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

U.S. Citizenship and Immigration Services

DATE: JUL 1 6 2015

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) denied the Form I-600A, Application for Advance Processing of Orphan Petition (Form I-600A), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

The director denied the Form I-600A because the applicant did not submit a detailed statement and record of his criminal history, thus failing to establish eligibility for the benefit sought. On appeal the applicant asserts, through counsel, that he did not understand that a more detailed personal statement was necessary and that he is capable of providing proper care to an adopted orphan. He submits additional evidence on appeal, including court disposition documents, police reports, and affidavits from himself and his wife.

Applicable Law

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i) states that U.S. Citizenship and Immigration Services (USCIS) may not approve a Form I-600A application unless satisfied that the applicant will provide proper parental care to an adopted orphan.

The regulation under 8 C.F.R. § 204.3(h)(2) clarifies that:

> No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan. If the director has reason to believe that a favorable home study, or update, or both are based on an inadequate or erroneous evaluation of all the facts, he or she shall attempt to resolve the issue with the home study preparer, the agency making the recommendation pursuant to paragraph (e)(8) of this section, if any, and the prospective adoptive parents. If such consultations are unsatisfactory, the director may request a review and opinion from the appropriate State Government authorities.

The regulation at 8 C.F.R. § 204.3(e) provides, in pertinent part, the following:

> (e) Home study requirements. For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. . . . In addition to meeting any State, professional, or agency requirements, a home study must include the following:
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> (2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.* The home study must include a discussion of the following areas:
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> * * *

(iii)(A)(2) Inquiring about abuse and violence. The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse, sexual or child abuse, or domestic violence, even if it did not result in an arrest or conviction. The home study preparer must include each prospective adoptive parent's response to the questions regarding abuse and violence. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. 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, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(C) Evidence of rehabilitation. If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the

> home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent. Additionally, if any adult member of the prospective adoptive parents' household has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer must apply the requirements of this paragraph to that adult member of the prospective adoptive parents' household.
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> (D) Failure to disclose or cooperate. Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service, may result in the denial of the advanced processing application or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section.

Factual and Procedural History

The applicant, a year-old citizen of the United States, filed the Form I-600A on April 11, 2014. He submitted a home study report, dated April 7, 2014, with the Form I-600A. He also submitted U.S. naturalization evidence for himself and his wife, evidence of their marriage, and a divorce decree for his first marriage.

On May 7, 2014, the director requested additional evidence, including, but not limited to, a signed personal statement from the applicant describing the details of each of his arrests and his rehabilitation and any mitigating circumstances. In addition, he requested certified police reports and court documents for each incident. The applicant was notified that final court disposition evidence was to include sealed, expunged, *nolle prossed*, and dismissed cases. The applicant was also notified that failure disclose any substance, sexual, child, or domestic violence-related arrest, conviction, history, or abuse could result in denial of his Form I-600A.

In response to the director's request, the applicant submitted an amended home study report, dated May 18, 2014. He also submitted an unsigned personal statement, dated May 19, 2014, listing his arrests and summarizing the judicial resolution of the cases, as well as arrest and court disposition documents.

On May 28, 2014, the director issued a Notice of Intent to Deny the Form I-600A (NOID), stating that the applicant's personal statement was unsigned and lacked details about his arrests and rehabilitation. The applicant was asked again to provide a signed and detailed personal statement describing all arrests, rehabilitation, and any mitigating circumstances. In addition, the applicant was asked to provide police reports for arrests that occurred in March, November, and December of 2004.

In response to the NOID, the applicant resubmitted his previous statement, now with his signature and dated June 5, 2014. He also submitted certified copies of a Virginia, police record check, reflecting that he was charged on March 22, 2004, and on December 6, 2004 for "Profane, Threatening [Language] over Public Air Way." The record check reflected that the disposition for the March 2004

charge was "unknown," and that the December 2004 charge was dismissed. In addition, the record check reflected that the applicant was charged on November 22, 2004, for the offense of "Violate Court Order Regarding Child Custody" and that he was found guilty.

