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

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U.S. Citizenship
and Immigration
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FILE: [REDACTED] OFFICE: NATIONAL BENEFITS CENTER

Date: JUN 29 2009

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Determination of Suitability to Adopt a Child from a Convention Country Pursuant to Section 101(b)(1)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(G)

ON BEHALF OF APPLICANT:

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 Director, National Benefits Center, denied the I-800A application, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks to adopt a child from a convention country pursuant to section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), which states, in pertinent part:

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, 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 proper care for the child;
- (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 immigrant status on one or both of such natural parents); and
- (V) in the case of a child who has not been adopted—
 - (aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and
 - (bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

A review of the record reveals the following facts and procedural history:

On October 8, 2008, the applicant filed the Form I-800A with U.S. Citizenship and Immigration Services (USCIS). At the time of filing, the applicant checked “Yes” in response to questions #10(a) and #10(c) regarding whether he had ever been arrested, cited, charged, convicted, or been placed on probation. In a letter that the applicant titled “Supplement to USCIS Form I-800A,” the applicant

stated that in December 1997, he was convicted of Driving Under the Influence (DUI) and completed a "Flat 48 hour sentence" and an alcohol safety education class. The applicant explained further that in March 2007, he was again arrested for DUI and received two years of supervised and three years of unsupervised probation. The applicant expressed his remorse and described the types of activities in which he has participated in order to rehabilitate himself.

Regarding the applicant's two DUI convictions, the record contains an "In Compliance Letter" from the Department of Public Safety and Correctional Services, dated September 1, 2008, which indicates that the applicant attends weekly Alcoholics Anonymous (AA) classes and reports to his probation officer once each week. The letter indicates that the applicant's participation and attendance has been "Satisfactory." The record also includes a letter from "Mountain Manor," which states that the applicant successfully completed its "Therapeutic Group" and elected to continue treatment for one month in its aftercare program. The counselor who wrote the letter states that the applicant is "highly motivated to continue in his recovery process by attending self-help groups." A letter from the Executive Pastor of the Uniontown Bible Church also indicates that the applicant has been attending its "Celebrate Recovery" program. The applicant's home study discusses the applicant's DUI convictions in great detail and concludes that the applicant would make a suitable adoptive parent.

On March 9, 2009, the director denied the application after determining that the applicant could not provide proper care for an adopted child. The director noted that, because the applicant was on probation at the time he filed the application, he failed to establish his suitability as an adoptive parent, despite the positive recommendation of the home study preparer.

On appeal, counsel submits a brief, new evidence that was not previously available, as well as copies of documents already included in the record of proceeding. The AAO shall address only counsel's brief and the new evidence, as the remaining evidence has been previously discussed.

According to counsel, the applicant filed the Form I-800A on December 3, 2008. Counsel submits an order from the Circuit Court for Carroll County in the State of Maryland, which shows that on March 25, 2009, a judge ordered the termination of the applicant's probation *nunc pro tunc* to December 1, 2008. Counsel also submits a letter from G. Warren Mix, an attorney-at-law, who states: "[T]he court granted [the applicant's] request for an early termination [of his probation] because he was a model probationer, had completed all the classes that were necessary, reported on a regular basis, and was recognized by his probation agent as having successfully adhered to all the sanctions of the probation." Counsel states that, as the applicant's probation was terminated prior to the filing of the application, he was a suitable adoptive parent at the time of filing the application.

Regarding evidence of the applicant's rehabilitation, counsel submits an evaluation from [REDACTED], a licensed psychologist. According to [REDACTED] she has completed extensive interviews with the applicant and does "not believe that [the applicant] has ever had a drug or alcohol dependency." [REDACTED] states further that the applicant does not "show any signs of an individual who backslides into problems with alcohol nor does he exhibit any tendencies that would lead me to believe that he has a personality that leads towards addictions." In a letter from the applicant's home study provider, dated May 5, 2009, a representative from the agency states that the agency has

placed 19 infants in the care of the applicant's family, despite the applicant being on probation, and that the agency "has continued to rely on them for safe competent care of newborns in our legal guardianship." The final item of new evidence that counsel submits on appeal is a May 7, 2009 letter from the applicant, who states that he has voluntarily continued to attend the "Celebrate Recovery" program despite not being required to attend after June 2008.

The evidence submitted on appeal does not overcome the director's decision to deny the application. An applicant must establish his eligibility for the benefit he is seeking at the time he files the application. 8 C.F.R. § 103.2(b)(1). Here, although counsel states that USCIS received the Form I-800A on December 3, 2008, there is no evidence in the record to support such a filing date. The evidence of the Form I-800A filing date is the Receipt Notice that was generated at the National Benefits Center, which is included in the record, and which assigns an October 8, 2008 receipt date to the Form I-800A. This receipt notice was mailed to both the applicant and his adoption service provider. Therefore, as the receipt date of the Form I-800A is October 8, 2008, the applicant must show that he was able to provide proper care to an orphan as of that date, not a date in the future.

The applicant's home study makes a favorable recommendation of the applicant as an adoptive parent; however, the applicant was on probation both on October 8, 2008, when the application was filed, as well as on December 2, 2008, the date that the home study was prepared.¹ Such a recommendation is contrary to the governing regulations, which state specifically that "[a] favorable recommendation cannot be made based on a claim of rehabilitation while an applicant or any additional adult member of the household is on probation, parole, supervised release, or other similar arrangement for any conviction. . . ." 8 C.F.R. § 204.311(l).² Therefore, as the home study preparer's recommendation is inconsistent with the regulatory provisions, USCIS must deny the Form I-800A. 8 C.F.R. § 204.312(b).

The AAO notes that the applicant, on March 25, 2009, received a termination of his parole *nunc pro tunc* to December 1, 2008. Nevertheless, a termination of parole that is effective approximately two months after a Form I-800A is filed does not show that, as of the application's filing date, the applicant was able to provide proper care to an adopted child.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for the benefit he is seeking. Here, the applicant has met not his burden. Accordingly, the AAO affirms the director's decision to deny the application and dismisses the appeal.

ORDER: The appeal is dismissed. The application is denied.

¹ The AAO notes that, although a judge terminated the applicant's probation *nunc pro tunc* to December 1, 2008 on March 25, 2009, this order was not entered until after the Form I-800A was filed and the home study was prepared.

² In the preamble to the interim rule regarding the Hague Adoption regulations, USCIS stated: "Approval will be possible only once the person has completed, and been discharged from, the probation." 72 FR 56854, October 4, 2007.