



U.S. Citizenship
and Immigration
Services

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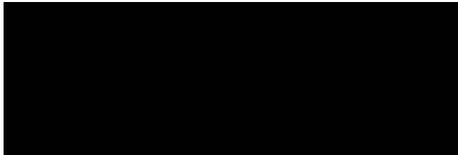
FILE: [Redacted] Office: NATIONAL BENEFITS CENTER
SIM 09 069 10022

Date:

IN RE: Petitioners: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition to Classify Convention Adoptee as an Immediate Relative Pursuant to Section 101(b)(1)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(G)

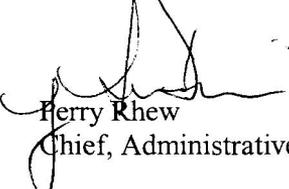
ON BEHALF OF PETITIONERS:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of a Convention adoptee as an immediate relative pursuant to section 101(b)(1)(G) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(b)(1)(G). The director denied the petition on five grounds: (1) that the petitioner¹ had failed to establish that the beneficiary’s birthmother had given her irrevocable consent to the beneficiary’s adoption; (2) that the petitioner, or an individual or entity acting on behalf of the petitioner, had improperly paid, given, offered to pay, or offered to give money, or anything of value, to induce or influence a decision; (3) that the petitioner engaged in conduct related to the adoption or immigration of the beneficiary prohibited by 8 C.F.R. § 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption; (4) that placement of the beneficiary with the petitioners at the time of his birth violated Article 17 of the Hague Convention; and (5) that denial of the Form I-800A precludes approval of the Form I-800.

For the purpose of classifying a Convention adoptee as a “child,” so that the child may be subsequently classified as an immediate relative for the purpose of emigrating to the United States, section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), provides, in pertinent part, the following definition:

a child, under the age of sixteen at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993,² or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age—

¹ The regulation at 8 C.F.R. § 204.301 defines “petitioner” as follows:

Petitioner means the U.S. citizen (and his or her spouse, if any) who has filed a Form I-800 under this subpart . . . Although the singular term “petitioner” is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

As this case involves a married couple, the phrase “the petitioner” could refer to either spouse. In an effort to ease the reading of this discussion, the AAO will refer to [REDACTED] as the “petitioner” (as he was named on the Form I-800 as the petitioner) and to [REDACTED] as the “petitioner’s wife.”

² See *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (May 29, 1993). The United States signed the Hague Convention on March 31, 1994 and ratified it on December 12, 2007, with an effective date of April 1, 2008.

- (i) if—
- (I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;
 - (II) the child’s natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child’s emigration and adoption;
 - (III) in the case of a child having two living natural parents, the natural parents are incapable of providing care for the child;
 - (IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer status on one or both of such natural parents)

The regulation at 8 C.F.R. § 204.301 states, in pertinent part, the following:

Birth parent means a “natural parent” as used in section 101(b)(1)(G) of the Act.

* * *

Competent authority means a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

* * *

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child’s two living birth parents are not able to provide for the child’s basic needs, consistent with the local standards of the Convention country.

* * *

Irrevocable consent means a document which indicates the place and date the document was signed by a child's legal custodian, and which meets the other requirements specified in this definition, in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. . . .

- (1) To qualify as an irrevocable consent under this definition, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, the document does not qualify as an irrevocable consent unless the document is accompanied by a declaration, signed, by an identified individual, establishing that the identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.
- (2) If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

* * *

Sole parent means:

- (1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life. . .

The regulation at 8 C.F.R. § 204.304 states, in pertinent part, the following:

Improper inducement prohibited

- (a) *Prohibited payments.* Neither the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning:
- (1) The placement of a child for adoption;
 - (2) The consent of a parent, a legal custodian, individual, or agency to the adoption of a child;
 - (3) The relinquishment of a child to a competent authority, or to an agency or person as defined in 22 C.F.R. [§] 96.2, for the purposes of adoption, or
 - (4) The performance by the child's parent or parents of any act that makes the child a Convention adoptee.
- (b) *Permissible payments.* Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. A payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided. The permissible services are:
- (1) The services of an adoption service provider in connection with an adoption;
 - (2) Expenses incurred in locating a child for adoption;
 - (3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child;

- (4) Counseling services for a parent or a child for a reasonable time before and after the child's placement for adoption;
- (5) Expenses, in an amount commensurate with the living standards in the country of the child's habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child;
- (6) Expenses incurred in obtaining the home study;
- (7) Expenses incurred in obtaining the reports on the child as described in 8 C.F.R. [§] 204.313(d)(3) and (4);
- (8) Legal services, court costs, and travel to or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency; and
- (9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.

The regulation at 8 C.F.R. § 204.307 states, in pertinent part, the following:

- (b) Eligibility to file a Form I-800. Except as provided in paragraph (c) of this section, the following persons may file a Form I-800:

* * *

- (3) The person has an approved and unexpired Form I-800A.

The regulation at 8 C.F.R. § 204.309 states, in pertinent part, the following:

Factors requiring denial of a Form I-800A or Form I-800.

* * *

- (b) *Form I-800.* A USCIS officer must deny a Form I-800 if:

* * *

- (2) [T]he petitioner, or any additional adult member of the household had met with, or had any form of contact with, the child's parents, legal custodian, or other individual or entity who was responsible

for the child's care when the contact occurred, unless the contact was permitted under this paragraph. An authorized adoption service provider's sharing of general information about a possible adoption placement is not "contact" for purposes of this section. Contact is permitted under this paragraph if:

- (i) The first such contact occurred only after USCIS had approved the Form I-800A filed by the petitioner, and after the competent authority of the Convention country had determined that the child is eligible for intercountry adoption and that the required consents to the adoption have been given; or
- (ii) The competent authority of the Convention country had permitted the earlier contact, either in the particular instance or through laws or rules of general application, and the contact occurred only in compliance with the particular authorization or generally applicable laws or rules. . . .

* * *

- (3) The USCIS officer finds that the petitioner, or any individual or entity acting on behalf of the petitioner has engaged in any conduct related to the adoption or immigration of the child that is prohibited by 8 C.F.R. [§] 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption. . . .

The regulation at 8 C.F.R. § 204.313 states, in pertinent part, the following:

Filing and adjudication of a Form I-800.

* * *

- (d) **Required evidence.** Except as specified in paragraph (c)(2)³ of this section, the petitioner must submit the following evidence with the properly completed Form I-800:

- (1) The Form I-800A approval notice. .

