

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

LEROY M. NESMITH,	:	Docket No.:
Petitioner,	:	OSAH-CSS-PASS-1341067-67-BAXTER
v.	:	
DEPARTMENT OF HUMAN SERVICES,	:	Agency Reference No.: 730010451
DIVISION OF CHILD SUPPORT	:	
SERVICES,	:	
Respondent.	:	


FILED
OSAH
JUN 13 2013

Valerie Ruff

Valerie Ruff, Legal Assistant

INITIAL DECISION

In response to Respondent's placement of Petitioner's name on the Department of State database for the non-payment of child support arrears, Petitioner requested a hearing.

I. Findings of Fact

1. Petitioner does not dispute that he is in arrears for child support in the amount of, at least, \$62,867.84, as of June 2013. Currently, Petitioner pays his monthly support and will begin contributing an additional amount for arrears. Petitioner is willing to pay a greater arrears payment.
2. Petitioner is employed by John Deere. He requires a passport to travel to Canada to oversee training at a John Deere dealership.
3. Respondent certified to the U.S. Department of State that Petitioner owed more than \$2,500 in unpaid child support. Petitioner's application for a passport was therefore denied.

II. Conclusions of Law

1. Federal regulations prohibit the issuance of a passport to an applicant who is in arrears by more than \$2,500. 22 C.F.R. § 51.60(a)(2). Respondent maintains a list of delinquent obligors whose debt exceeds the arrearage threshold, and then submits the names and Social Security numbers of these obligors to the United States Secretary of State. Any applicant for a new passport whose name appears on the Department of State database will be denied a passport.
2. The issues at a hearing are "strictly limited to the amount of arrears or misidentification of the obligor." Ga. Comp. R. & Regs. r. 290-7-1-.11(d). In this instance, Petitioner does not dispute that he is the obligor or that he is in arrears in excess of \$2,500.00.
3. In order to be removed from the certified list, an obligor must pay the arrears either in full or in an amount sufficient to bring the arrearage amount below the \$ 2,500

threshold. The regulations also provide that the Department may “exempt” an obligor from the certified list if:

- (1) the Department is convinced that the passport is necessary and indispensable to the obligor for the purpose of generating income needed to pay current support or arrear; and,
- (2) The obligor posts bond or some other form of surety payable to the Department for the full amount of the arrears owed; and,
- (3) The obligor enters into a written Enforcement Deferral with the Department setting forth the schedule for repayment of the arrears amount in addition to current support, if applicable. Failure by the obligor to adhere in full with the Enforcement Deferral shall result in forfeiture of the bond or surety posted by the obligor.

Ga. Comp. R. & Reg. 290-7-1-.11(e).

4. In this case, if Petitioner remains on the list certified to the Department of State, he cannot be eligible for a U.S. passport. Petitioner testified that failing to obtain a passport will adversely affect his employment. Given his current consistent payments of support, the Court declines to jeopardize his current employment potential. Therefore, the Court concludes that a passport is “necessary and indispensable” for Petitioner to pay his current child support and the arrearage. Petitioner may meet the second exemption criterion by obtaining a bond or surety through a local insurer or other agency for the unpaid amount of his arrearage claim, with the Department named as payee or insured in the event of Petitioner’s default under the repayment terms specified below. Finally, Petitioner meets the third criterion as this Decision can serve as a written Enforcement Deferral.

III. DECISION

It is the Initial Decision of the Administrative Law Judge that:

1. As a condition for removal of Petitioner’s name from the list of delinquent child support obligors that Respondent submits to the U.S. Department of State, he shall continue to make current support and previously ordered arrearage payments.
2. Petitioner shall also post bond or another form of surety payable to the Department of Human Services for the full amount of the outstanding child support arrearage. If Petitioner fails to make payments as required in the above Paragraph One, then the bond or surety shall be forfeited to Respondent.
3. If Petitioner posts a bond or other surety as required by Paragraph Two above, then this Decision shall operate as a written Enforcement Deferral of the certification to the U.S. Department of State that Petitioner is a delinquent obligor. Therefore, upon posting of the bond or surety, Petitioner will be considered “exempt” from the list of certified obligors as provided by Ga. Comp. R. & Regs. r. 290-7-1-.11(e), and Respondent’s

action regarding Petitioner's passport is **REVERSED**. As Respondent does not issue passports but only certifies to the Department of State that an individual is ineligible, Petitioner must reapply for a passport.

SO ORDERED, this 11th day of June, 2013.

A handwritten signature in black ink, appearing to read 'A. Baxter', written over a horizontal line.

AMANDA C. BAXTER
ADMINISTRATIVE LAW JUDGE