The director denied the Form I-600A on July 7, 2014, because the applicant did not submit a detailed statement and record of his criminal history. The director determined further that the applicant did not provide requested certified police reports for his March, November, and December 2004 arrests, thus failing to establish his eligibility for the benefit sought.

On appeal, the applicant asserts that he did not understand that a more detailed personal statement was necessary, and he submits a new statement. The applicant also submits new court disposition and police department evidence, including a County Juvenile and Domestic Relations District Court disposition for an arrest that occurred on March 12, 2004, and two Police Department criminal incident information forms reflecting that he was reported for "Violat[ing] A Parental Order/ Parental Abduction" on November 5, 2004, and for "Threatening Phone Calls" on December 6, 2004. The applicant submits e-mail evidence reflecting that the police department does not provide certified copies of police reports. He also submits a letter from the County Juvenile and Domestic Relations District Court stating that they found no record under the applicant's name. In addition, the applicant submits a statement from his wife attesting, in pertinent part, to his good character.

Analysis

We conduct appellate review on a *de novo* basis. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant submitted evidence concerning the following incidents related to his criminal conviction history:

> On or about November 22, 2004, the applicant was charged with violating a court order regarding custody of a child, a Class 3 misdemeanor, in violation of the Code of Virginia § 18.2-49.1. He was found guilty of the charge and fined $100.00 on March 31, 2005.
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> On or about December 15, 2005, the applicant was charged with selling tobacco to a person less than 18 years of age, in violation of Code of Virginia § 18.2-371.2. The applicant paid a $100.00 fine on December 27, 2005.

The record also contains evidence that on June 10, 2005, the County Circuit Court found the applicant not guilty of Code of Virginia § 18.2-427, threatening over the phone. In addition, the record contains evidence that March 22, 2004, December 6, 2004 charges against the applicant for violating Code of Virginia § 18.2-427 were dismissed on April 27, 2004 and July 22, 2005, respectively. A March 28, 2005 charge against the applicant for selling alcohol to a person less than 21 years old, in violation of the Code of Virginia § 4.1.304 was also dismissed on June 2, 2006. These

cases involving a not-guilty finding and dismissed charges do not constitute part of the applicant's criminal conviction history.

The applicant stated in his May 19, 2014, statement, that of his six court cases, four were dismissed. He explained that he paid a $100 fine in a case related to selling tobacco to someone who was underage, after his "judgment of age was challenged." He stated that "the other case in which [he] was fined was related to violation of restriction order."

The applicant repeated the above information in a statement dated June 5, 2014, and he added that he was fined $100 for the sale of tobacco and for his "violation of restriction order." He also stated in the June 5, 2014 statement that, "[n]o rehabilitation or other issue was involved in any of the cases or arrests" against him.

In his May and June 2014 statements, the applicant lists the charges against him and the dispositions for each charge. Regarding the "visitation violation" charge, he indicates that he was fined $100 on March 31, 2005. Regarding the "failure to check ID from customer" charge, he indicates that he was fined $100 on February 1, 2006. In addition, the applicant lists two "threatening phone call" charges that he states were dismissed on April 27, 2004 and July 22, 2005, respectively. He also lists a second "failure to check ID from customer" charge that he states was dismissed on June 2, 2006, and an "INS – visa issue" charge, that he states was dismissed on March 8, 2006. He provided no other details or criminal history information in these two statements.

In an August 18, 2014, affidavit submitted on appeal, the applicant discusses the two "failure to check ID" offenses and indicates that the offenses occurred in April and May 2005. He explains that he worked at a convenience store at the time and did not look carefully at identification that underage customers showed him. The applicant indicates further that he was required to perform community service after the first violation and that he was ordered to pay a fine after the second. The applicant also refers to the offenses that occurred on March 22, 2004, December 6, 2004, and November 22, 2004. He states, with regard to the March 22, 2004 and December 6, 2004 offenses, that he did not make threatening phone calls to his former wife and that the cases did not result in convictions. The applicant states with regard to the November 22, 2004 offense that he "was fined for a visitation violation" and that although he believes that these charges were false, he paid a fine on March 31, 2005.

