



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17833368

Date: MAR. 1, 2022

Appeal of National Benefits Center Decision

Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify a Convention adoptee as an immediate relative under section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(G). The Director of the National Benefits Center denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative (Convention adoptee petition), concluding that the Beneficiary did not meet the definition of a child for immigration purposes under the Act. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief reasserting her eligibility for the benefit sought. The burden of proof is on the Petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *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

A Convention adoptee is defined as a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative, who has been adopted in a foreign country that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), or who is emigrating from such a foreign country to be adopted in the United States by a U.S. citizen and spouse jointly or by an unmarried U.S. citizen who is at least 25 years of age. Section 101(b)(1)(G) of the Act.

Regarding the deadlines for submitting a Convention adoptee petition to U.S. Citizenship and Immigration Services (USCIS), the regulation at 8 C.F.R. § 204.313(c) states the following:

(c) Filing deadline.

(1) The petitioner must file the Form I-800 before the expiration of the notice of the approval of the Form I-800A and before the child's 16th birthday. Paragraphs (c)(2) and (3) of this section provide special rules for determining that this requirement has been met.

(2) If the appropriate Central Authority places the child with the petitioner for intercountry adoption more than 6 months after the child's 15th birthday but before the child's 16th birthday, the petitioner must still file the Form I-800 before the child's 16th birthday. If the evidence required by paragraph (d)(3) or (4) of this section is not yet available, instead of that evidence, the petitioner may submit a statement from the primary provider, signed under penalty of perjury under United States law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified in the statement. Submission of a Form I-800 with this statement will satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday, but no provisional or final approval of the Form I-800 will be granted until the evidence required by paragraph (d)(3) or (4) of this section has been submitted. When submitted, the evidence required by paragraph (d)(3) and (4) must affirmatively show that the Central Authority did, in fact, make the adoption placement decision before the child's 16th birthday.

(3) If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date of the Form I-800, provided the Form I-800 is filed not more than 180 days after the initial approval of the Form I-800A.

II. ANALYSIS

The Beneficiary, a native and citizen of Zambia, was born on [REDACTED] 2004. The Petitioner filed a Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, on January 16, 2019, and it was approved on February 26, 2019. The Petitioner filed the instant Convention adoptee petition on behalf of the Beneficiary on July 22, 2020, when she was 16 years old. The Director denied the orphan petition, noting that the Petitioner was not eligible for the benefit sought because the Beneficiary did not meet the definition of a child for immigration purposes under the section 101(b)(1)(G) of the Act.

On appeal, the Petitioner does not dispute that she filed the Convention adoptee petition after the Beneficiary's 16th birthday. Rather, she contends that her untimely filing was due to several things including delays by the Zambian government, differing instructions on the receipt notices regarding the filing of the Convention adoptee petition, and an error with USCIS's lockbox. Specifically, she notes that "many attempts were made to secure Article 16¹ from the Zambian Central Authority" to no avail.² The Petitioner maintains that "had Zambia issued Article 16 earlier, then the I-800 would have been filed prior to [the Beneficiary's] 16th birthday." The Petitioner further asserts that "USCIS policy [wa]s not clear as to how and when [the Convention adoptee petition] should be filed." Specifically, she notes that the initial Form I-800A receipt notice she received in January 2019 did not contain any information regarding the filing of the Convention adoptee petition while the receipt notice for the I-800A extension she received in May 2020 contained specific instructions for filing the Convention adoptee petition per the regulation at 8 C.F.R. § 204.313(c). Additionally, the Petitioner notes that the May 2020 receipt notice instructed petitioners to file the Convention adoptee petition no

¹ Article 16 is the Child Background Study.

² In support of this assertion, the Petitioner submits copies of written correspondence including a letter and emails from herself, the Beneficiary, her attorney to the Zambian authorities requesting assistance in processing the adoption case before the Beneficiary aged out.

more than 180 days after the initial approval of the Form I-800A application even if they have not obtained all of the required evidence while a USCIS Public Notice stated that USCIS would reject an incomplete or improperly filed submission. Lastly, the Petitioner contends that USCIS informed her that there was an error with the lockbox which caused USCIS to accept the Beneficiary's Convention adoptee petition package in August 2020, as opposed to July 2020 when it was received.

Section 101(b)(1)(G)(i) requires the submission of a Convention adoptee petition prior to a child's 16th birthday. The regulation at 8 C.F.R. § 204.313(c) reiterates, and provides two special rules to satisfy, the age requirement and further requires that the Convention adoptee petition be filed before the expiration of the Form I-800A. Moreover, the regulation makes clear that, if the report required under Article 16 of the Convention is not yet available, the petitioner may submit "a statement from the primary provider . . . confirming that the Central Authority has . . . made the adoption placement on the date specified in the statement" and that such evidence will "satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday" *Id.* The instructions for the Convention adoptee petition at the time the Petitioner filed the Form I-800A reiterated the same. *See* Instructions for Form I-800, Petition to Classify Convention adoptee as an Immediate Relative (Form I-800 Instructions), at 1 (Mar. 10, 2017 ed.). Here, the Petitioner filed the Convention adoptee petition prior to the expiration of the Form I-800A, but after the Beneficiary's 16th birthday and she has not demonstrated that she met the special rules at 8 C.F.R. § 204.313(c)(2) or (3). The referenced agency-lockbox error does not change this fact, as the Petitioner reached the age of 16 in 2020, prior to both the initial filing of the Convention adoptee petition in July 2020 and its receipt by USCIS in August 2020. While we acknowledge the Petitioner's arguments on appeal and do not seek to diminish the hardship this result may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Accordingly, as the Beneficiary was not under 16 years of age when the Convention adoptee petition was filed, she is not eligible for immediate relative classification under section 101(b)(1)(G) of the Act.

III. CONCLUSION

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. The Petitioner has not overcome the basis of the Director's decision on appeal. Accordingly, she has not established the Beneficiary's eligibility for classification as an immediate relative, and the appeal will be dismissed.

ORDER: The appeal is dismissed.