of this case, the AAO also finds that the failure to initially disclose this information does not justify a finding that the applicant cannot provide a suitable home or proper care. However, an assessment must be made that takes into account the recently disclosed information. The Home Study Update, *supra*, fails to contain the required evaluation of the suitability of the home for adoptive placement of an orphan in light of the later disclosure of substance abuse and sexual abuse.

#### Failure to disclose prior arrest

The record reflects that the prospective adoptive parents were interviewed on April 25, 2007 by [REDACTED], a social worker employed by [REDACTED] Promise, a licensed, non-profit child-placing agency in Tennessee. [REDACTED] prepared a home study report, dated September 27, 2007, for submission in support of the applicant's I-600A Application. The home study report indicates that, in response to a direct question from [REDACTED] she stated that she had been arrested once, and court records of the City of Huntsville, Alabama, confirm that she was arrested on December 5, 1994 on a charge of harassment; she paid a fine and court costs and the case was closed; [REDACTED] stated that the arrest was because of an argument with another woman in a public place. The home study report recommended the Salacuses as adoptive parents. However, upon receipt of an FBI report, USCIS noted the following arrest and charges on record for Mrs. [REDACTED] an arrest in Pigeon Forge, Tennessee on April 11, 1999 for Manufacture of Controlled Substance (Charge 1) and Possession of Drug Paraphernalia (Charge 2). Based on her failure to disclose the 1999 arrest, USCIS issued a NOID asking for a signed and dated statement from the prospective adoptive parents as to why the information was not disclosed, an addendum from the home study preparer reassessing [REDACTED]'s eligibility to adopt in light of the new information, and certified copies of all arrest records and court dispositions for [REDACTED] NOID, December 14, 2007.

[REDACTED] responded on December 19, 2007 with a statement from [REDACTED] explaining the circumstances of the arrest; that her former husband had been arrested for growing marijuana on their land and that she was arrested at the same time and charged because she lived at the residence; and that her criminal defense attorney told her that the charge of manufacturing would

be expunged and that she would have no problems after she completed six months probation. She also submitted a letter from the Deputy Clerk of Sevier County General Sessions Court indicating that [REDACTED] had called about the criminal record from 1999; the court had informed her that the record was available for expungement as [REDACTED] had completed her advisement period of six months and all other requirements; the court had provided the necessary forms to have the records expunged, and the records "have been destroyed in our office and [REDACTED] no longer has a criminal history." *Letter from [REDACTED] to Whom It May Concern*, undated, submitted to USCIS December 19, 2007. The applicant later submitted court records showing that the charge for possession of drug paraphernalia had been dismissed and the charge for manufacture of a controlled substance resulted in a deferral and was later dismissed (both charges were also expunged). A Home Study Addendum was also submitted as requested, based on a follow-up interview, addressing the failure to report the 1999 arrest. *Addendum by [REDACTED]*, dated January 9, 2008. The Addendum noted [REDACTED]'s explanation that she was under the impression that the 1999 arrest "would be expunged" and therefore decided not to disclose it; that it was from a time in her life that she had left behind; and that she was unaware at the time that her former husband was growing marijuana on their property. The Addendum concluded that [REDACTED] continued to be appropriate candidates for the adoption of one or two children from Russia, approved by [REDACTED]'s Promise, based on interviews, observations of the couple, references and supporting documentation.

Finding discrepancies between [REDACTED] statement and the court letter regarding the expungement, and noting that the home study preparer disregarded the fact that the [REDACTED] family willingly withheld information regarding [REDACTED]'s arrest history, USCIS denied the I-600A Application for failure to disclose an arrest record in its entirety. *Director's Decision, supra*. The decision did not address whether the failure to disclose a prior arrest could affect the couple's ability to parent.

Upon thorough review of the record, the AAO finds that the evidence indicates that the prospective adoptive parents did not intend to hide [REDACTED] past arrest and that [REDACTED] reasonably believed that her guilty plea, deferred sentence, and later expungement indicated that she had no criminal history other than the 1994 charge that she divulged. The record also reflects that she did not want to reveal the details of a childhood and early adulthood that was understandably painful. She did, however, initially fail to disclose to USCIS and to the home study provider information the prior arrest and charges. Once the [REDACTED] received the district director's decision indicating that the charges appeared on [REDACTED]'s record, they provided an explanation in response to the NOID and, on appeal, provided further information not previously divulged. They also provided three separate assessments by experts concluding that the reasons for failure to disclose are understandable and that [REDACTED]'s record does not interfere with the couple's ability to parent. Although [REDACTED] did not fully reveal her criminal history to the home study preparer, the reasons behind this failure to provide complete information are clearly explained, and her actions are mitigated by her full disclosure of her criminal history on appeal.

