

other criminal history was sealed, pardoned, expunged or subject to other amelioration does not alter the duty to disclose. *Id.* Before denying the Form I-800A for failure to disclose, the USCIS will issue a Notice of Intent to Deny (NOID). 8 C.F.R. § 204.309(c). In order to rebut the NOID, the applicant must establish by clear and convincing evidence that:

- (1) the applicant or the adult household member did disclose the information; or
- (2) if the nondisclosure or failure to cooperate related to an additional household member, that the person is no longer a member of the household and his or her conduct is no longer relevant to the applicant's suitability to adopt. 8 C.F.R. § 204.309(d).

A denial for failure to disclose will bar the applicant from filing a subsequent Form I-800A for one year after the decision becomes administratively final. 8 C.F.R. § 204.307(c).⁵¹

Approval has also been denied for violation of the duty to disclose, i.e., the duty to give complete and true information to the preparer, and the ongoing duty of candor to provide new information that might warrant submission of an amended or updated home study, as set forth in 8 C.F.R. § 204.311(d). In one case, the AAO confirmed denial of an I-800A because the original home study reported the applicant and his wife had resided in the State of Washington since the age of 18, when in fact the applicant's wife was temporarily residing in Belize for several months to care for the child they wished to adopt, who had been placed in her physical care at birth. When these facts came to light in an Article 16 report from the country of origin, the couple filed an addendum at the request of the USCIS. Despite the fact that the original preparer of the home study apparently was aware she was in Belize and later continued to recommend approval after reviewing the addendum, the AAO found the application should be denied for failure to disclose, rejecting their argument that applicant and his wife were always domiciled and habitually resident in Washington and only temporarily staying in Belize. The AAO emphasized that the preparer had a duty to check child abuse registries in any state or country in which the applicants had resided, and the concept of "habitual residence" is not interchangeable with the "residence(s)" that must be reported in the home study. The AAO found as a separate ground for denial the fact that the home study did not report that the applicants were in fact living with and caring for the child they hoped to adopt, given that their home study stated only that they wished to adopt a healthy child up to twelve months old.⁵²

⁵¹ This regulation has been strictly enforced. See *In re [Name Redacted]*, AAU SIM 10 321 00033, 2011 WL 7068518 (INS) (AAO April 18, 2011)(AAO lacks authority to grant exemption from one-year ban and affirms denial for failure to disclose a charge of common assault against the applicant's wife, which occurred 11 years before the homestudy and I-800 filing, where applicant explains they mistakenly believed there was no criminal record to disclose because there had been no arrest, no prosecution, and no conviction.)

⁵² *In re [Name Redacted]*, AAU SIM 08 296 01053, 2009 WL 6811400 (INS) (AAO Dec. 2, 2009).