³ The requirements at 8 C.F.R. § 204.313(c)(2) are not applicable to this case.

* * *

- (3) The report required under article 16 of the Convention, specifying the child's name and date of birth, the reasons for making the adoption placement, and establishing that the competent authority has, as required under article 4 of the Convention:

- (i) Established that the child is eligible for adoption;

* * *

- (iii) Ensured that the legal custodian, after having been counseled as required, concerning the effect of the child's adoption on the legal custodian's relationship to the child and on the child's legal relationship to his or her family of origin, has freely consented in writing to the child's adoption, in the required legal form;

- (iv) Ensured that if any individual or entity other than the legal custodian of the must consent to the child's adoption, this individual or entity, after having been counseled as required concerning the effect of the child's adoption, has freely consented, in writing, to the child's adoption. . . .

* * *

- (vi) Ensured that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed.

* * *

- (4) The report under paragraph (d)(3) of this paragraph of this section must be accompanied by:

* * *

- (ii) A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption. . . .

The petitioner and his wife are citizens of the United States. After receiving approval of their Form I-800A on October 15, 2008, they filed the Form I-800 on December 5, 2008. Upon

receipt of the report required by 8 C.F.R. § 204.313(d)(3) and Article 16 of the Convention (the “Article 16 report”), the director issued a notice of intent to deny the petition on December 20, 2008, and the petitioner submitted a timely response. The director denied the petition on June 24, 2009.⁴

The beneficiary, [REDACTED], was born in Belize on April 5, 2008. The birth mother, [REDACTED], is a citizen of Guatemala who was 23 years of age at the time the Article 16 report was issued. The record indicates that the beneficiary’s conception was the result of the birth mother being raped and, as such, the record contains little evidence regarding the birth father.⁵

As noted previously, the director denied the petition on five grounds: (1) that the petitioner had failed to establish that the beneficiary’s birthmother had given her irrevocable consent to the beneficiary’s adoption; (2) that the petitioner, or an individual or entity acting on behalf of the petitioner, had improperly paid, given, offered to pay, or offered to give money, or anything of value, to induce or influence a decision; (3) that the petitioner engaged in conduct related to the adoption or immigration of the beneficiary prohibited by 8 C.F.R. § 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption; (4) that placement of the beneficiary with the petitioners at the time of his birth violated Article 17 of the Hague Convention; and (5) that denial of the Form I-800A precludes approval of the Form I-800.

The AAO will address each of the director’s grounds of denial in turn. At the outset of its analysis, the AAO reminds counsel and the petitioners that the issue before it is whether, based upon the record of proceeding as currently constituted, the Form I-800 merits approval.

I. Irrevocable Consent of the Birth Mother

The first ground of the director’s denial of the petition was his determination that the petitioner had failed to establish that the birth mother had irrevocably consented to the adoption.

The record contains a June 17, 2008 document entitled “Consent to an Adoption Order in Respect of the Infant Named [REDACTED].” By virtue of that document, the birth mother consented to the adoption.

⁴ Although the director had approved the Form I-800A on October 15, 2008, he issued a service motion to reopen the application, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), on February 6, 2009. The Form I-800A was ultimately denied on June 24, 2009.

⁵ The AAO finds the evidence of record sufficient to establish that the birth mother is the beneficiary’s “sole parent” as that term is defined at 8 C.F.R. § 204.301, and will therefore not inquire into whether the birth father has consented to the adoption of the beneficiary.

However, the November 17, 2008 Article 16 report uncovered information undermining the validity of that document. In particular, the AAO notes the following language of the Article 16 report:

[The birth mother told the interviewer that after the birth of the beneficiary] she stayed in the hospital for either one or two days and when she was released the [petitioner's wife] took [the birth mother] back to [redacted] home and [the petitioner's wife] took the baby with her.

She continued by saying that a few days later she became very depressed and regretted the decision of giving up her child. She stated that she had no way of locating the family because she wanted back her baby. She said that she never breastfed her baby, and hated the idea that her son would leave the country and she would not know where the child is. . . .

* * *

[The birth mother] stated that at first she was in agreement to the adoption because she felt that it was the right thing to do considering the event that led to her getting pregnant, and that she had agreed to get the money and the house in exchange for the baby. She said but she now regrets the sinful action that she had agreed to and only wants back her child. She continued that while she knows that she will get into trouble and that she might have to pay back all the money [to the petitioner's wife]; she still is certain that she wants back her child and she feels guilty of what she did.

She further stated that she believes that [redacted] is upset because he tried to persuade her to continue with the adoption because she is not in a position to care for a baby. She said that even [the petitioner's wife] is upset because [the birth mother] told the officer about the payments and promises; and that [the petitioner's wife] told her that she never promised her anything.

[The birth mother] stated that it was not until the baby was two months old [that] [redacted] brought a yellow paper and told her to sign her name;⁶ she stated that she told him that she cannot write and he told her to sign an "X." According to [the birth mother], she signed on three papers only once; she stated that she did not know what she was signing for and because no one read it to her in Spanish.

⁶ [redacted] refers to [redacted]

⁷ [redacted] refers to [redacted] in Belize.

⁸ The AAO presumes this was the June 17, 2008 "Consent to an Adoption Order in Respect of the Infant Named [redacted]," as the beneficiary would have been just over two months old at the time that document was executed.

She stated that she was aware what the adoption process was and that it would deprive her from parenting her child. She said but five days later she regretted the decision and now wants back her child. . . .

* * *

[The birth mother] stated that since the birth of her child she only saw the child once and [the petitioner's wife] does not agree for her to visit the baby and that unfortunately she does not know where they live. She continued by saying she is very remorseful of her decision and desperately wants back her son; she said that although she is unemployed at the moment she is adamant to get her life together and provide for her son with the love and care of a mother.

The Article 16 report stated that these meetings with the birth mother occurred on July 1, 2008, July 22, 2008 and November 4, 2008.

At page 11, the Article 16 report stated the following:

Initially, the birth mother's plan was to have her child be adopted by [the petitioners] and has signed the Consent Form on 19th May 2008. However, she has recanted and no longer wants to give the child up for adoption.

At page 13, the Article 16 report stated the following:

The birth mother had previously consented to the adoption. She has now recanted on her consent and wants back her child.

