U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18069509

Date: MAR. 2, 2022

Appeal of National Benefits Center Decision

Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country

The Applicant, a U.S. citizen. seeks to classify a Convention adoptee as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(G), 8 U.S.C. § 1101(b)(1)(G). The Director of the National Benefits Center denied the Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I-800A), concluding that the Applicant was not eligible for the benefit sought because she failed to disclose her spouse's criminal history.[1] The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and reasserts her eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(b)(1)(G) of the Act 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

[1] Specifically, the Director noted that the Applicant answered "No" to the question "Has your spouse ever, whether in or outside the United States been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations, but including driving or operating a vehicle while intoxicated or while impaired by or under the influence or alcohol or other intoxicant?" Additionally, the Applicant's spouse told the home study preparer that he had never been arrested or convicted of a crime and that he did not have any criminal history in the United States or abroad, even if the record had been expunged, sealed, pardoned or the subject of any other amelioration (other than minor traffic offenses).

> 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). 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 1-800A 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).

II. ANALYSIS

The record reflects that the Applicant's spouse was arrested in Japan in [redacted] 2006 for attempted murder. He pled guilty and was sentenced to five and half years in a Japanese forced labor camp. He served four years and was released in 2010. The Applicant and her spouse filed Form I-800A with the required home study in June 2020. After reviewing the evidence in the record, the Director issued a NOID, informing the Applicant that she failed to disclose her spouse's arrest on the Form I-800A or to the home study preparer. The Director also informed the Applicant that she could submit additional evidence such as a sworn statement regarding her spouse's arrest, certified court dispositions, proof of rehabilitation, and a statement addressing her spouse's military history. The Applicant did not submit any of the requested evidence in response to the NOID.

On appeal, the Applicant submits joint statements regarding her spouse's [redacted] 2006 arrest, military history, and efforts at rehabilitation. Additionally, the Applicant submits a copy of the U.S. Naval Criminal Investigative Service (NCIS) report detailing their investigation of the incident resulting in her spouse's arrest in [redacted] 2006. In their joint statements, the Applicant and her spouse concede that they did not disclose the arrest on the application or during the home study. Instead, they state that "the day [the Applicant's spouse] was released from prison in 2010, [he] was told by both the Japanese authorities and the US Military, that [his] record would be completely destroyed; as if nothing ever happened." The Applicant's spouse further states that, he did not disclose his past because "[he] was told to treat it as such (never happened), and [to] never disclose it since there would be no record." He claims that he was not aware of the NCIS investigation until he inquired about his time in Japan after receiving the NOID. He states that "it was never [the Applicant's or his] intention to fail to disclose or appear to hide anything." He maintains that he was just "following the orders of the Japanese and American authorities," and that he truly believed that he had "nothing to disclose."

While we acknowledge the Applicant's arguments and additional evidence on appeal, she has not shown, by clear and convincing evidence, that her spouse disclosed his criminal history to USCIS or the home study preparer, or that he is no longer a member of the household. Accordingly, 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). Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on an applicant to establish eligibility for the benefit sought. Here, the Applicant has not met her burden.

ORDER: The appeal is dismissed.