Given the circumstances in this case and [REDACTED]'s full disclosure in response to the NOID and on appeal, the AAO finds that she has responded fully to concerns regarding her criminal history. The record shows that the conviction at issue in this case was a deferred judgment and was later expunged; [REDACTED] has also submitted to psychological testing and revealed past problems in an effort to show her ability to parent despite this history.

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 the offenses at issue were committed in 1999 and resulted in a dismissed charge and a deferred sentence which was later expunged.* The explanations given for the initial failure to provide the required information are reasonable under the circumstances of this case. Since 1999, the applicant's spouse has remarried and has no criminal history or history of substance abuse. Accordingly, the director's decision to deny the I-600A Application for failure to disclose the noted arrest is withdrawn.

#### Requirement for updated home study

The record contains two sealed evaluations of [REDACTED] that were submitted on appeal. One is a letter, dated November 3, 2008, from [REDACTED], a licensed social worker and [REDACTED]'s former therapist for two years when [REDACTED] was between the ages of 16 and 18 and a resident at Tennessee Children's Home. The second is a September 15, 2008 assessment by [REDACTED], a Clinical Psychologist. Both reports are based on interviews with [REDACTED] and both conclude that she does not currently exhibit any negative traits and has overcome childhood trauma and problems in early adulthood.

The AAO notes that the initial home study report indicated that [REDACTED] stated that she had never used or abused any controlled substance; however, the more detailed confidential report by Dr. [REDACTED] indicates that [REDACTED] reported using marijuana in the past but stopped about nine or ten years ago and tried cocaine once when she was 19. [REDACTED]'s assessment also reported on Mrs. [REDACTED] difficult childhood, including the death of her mother when she was nine years old, residence in the Tennessee Children's home and the trauma of rape and sexual abuse for many years. The assessment concludes that [REDACTED] has successfully overcome these experiences and "is physically and mentally healthy and seems to cope with life's difficulties well." The AAO finds that failure to report past use of a controlled substance is serious. The fact that she later fully disclosed such use along with reporting on a painful part of her childhood is also taken into consideration. Given the circumstances surrounding [REDACTED]'s youth, and her full disclosure now, the AAO agrees with the final conclusions of the experts who observed and interviewed her and does not find her failure to disclose this information previously to be a negative factor in her current ability to provide proper care to an adoptive child.

However, while both the therapist and psychologist who submitted reports found that [REDACTED] had generally overcome a history of past trauma and adversity, and to be a healthy functioning adult, neither expert specifically addressed [REDACTED]'s current ability to parent in light of that history. As the expert reports fail to fully address this issue, so too does the Home Study Update. As noted above, a home study must include an "[a]ssessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan." 8 C.F.R. § 204.3(e)(2)(i). It must also contain an evaluation of the suitability of the home for adoptive placement or an orphan in light of any adverse history. 8 C.F.R. § 204.3(e)(2)(iii).

#### Conclusion

The [REDACTED] were married in 2003. The home study indicates that the applicant and his wife have the support and praise of their families, friends and community. Knowing of [REDACTED] criminal history, the home study preparer continued to highly recommend the applicant and his wife

as adoptive parents; knowing further details of a troubled past, two experts submitted reports noting that [REDACTED] has overcome past adversity.

The AAO finds that [REDACTED] failure to fully disclose her history at the time of the home study is serious and cannot be condoned. Nevertheless, the AAO finds that, in spite of her arrest and failure to fully disclose the details of her criminal history and past trauma during the initial home study, a review of the circumstances of her past experiences and totality of evidence in the record establishes that the failure to provide these details is not a basis to conclude that the couple would not 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). The director's decision of April 4, 2008 is, therefore, withdrawn.

However, an assessment must be made that takes into account the information disclosed on appeal, a history involving possible substance abuse and sexual abuse suffered by [REDACTED] as a child. The Home Study Update, *supra*, fails to contain the required evaluation of the suitability of the home for adoptive placement of an orphan in light of that history. The applicant has the burden of proving eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. 1361. In the present matter, the AAO finds that the evidence in the record, lacking a complete assessment as required, does not sufficiently establish that the applicant can provide proper parental care to an adopted orphan. The applicant has therefore not met his burden. The matter will, therefore, be remanded to provide the applicant an opportunity to submit additional evidence of the couple's ability to provide a proper home environment and their suitability as parents.

**ORDER:** The director's decision of April 4, 2008 is withdrawn; the case is remanded for further action in compliance with this decision.