The petitioner and his wife were provided notice of the findings of the Article 16 report via the director's December 20, 2008 notice of intent to deny the petition. In her December 22, 2008 letter, the petitioner's wife responded to the director's notice. The petitioner's wife stated that she was shocked to read "the many false statements made by [the birth mother]." In rebuttal to the birth mother's testimony regarding her lack of understanding of the consent form, the petitioner's wife stated that the birth mother was in fact aware of what she was signing when she consented to the adoption. She stated that [redacted] presented the consent form to the birth mother and explained its contents to her in the Spanish language.

The director found the testimony of the petitioner's wife insufficient to overcome the testimony of the birth mother, and denied the petition on June 24, 2009.

⁹ The AAO presumes that the petitioner's wife is referring to [redacted], who was referred to by the birth mother as [redacted].

On appeal, counsel submits the following documentation pertinent to the issue of the birth mother's irrevocable consent to the adoption:

- Counsel's August 17, 2009 letter;
- Counsel's September 28, 2009 letter;
- A September 25, 2009 affidavit from [REDACTED];
- A document, dated August 18, 2009, which appears to be an affidavit from the birth mother; and
- A second document, also dated August 18, 2009, which also appears to be an affidavit from the birth mother.

In his August 17, 2009 letter, counsel states, with regard to the June 17, 2008 consent decree, that the court officer "swore to the fact that [the birth mother] understood the full meaning and effect." Counsel states that the petitioner and his wife "have also clearly stated that the birth mother gave her irrevocable consent to the adoption, and that any allegations that may have been raised are not supported by a preponderance of the evidence."

In his September 28, 2009 letter, counsel states that the birth mother has voluntarily, knowingly, and intelligently again consented to the relinquishment and adoption of the beneficiary.

In her September 25, 2009 affidavit, [REDACTED] states that she is a licensed pediatrician in Belize, and that she was present at the birth of the beneficiary. She states that "I specifically know, as [the birth mother] stated to me by the nursing staff [sic], and as I witnessed by the birth mother's actions, that she intended to relinquish her child for adoption."

Finally, the AAO turns to the new testimony of the birth mother. In the first affidavit, which was prepared on August 18, 2009,¹⁰ the birth mother states that she decided, voluntarily, to give the beneficiary up for adoption, and that she consented to an adoption order on June 17, 2008.¹¹ She states further that on that date she also said that the adoption order could be used as evidence of her consent when the adoption application was heard by a judge. She also states that the meaning of the June 17, 2008 document was explained to her, in the Spanish language, and that she fully understood the meaning and effect of the document and that, since that time, she has not withdrawn her consent to the adoption. Finally, she states the following:

That today the 18th day of August, 2009 I sign this document consisting of two pages which again was fully explained to me in the Spanish Language and I say that I fully understand the nature of the document and I am prepare[d] to surrender my child for adoption.

¹⁰ Although dated August 18, 2009, this document provides a year of 2008 at its top portion, which calls into question the reliability of the document.

¹¹ The AAO presumes that the birth mother is referring to the June 17, 2008 "Consent to an Adoption Order in Respect of the Infant Named [REDACTED]"

In her second affidavit, which was also prepared on August 18, 2009,¹² the birth mother states that she spoke with ‘[REDACTED]’¹³ on several occasions regarding the adoption and that, after the beneficiary was born, he read the adoption consent to her in Spanish, and that she understood that if she signed it, she would be giving up her parental rights to the beneficiary. The beneficiary acknowledges her testimony contained in the Article 16 report, and states that she indeed gave such testimony. However, she states that she gave such testimony in anger during a period of depression, and that it was not true. She states that she is sorry for having lied, for having created problems, and that she never intended to harm anyone. She states that she understands that under Belizean law, she may withdraw her consent to the adoption at any time before the final adoption is approved by a judge, but that she does not wish to do so. She states that she wants to place the beneficiary for adoption because she is unable to care for him.

Upon review of the entire record of proceeding, the AAO agrees with the director’s decision to deny the petition on this ground. The AAO bases its findings in this regard on two separate factors: (1) that the record lacks the irrevocable consent of the birth mother to the adoption; and (2) that the record as presently constituted fails to resolve the issues raised by the birth mother’s testimony in the Article 16 report. The AAO will discuss these two matters separately.

A. The record lacks the irrevocable consent of the birth mother pursuant to 8 C.F.R. § 204.301.

The AAO finds that, irrespective of its finding regarding the issues raised by the testimony of the birth mother in the Article 16 report, the record lacks her irrevocable consent to the adoption. As was set forth previously, “irrevocable consent” is specifically defined in the regulation at 8 C.F.R. § 204.301, and the document must contain several specific provisions in order to qualify as an irrevocable consent. First, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. Second, if the legal custodian is not able to read or understand the language in which the document is written, as is the case here, the document does not qualify as an irrevocable consent unless the document is accompanied by several additional items: (1) a signed declaration by an identified individual establishing that such identified individual is competent to translate the language of the irrevocable consent into a language that the parent understands; (2) a statement by the individual stating that such individual did, on the date and at the place specified in the declaration, in fact read and explain the consent to the legal custodian in a language that the legal custodian understands; and (3) a statement indicating the language that was used to provide such explanation. 8 C.F.R. § 204.301(1).

¹² Again although dated August 18, 2009, the AAO notes that this document provides a year of 2008 at its top portion, which calls into question the reliability of the document.

¹³ [REDACTED] in Belize.

The record contains three statements by the birth mother: one dated June 17, 2008, and two dated August 18, 2009.

The June 17, 2008 "Consent to an Adoption Order in Respect of the Infant Named [REDACTED]" is deficient for several reasons. First, the birth mother recanted her June 17, 2008 testimony when later interviewed for the Article 16 report, which negated such testimony. Second, even if the birth mother had not recanted her June 17, 2008 testimony, the document would still be deficient, as it does not satisfy 8 C.F.R. § 204.301. The first reason for the deficiency of this document under 8 C.F.R. § 204.301 is its lack of a specific statement as to whether the birth mother is able to read and understand English, the language in which this document is written. The second reason for the deficiency of this document under 8 C.F.R. § 204.301 is its lack of a signed declaration by an identified individual establishing that such individual is competent to translate the language of the irrevocable consent (English) into a language that the birth mother understands (Spanish). The third reason for the deficiency of this document under 8 C.F.R. § 204.301 is its lack of a signed statement by the identified individual stating that such individual did, on the date and at the place specified in the declaration, in fact read and explain the consent to the legal custodian in a language that the legal custodian understands (Spanish). The fourth reason for the deficiency of this document under 8 C.F.R. § 204.301 is its lack of a statement by the identified individual indicating the language that was used to provide such explanation (again, which would have been Spanish in this case). Finally, the AAO notes that in her testimony in the Article 16 report, the birth mother stated that she signed a consent she was given by "[REDACTED]". However, this document was not signed by "[REDACTED]". Rather, it was signed by a "Commissioner of the Supreme Court" who states her satisfaction that the birth mother "fully understood the nature of the foregoing document." The record, however, is unclear as to whether this commissioner actually saw the birth mother and, if not, how she was able to make that assessment. For all of these reasons, this document does not constitute "irrevocable consent" by the birth mother.