The record contains an initial home study report for the applicant, dated April 7, 2014, and an amended home study report, dated May 18, 2014. The reports reflect that the applicant told the home study preparer that "he was charged with making threatening phone calls on March 11, 2004 and March 12, 2004, and that "he was charged with a visitation violation" on December 14, 2004. The home study preparer stated that the first charge was dismissed and the applicant paid a $100 fine for the visitation violation. The preparer also indicated that the applicant volunteered information about being charged with "failure to check ID from customer" on April 13, 2005, and that he also spoke of an "INS-visa issue" on May 5, 2005, and he had stated that both of these charges were dismissed.

The home study preparer indicated that they would ordinarily interview the applicant's adult-age son about the applicant's plan to adopt, but that this was not done because the applicant's former spouse

has prevented the applicant from having a relationship with his son, and they felt this would "further strain an already difficult situation."

The home study preparer stated further that the applicant explained that the threatening phone call and visitation violation charges "were related to the very acrimonious divorce from [the applicant's] first wife." However, the home study preparer's report does not acknowledge that the applicant violated a visitation order and provides no detailed discussion about the circumstances under which the order was violated.

Although the home study preparer refers to the applicant's November 2004 offense as a visitation violation, evidence reflects that the applicant was found guilty of violating a court order. A City of Virginia, police record check submitted by the applicant in response to the director's RFE refers to the charge as "violate court order regarding child custody" charge. A Police Department criminal incident information form submitted by the applicant on appeal refers to the offense as "a protective order/parental abduction."

The distinction is relevant in that the applicant's alien file contains evidence, submitted by the applicant for naturalization purposes, reflecting that his former spouse obtained a protective order from the Juvenile and Domestic Relations District Court against the applicant on April 6, 2004. The protective order reflects that the applicant was ordered to "refrain from committing further acts of family abuse," and that he was denied "further contact of any type" with his former spouse and his son. The protective order granted temporary custody of the applicant's son to his former spouse. The applicant's file also contains an August 13, 2004, final "order for custody/visitation," granting legal and physical custody of the applicant's son to the child's mother, and specifying that the applicant was awarded "visitation with [the] child under such terms and conditions as are acceptable to the mother." The applicant's file also contains a November 5, 2004 incident report from the Police Department, pertaining to the circumstances of the applicant's custody order violation, reflecting that the applicant's former spouse told police that the applicant went to her residence in violation of a protective order and attempted to abduct their son.

Upon review, the record reflects that the applicant did not reveal the full nature of his custody/visitation order violation to USCIS or to the home study preparer, and the applicant did not disclose that a protective order was issued against him in April 2004, ordering him to "refrain from committing further acts of family abuse," and denying him "further contact of any type" with his former spouse and his son.

The statutory and regulatory provisions 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, and that determination is based upon protective concerns for the orphan. Complete knowledge of an applicant's arrest, criminal history, and adverse information is essential for a proper determination regarding whether the applicant can provide proper care and a suitable home environment and to an adopted orphan. Accordingly, denial of a Form I-600A is often justified when an applicant fails to make the required disclosures, unless it is clearly shown that the undisclosed information was immaterial to a

discretionary determination regarding whether the applicant can provide proper care and a suitable home and to an orphan.

Here, the applicant's failure to fully disclose the full nature and history of his custody/visitation order violation relates directly to his ability to provide proper care to an adopted orphan. Moreover, the record indicates that he was aware of his duty to fully disclose this information, in that initial and amended home study reports reflect that the applicant was advised that he had an ongoing duty of candor and disclosure, and that he "must disclose [his] adverse criminal history. . ., even if the event did not lead to any conviction, or if any conviction was expunged, sealed, pardoned or otherwise ameliorated."

Based on the information in the record, we cannot find that the applicant 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).

However, because the applicant was not provided with prior notice of the above discussed deficiencies, the matter is remanded to the director for further action to resolve the issues with the applicant, and for an updated home study report fully addressing the suitability of the applicant's home for placement of an orphan in light of his history, as set forth in 8 C.F.R. §§ 204.3(e)(2)(iii)(A)(2), 204.3(e)(2)(iii)(B) and 204.3(e)(2)(iii)(C). The director shall then issue a new decision which, if adverse to the applicant, will be certified to this office for review.

ORDER: The matter is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.