Although the two August 18, 2009 documents containing testimony of the birth mother were prepared after the Article 16 report, the AAO still finds, nonetheless, that they also fail to constitute irrevocable consent on the part of the birth mother. First, the AAO notes again the error in the reporting of dates contained in both documents: the headers of both documents indicate that they were created in 2008, but both documents are dated August 18, 2009. Again, this error calls into question the reliability of the document. Second, these documents are also deficient under 8 C.F.R. § 204.301. Although these documents do specify that the birth mother is not able to read or understand English; they are deficient under 8 C.F.R. § 204.301 for three reasons: (1) first, they do not contain a specific statement from an identified individual stating that he or she read and explained the documents to the birth mother in Spanish on August 18, 2009; (2) they do not contain a statement from an identified individual indicating the language used to provide that explanation; and (3) there is no "identified individual": the signature of the

individual signing the document was illegible, and his or her name was not provided.¹⁴ For all of these reasons, these two documents do not constitute “irrevocable consent” by the birth mother.

These specific, technical requirements are set forth at 8 C.F.R. § 204.301, and the AAO is without discretionary authority to waive them. The regulation at 8 C.F.R. § 204.301 specifically states that if a document does not meet these technical requirements, the document does not qualify as an irrevocable consent. None of these three documents satisfies 8 C.F.R. § 204.301. Accordingly, none of them qualify as irrevocable consent of the birth mother to the adoption.

As such, the AAO agrees with the director’s determination that the record lacks the irrevocable consent of the birth mother to the adoption.

B. The record of proceeding as presently constituted does not resolve the issues raised by the birth mother’s testimony in the Article 16 report.

The AAO also agrees with the director’s determination that the record lacks the irrevocable consent of the birth mother to the adoption for a second reason: that the record fails to resolve the issues raised by the birth mother’s testimony in the Article 16 report. As a preliminary matter, the AAO incorporates here, by reference, its previous discussion of the birth mother’s testimony in the Article 16 report. Again, by the time of the Article 16 report’s issuance, the birth mother had recanted her consent to the adoption.

Again, counsel’s submission on appeal includes, among other items, the August 18, 2009 supplemental testimony from the birth mother and the assertions of counsel as set forth previously. The AAO finds that such evidence does not resolve the issues raised by the birth mother’s testimony in the Article 16 report. Again, the Article 16 report found, at several places, that the birth mother had recanted her previous consent to the adoption.

The first reason the AAO finds such evidence insufficient to resolve the issues raised by the Article 16 report pertains to the lack of additional evidence, subsequent to its issuance of the Article 16 report, from the competent authority regarding its previous determination that the birth mother had recanted her consent to the adoption. Again, the Article 16 report was prepared by the Department of Human Services, in Belize, on November 17, 2008. Although the record contains further communication from that office, and the AAO notes particularly its May 18, 2009 letter addressing this issue, the Department of Human Services has not withdrawn its

¹⁴ The title of this individual was provided: he or she is a “Commissioner of the Supreme Court.” However, given that a person bearing this title signed the June 17, 2008 document, yet the testimony of the birth mother indicated that she did not personally appear before such an individual when giving that consent (rather, she gave such consent to [REDACTED]), the AAO will not presume that on August 18, 2009 the birth mother did appear before a “Commissioner of the Supreme Court” to make this consent. As such, the AAO will not consider this individual to be the “identified individual” described at 8 C.F.R. § 204.301.

earlier finding that the birth mother recanted her consent to the adoption, or otherwise clearly indicated that it no longer considers her to be lacking consent for the adoption.

The second reason the AAO finds such evidence insufficient to resolve the issues raised by the Article 16 report relates to nature of the supplemental testimony of the birth mother itself. As was noted previously, the affidavits by the birth mother submitted on appeal do not satisfy the technical requirements at 8 C.F.R. § 204.301 required for such affidavits to qualify as irrevocable consent. Here, the AAO finds further that the birth mother's testimony is insufficiently vague as to why she now recants her statements to representatives of the competent authority recanting her consent to the adoption. The birth mother's only explanation as to why she recanted her consent to the adoption was that "all of this was said in anger and during a period of depression." No further explanation was offered. The AAO finds this vague explanation insufficient to overcome her statements to representatives of the competent authority specifically recanting her consent to the adoption.

The third reason the AAO finds such evidence insufficient to resolve the issues raised by the Article 16 report pertains to the reliability of the testimony of the birth mother, as such reliability was described by counsel and the petitioner. In his August 17, 2009 letter, counsel stated that "[i]t is important to put into context the relative credibility of the various witnesses and the statements that were made." In her December 22, 2008 letter, the petitioner's wife stated, with regard to the relative reliability of the birth mother's testimony, the following:

I am dumbfounded that my testimony, in the Article 16 report, which is absolute truth, is in question. Yet the accusations of the birth mother, who clearly has questionable character and motives, lacking skills and motivation to care for a baby/child, would be reacted to as though she were speaking truth. I will repeat, [the birth mother] confessed to me and others about relinquishing two other children, one who was sold. She told us this with no remorse in her voice, but rather, matter of fact. That is often typical for people of her background; children are not cherished. Her life has been a difficult one; common in this part of the world. She lost her parents at a young age; she stated to us that her father was murdered. She had no education. She cannot read or write. Her character would naturally be compromised, thus, lying is purposeful.

Having made these statements regarding the reliability of the testimony of the birth mother, counsel and the petitioner now request that the AAO accept the brief, vague, and generalized testimony of the birth mother regarding her most recent decision to recant her testimony recanting her consent to the adoption. If counsel and the petitioner do not find the testimony of the birth mother reliable, it is unclear why they would expect the AAO to accept her most recent testimony as any more reliable or credible than her previous testimony.

For all of these reasons, the AAO finds that the evidence submitted on appeal fails to resolve the issues raised by the birth mother's testimony in the Article 16 report.

As such, the AAO agrees with the director's determination that the record lacks the irrevocable consent of the birth mother to the adoption.

C. Conclusion

Pursuant to the discussion contained above, the AAO agrees with the first ground of the director's denial: that the record lacks the irrevocable consent of the birth mother to the adoption. The AAO bases its finding in this regard on two independent grounds: (1) that the record lacks the irrevocable consent of the birth mother to the adoption pursuant to 8 C.F.R. § 204.301; and (2) that the record as presently constituted fails to resolve the issues raised by the birth mother's testimony in the Article 16 report. These factors, alone, mandate denial of the Form I-800.

Having made that determination, the AAO turns next to the second ground of the director's decision: that the petitioner had improperly paid, given, offered to pay, or offered to give money, or anything of value, to induce or influence a decision.

II. Whether the petitioner, or an individual or entity acting on behalf of the petitioner, improperly paid, gave, offered to pay, or offered to give money, or anything of value, to induce or influence a decision.

The second ground of the director's denial was his determination that the petitioner, or an individual or entity acting on behalf of the petitioner, had improperly paid, given, offered to pay, or offered to give money, or anything of value, to induce or influence a decision by the birth mother.

In arriving at his conclusion that a decision had been improperly induced or influenced, the director looked to the language of the Article 16 report. In his June 24, 2009 denial, the director stated the following:

It was noted in the Article 16 report that [the beneficiary's] birth mother . . . was improperly induced by you into giving her child [the beneficiary] away at birth. Improper inducement came in the form of food, payment of prenatal visits, medical follow-up visits, medical lab fees, immunization fees, etc. It was further stated that intended inducement was to come in the form of monetary gifts and real estate.

When they filed the Form I-800, the petitioner and his wife disclosed, pursuant to the instructions on page 8 of the form, several payments between July 2007 and November 2008 that they had made for such items as medical fees for the birth mother's delivery of the beneficiary; groceries and a mattress for the birthing center; immunization fees; lab fees; and other medical fees.

In relevant portion, the November 17, 2008 Article 16 report stated the following:

During the course of the investigation, there were several allegations of promises and financial assistance to be given to the birth mother on the completion of the adoption. Such actions are clearly contrary to Section 143 of the Families and Children Act Chapter 178 of the laws of Belize, 2000, which states ***“It shall not be lawful for any adopter or for any parent, or guardian, except with the sanction of the court, to receive any payments or other reward in consideration of the adoption of any child under this Act, or for any person to make or give to, or agree to make or give to any adopter or to any parent o[r] guardian in such payment or reward [emphasis in original].”***

* * *

[The birth mother stated that] when she was seven months pregnant she had to take an ultrasound examination and visit the hospital; she stated that the practicing Doctor who she later learnt his name [sic] to be [REDACTED]⁵ told her that a white family was interested in adopting a baby and if she wanted to give away the baby they would give her a house and some money. . . .

* * *

[The birth mother] stated that . . . she had agreed to get the money and the house in exchange for the baby . . . [S]he wants back her child and feels guilty of what she did. . . .

She said that even [the petitioner’s wife] is upset because [the birth mother] told the officer about the payments and promises; and that [the petitioner’s wife] told her that she never promised her anything.

* * *

She stated that personally she did not get any money from either [the petitioner’s wife] or [REDACTED] however, she knows that [REDACTED] gave [REDACTED]⁶ \$120.00 and he would give her some money when she needs to purchase personal stuff.

The authors of the Article 16 report reported the following with regard to their interview with [REDACTED]”):

15 [REDACTED] in Belize.

16 [REDACTED]

██████████ stated that he also heard when ██████████ and [the petitioner's wife] told [the birth mother] that they will build a house for her.

In its section entitled "Findings" and "Recommendation," the Article 16 report stated the following:

Allegations also arose about the promise of payment offered to the birth mother. . . .

* * *

Further allegations were also raised against the [birth] mother of her giving away one of her children in Guatemala for monetary gain. . . .

* * *

Vulnerabilities of the Birth Mother . . . In addition, an allegation from a previous sale of one her child [sic] in Guatemala was made against her and she also stated that she wanted money and a house for her baby. This questions her motives for relinquishing her parental rights. . . .

* * *

Allegations of Payment of Money – was also made throughout the investigation. However, it has been established that no payments were made directly between the adoptive parents and the birth mother. . . .

Intermediaries in adoption – Several people have been instrumental in this adoption application (by providing financial assistance, advice) and their motives are deemed questionable. They do not have the legal authority to match or place any children for adoption purposes. . . .

Effects of Adoption – An inference that can be drawn from this adoption application and which requires serious interventions and monitoring is Belize being used as a destination for adoptions from Guatemala.¹⁷ The Department is

¹⁷ With regard to adoptions from Guatemala directly, the USCIS website currently states the following:

Guatemala is a party to the Hague Intercountry Adoption Convention. DOS [U.S. Department of State] determined that Guatemala is currently not meeting its obligations under the Convention. For this reason, DOS Consular officers cannot issue the required Hague Adoption Certificate or Hague Custody Declaration at this time.

seeing new referrals of Guatemalan expectant mothers who are coming to Belize to give birth to their children and these children are being placed with prospective adoptive applicants from abroad.

The authors of the Article 16 report stated that [REDACTED] denied any allegations of child trafficking. In their interview with [REDACTED] and [REDACTED] Ms. [REDACTED] told the authors of the report that although the birth mother discussed selling another child, [REDACTED] told her that the petitioner's wife would never agree to pay her for the beneficiary. Finally, the petitioner's wife told the authors of the Article 16 report that she remembered, clearly, an occasion on which the birth mother told her that she had sold one of her other children. She stated that, in reply, she said she would never buy a baby, and that if the birth mother was insinuating that the petitioners would buy the beneficiary, the birth mother should take him and care for him herself. The petitioner and his wife stated that was the only occasion on which the issue of buying the beneficiary came up. They reported to the authors of the Article 16 report the allegation of baby-buying had been extremely difficult on both of them.

In summary, the Article 16 report indicated that the petitioner and his wife, [REDACTED] and [REDACTED], and [REDACTED] denied allegations of baby-buying. On the other hand, the birth mother and [REDACTED] indicate that baby-buying did occur.

As a preliminary matter, the AAO wishes to separate the issue of payments made for medical expenses for the beneficiary and the birth mother from the allegations regarding the promise of cash and a house for the birth mother in exchange for the adoption. As noted previously, the director stated that the petitioner "improperly induced" the birth mother into making a decision: "[i]mproper inducement came in the form of food, payment of prenatal visits, medical follow-up visits, medical lab fees, immunization fees, etc." The AAO disagrees with this statement by the director. The regulation at 8 C.F.R. § 204.304(b) sets forth several "permissible expenses" that may be paid by a petitioner:

- The regulation at 8 C.F.R. § 204.304(b)(3) permits payment by the petitioner for "[m]edical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child";
- The regulation at 8 C.F.R. § 204.304(b)(4) permits payment by the petitioner for "[c]ounseling services for a parent or a child for a reasonable time before and after the child's placement for adoption";

In light of the inability to complete the immigration process for Hague cases, prospective adoptive parents are strongly urged not to file Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, identifying Guatemala as the country from which they intend to adopt.

- The regulation at 8 C.F.R. § 204.304(b)(5) permits payment by the petitioner for “[e]xpenses, in an amount commensurate with the living standards in the country of the child’s habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child; and
- The regulation at 8 C.F.R. § 204.304(b)(9) permits payment by the petitioner for “[a]ny other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.”

The AAO finds that all of the expenses set forth by the petitioner and his wife in response to part 4, question 2 at page 8 of the Form I-800 to have fallen squarely within these permitted expense exceptions described. Moreover, the AAO finds no basis in 8 C.F.R. § 204.304 for the director’s determination that the prenatal visits, medical follow-up visits, medical lab fees, and immunization fees he identified were “improper inducements.” Rather, those items fall within the exception at 8 C.F.R. § 204.304(b)(3) which, again, allows for payment by the petitioner for “[m]edical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child.” The other expenses identified by the petitioners on the Form I-800 also fall within subsections (3), (4), (5), and (9) of 8 C.F.R. § 204.304(b). The AAO, therefore, withdraws that portion of the director’s decision.

Although the AAO has withdrawn that portion of the director’s decision regarding improper payments relating to the identified prenatal visits, medical follow-up visits, medical lab fees, and immunization fees, the allegations regarding promises of cash and a house for the birth mother in exchange for the adoption remain. If found to be true, such payments would not fall under any of the exceptions set forth at 8 C.F.R. § 204.304(b). Rather, they would be prohibited payments under 8 C.F.R. § 204.304(a).

The allegations of the birth mother and of _____ in the Article 16 report were set forth previously. In her December 22, 2008 letter, the petitioner’s wife responded to the allegations of the birth mother as set out in the Article 16 report. With regard to the birth mother’s allegation that _____”) had told her that the petitioners would give her a house and cash in exchange for the beneficiary, the birth mother stated that she knew the character of Mr. _____ and the heart he has for his ministry in Belize, and that such an accusation “does not fit” him. She stated that she and _____ spoke at length regarding the adoption, and that financial gain was never discussed. She also repeated the story she told to the author of the Article 16 report regarding the occasion on which the birth mother told her, through the Spanish-to-English interpretation of _____, of how she had sold one of her daughters. She reiterated that she told _____ to tell the birth mother that she did not come to Belize to buy a baby, and that if the birth mother thought she had come to Belize to buy a baby, she would fly home to the United States the following day. According to the petitioner’s wife, this was her only discussion with the birth mother about money.

In their January 6, 2009 letter, _____ and _____ stated that they were involved in the relationship between the petitioner’s wife and the birth mother as interpreters. In contrast to

the testimony of the petitioner's wife, who stated that she and the birth mother had one discussion regarding money, the [REDACTED] stated in their letter that they and the petitioner's wife told the birth mother "point blank, time and again," that the petitioners were not in Belize to buy a child. They testified to the good moral character of the petitioner and his wife, and stated their belief that if the birth mother had made any allegations regarding the exchange of money, such allegations were false.

The record also contains a January 12, 2009 letter from the competent authority in Belize. In that letter, the competent authority stated that the birth mother told the representative of the competent authority that her motivation in consenting to the adoption was: (1) the fact that the beneficiary was conceived through rape; and (2) the promise of money and a house by a third party. The competent authority stated that the petitioners have denied any such offer, and that such claims were supported by the testimony of [REDACTED]. The AAO takes note that the competent authority made no findings of fact in this letter; it simply reiterated the findings of its earlier Article 16 report: i.e., that the birth made allegations regarding an exchange of money and housing for the baby, and that the petitioners and [REDACTED] denied such allegations.

The record also contains a May 18, 2009 letter from the competent authority in Belize. In that letter, the competent authority stated that "the allegation of exchange of money from the adoptive parents to the birth mother has not been substantiated."

On appeal, counsel contends that the director erred in denying the petition, and submits the following documentation pertinent to the issue of whether the petitioners, or an individual or entity acting on behalf of the petitioners, improperly paid, gave, offered to pay, or offered to give money, or anything of value, to induce or influence a decision by the birth mother:

- Counsel's August 17, 2009 letter;
- Counsel's September 28, 2009 letter;
- A document, dated August 18, 2009, which appears to be an affidavit from the birth mother; and
- A second document, also dated August 18, 2009, which also appears to be an affidavit from the birth mother.

In his August 17, 2009 letter, counsel reiterates the claims of the petitioner and his wife that no financial inducements were made or represented, and refers to the AAO to the testimony of the petitioner and his wife in the Article 16 report, and well as the December 22, 2008 testimony of the petitioner's wife. As noted by counsel, the petitioner and his wife have denied any allegations of offering money and a house in exchange for the beneficiary. Counsel also points to the January 6, 2009 testimony of [REDACTED] which supports the testimony of the petitioner and his wife. Counsel contends that the record of proceeding establishes, by a preponderance of the evidence, that the allegations regarding improper inducement "have no merit or basis."

In his September 28, 2009 letter, counsel refers the AAO to the August 18, 2009 testimony of the birth mother, and emphasizes her new claims that she gave false testimony to the preparers of the Article 16 report, and that she gave such false testimony in anger.

The birth mother's two August 18, 2009 documents, which were discussed in the portion of this decision relating to her irrevocable consent to the adoption, are also pertinent to the issue of whether improper inducements were made. Although the birth mother does not address the issue of improper inducement in her first document, she does address it in the second document. At item 11 of that document, she states the following: "At no time did anyone including [the petitioner or his wife] ever offer money to me or a house in exchange for my son."

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition on this ground. Before addressing the substantive reasons underlying its determination that the record of proceeding as currently constituted fails to resolve the allegations of record regarding improper inducement, the AAO turns again to the issue of the reliability of the testimony of the birth mother, as such reliability is described in the record by counsel and the petitioner's wife. As the AAO noted in its earlier discussion regarding the issue of the birth mother's irrevocable consent to the adoption, both counsel and the petitioner's wife have asserted that the testimony of the petitioner's wife is unreliable and lacking in credibility. Again, counsel stated in his August 17, 2009 letter that "[i]t is important to put into context the relative credibility of the various witnesses and the statements that were made" and, in her December 22, 2008 letter, the petitioner's wife stated that the birth mother has "questionable character and motives," and that because her character is "compromised," "lying is purposeful."

Having heard such assertions regarding the reliability of the testimony of the birth mother when her testimony was adverse to a favorable determination on this petition, it is unclear why the AAO should accept such testimony as reliable now that it supports a favorable determination on this petition. Having made this preliminary observation, the AAO turns to its analysis of the second ground of the director's denial of this petition.

As noted previously, the AAO has withdrawn that portion of the director's second ground for denial of the petition pertaining to the director's identification of prenatal visits, medical follow-up visits, medical lab fees, and immunization fees as "improper inducements." Again, the AAO found such payments to have fallen squarely within the exception at 8 C.F.R. § 204.304(b)(3), which allows for payment by the petitioner for "[m]edical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child." The AAO found further that the other expenses identified by the petitioners on the Form I-800 also fell within subsections (3), (4), (5), and (9) of 8 C.F.R. § 204.304(b).

Remaining before the AAO are the allegations regarding the offers of cash and a house in exchange for the beneficiary. Not only have counsel and the petitioners failed to adequately

overcome such allegations, they have failed to even fully address them. The full text of the regulation at issue here, 8 C.F.R. § 204.304, was set forth earlier in this decision. Again, that regulation prohibits improper inducements by the petitioner *or any individual or entity acting on behalf of the petitioner.*

The AAO accepts the findings of the competent authority that the petitioners have not directly made any improper inducements of cash or a house in exchange for the beneficiary. Again, the competent authority stated, specifically, in the Article 16 report that “it has been established that no payments were made directly between the adoptive applicants and the birth mother.” The AAO finds no evidence in the record to dispute this finding. However, in addition to establishing that neither the petitioner nor his wife engaged in any improper inducement is not the end of USCIS’s inquiry: the petitioners must also establish that no individual or entity acting on their behalf engaged in improper inducement. *See* 8 C.F.R. § 204.304(a). As noted previously, the Article 16 report specifically stated that several people, whose motives were deemed “questionable” by the competent authority, had been “instrumental” in the adoption by providing financial assistance. The Article 16 report stated further that “there were several allegations of promises and financial assistance to be given to the birth mother on the completion of the adoption.”

While the evidence of record does satisfy the first half of this requirement, in that it has been demonstrated that the petitioners did not engage in any improper inducement, the evidence of record does not satisfy, or even address, the second half: whether an individual or entity acting on behalf of the petitioners did engage in such improper inducement. Neither counsel nor the petitioners address the issue of whether an individual or entity acting on behalf of the petitioner has engaged in any improper inducements. Nor does counsel or the petitioner explain why they have elected not to address this issue on appeal. Accordingly, the second ground of the director’s denial of this petition has not been overcome. The AAO emphasizes that it is not entering a finding that an individual or entity acting on behalf of the petitioners in fact engaged in any improper inducement. Rather, it finds that the record of proceeding as currently constituted fails to adequately lay such allegations to rest.

Having made that determination, the AAO turns next to the third ground of the director’s decision: that the petitioners have engaged in conduct related to the adoption or immigration of the child prohibited by 8 C.F.R. § 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption.

III. Whether the petitioner has engaged in conduct related to the adoption or immigration of the beneficiary prohibited by 8 C.F.R. § 204.304, or has concealed or misrepresented any material facts concerning payments made in relation to the adoption.

The third ground of the director's denial was his determination that 8 C.F.R. § 204.309(b)(3) mandates denial of the petition.¹⁸ The regulation at 8 C.F.R. § 204.309(b)(3) mandates denial of a Form I-800 if USCIS finds that the petitioner, or any individual or entity acting on behalf of the petitioner, has engaged in any conduct related to the adoption or immigration of the child that is prohibited by 8 C.F.R. § 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption.

As established by the AAO in its discussion of the director's second ground for denial of the petition, the record of proceeding as currently constituted fails to resolve allegations raised in the Article 16 report concerning whether any individual or entity acting on behalf of the petitioners engaged in any improper inducement and, as such, that the petitioners had failed to satisfy 8 C.F.R. § 204.304.

Given that the AAO has therefore determined that the petitioners have been found in violation of 8 C.F.R. § 204.304, the regulation at 8 C.F.R. § 204.309(b)(3) mandates denial of the Form I-800. Accordingly, the AAO agrees with the third ground of the director's decision to deny this petition.

Having made that determination, the AAO turns next to the fourth ground of the director's decision: that the petitioners are in violation of Article 17 of the Hague Convention.

IV. Whether placement of the beneficiary with the petitioners at the time of his birth violated Article 17 of the Hague Convention.

The fourth ground of the director's denial of the Form I-800 was his determination that the petitioners are in violation of Article 17 of the Hague Convention. As noted by the director, Article 17 of the Hague Convention states the following:

Any decision in the State of origin [Belize] that a child should be entrusted to prospective adoptive parents may only be made if –

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State [the United States] has approved such a decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

¹⁸ The AAO acknowledges that the director cited subsection (2) of 8 C.F.R. § 204.309(b) rather than subsection (3). However, he cited the language of subsection (3) rather than that of subsection (2). Given that he provided the regulatory language to which he cited, and thus placed the petitioner on notice as to the substantive basis for his decision, the AAO finds this to have been a harmless typographical error on the part of the director.

- (c) the Central Authorities of both States have agreed that the adoption may proceed; and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authori[z]ed to enter and reside permanently in the receiving State.

The Article 16 report stated the following:

The child has been in one placement since birth:

1. with prospective adoptive parents. . . .

* * *

[The beneficiary] has been in the care and control of [the petitioner and his wife] since birth.

* * *

The child has been in one constant placement since his birth.

That the beneficiary has been living with the petitioners since his birth is not in dispute. However, counsel and the petitioners emphasize that the petitioners do not have legal custody of the beneficiary. Rather, as noted by the competent authority's May 18, 2009 letter, the birth mother "had independently placed the child with the applicants before our involvement." However, the AAO finds the distinction drawn by counsel and the petitioners irrelevant.

The AAO agrees with the director's determination that the petitioners' physical custody of the beneficiary violates Article 17 of the Hague Convention. The AAO acknowledges that the petitioner and his wife do not have legal custody of the beneficiary. They have, however, had physical custody of the beneficiary since he was born, and application of Article 17 of the Hague Convention is not limited to situations involving grants of legal custody. Rather, the framers of Article 17 specifically referred to "any decision in the State of origin that a child should be entrusted to prospective adoptive parents." The birth mother's decision to place the beneficiary in the physical custody of the petitioners, therefore, falls under the purview of Article 17.

Again, under Article 17 of the Hague Convention, four criteria must be met before a beneficiary may be placed with the adoptive parents. Here, none of those four criteria had been satisfied at the time the birth mother placed the beneficiary with the birth parents.

Placement of the beneficiary with the birth parents at the time of his birth did not satisfy Article 17(a) of the Hague Convention, because at that time Belize had not yet ensured that the birth mother had agreed to the placement (i.e., that she was not pressured to place the beneficiary with the petitioners).

Placement of the beneficiary with the birth parents at the time of his birth did not satisfy Article 17(b) of the Hague Convention, because at that time USCIS had not yet approved of the placement.

Placement of the beneficiary with the birth parents at the time of his birth did not satisfy Article 17(c) of the Hague Convention, because at that time neither Belize nor the United States had yet agreed that the adoption could proceed.

Placement of the beneficiary with the birth parents at the time of his birth did not satisfy Article 17(d) of the Hague Convention, because at that time USCIS had not, in accordance with Article 5 of the Convention, determined that the petitioners were eligible to adopt; that they had received the necessary counseling; and that beneficiary would be authorized to enter the United States.

Accordingly, placement of the beneficiary with the birth parents at the time of his birth by the birth mother violated Article 17 of the Hague Convention. Accordingly, the AAO agrees with the fourth ground of the director's decision to deny this petition.

Having made that determination, the AAO turns next to the fifth ground of the director's decision: that denial of the Form I-800A precludes approval of this Form I-800.

V. Whether denial of the Form I-800A precludes approval of the Form I-800.

The fifth ground of the director's denial of the Form I-800 was his determination that denial of the Form I-800A also precludes approval of the Form I-800. The AAO agrees. The regulation at 8 C.F.R. § 204.307(b)(3) states that only persons with an approved and unexpired Form I-800A may file a Form I-800, and the regulation at 8 C.F.R. § 204.313(d)(1) requires the petitioner to submit the Form I-800A approval notice as supporting evidence when he or she files a Form I-800.

The director denied the Form I-800A on June 24, 2009, and the AAO has dismissed a subsequent appeal by the petitioners. The Form I-800A has been denied; the petitioners are not in possession of a Form I-800A approval notice. As such, 8 C.F.R. §§ 204.307(b)(3) and 204.313(d)(1) mandate denial of the Form I-800.

Accordingly, the AAO agrees with the fifth ground of the director's decision to deny this petition.

Pursuant to the preceding discussion, the AAO agrees with the director's decision to deny the Form I-800. Beyond the decision of the director, the AAO finds that the Form I-800 may not be approved for two additional reasons: (1) the regulation at 8 C.F.R. § 204.307(b)(2) precludes approval of the Form I-800; and (2) Article 4 of the Hague Convention precludes approval of the Form I-800.

VI. Whether 8 C.F.R. § 204.309(b)(2) precludes approval of the Form I-800.

Beyond the decision of the director, the AAO finds that 8 C.F.R. § 204.309(b)(2) precludes approval of the Form I-800. The text of 8 C.F.R. § 204.309(b)(2) was set forth previously.¹⁹ Again, that regulation mandates denial of a Form I-800 when the petitioner has any form of contact with the child's parents, legal custodian, or other individual or entity who was responsible for the child's care when the contact occurred, unless such contact was expressly permitted by subsections (i) and (ii) of 8 C.F.R. § 204.309(b)(2). In this case, the contact between the petitioner's wife and the birth mother prior to the beneficiary's birth, which is well-documented in the record of proceeding, does not fall under any of the exceptions contained in those subsections. The contact occurred prior to approval of the Form I-800A, so it does fall under the exception at subsection (i). Nor does such contact fall under the exceptions contained at subsection (ii), as there is no evidence the contact between the petitioner's wife and the birth mother that occurred prior to the birth of the beneficiary was permitted by the competent authority, and that such contact occurred only in compliance with that particular authorization.

Accordingly, 8 C.F.R. § 204.309(b)(2) bars approval of this petition. For this additional reason, the petition may not be approved.

VII. Whether Article 4 of the Hague Convention precludes approval of the Form I-800.

Beyond the decision of the director, the AAO finds that Article 4 of the Hague Convention precludes approval of the Form I-800.

Article 4 of the Hague Convention states, in pertinent part, the following:

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin [Belize] –

* * *

(b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

¹⁹ The regulation at 8 C.F.R. § 204.309(b)(2) is based upon Article 29 of the Hague Convention.

(c) have ensured that

* * *

(4) the consent of the mother, where required, has been given only after the birth of the child. . . .

Article 4(b) of the Hague Convention states that an adoption shall only take place after the competent authority has determined that an intercountry adoption is in the child's best interests, after the possibility of placing the child within the country of origin have been given due consideration. In that the beneficiary was placed with the petitioner's wife at the time of birth, the record does not establish that the competent authority afforded such due consideration to placement of the beneficiary in Belize.

Article 4(c)(4) of the Hague Convention requires the competent authority to ensure that the consent of the birth mother was given only after the birth of the child. In this case, the record establishes clearly that the birth mother initially consented to the adoption before the birth of the beneficiary.

Accordingly, Article 4 of the Hague Convention precludes approval of the Form I-800. For this additional reason, the petition may not be approved.

VIII. Conclusion

The AAO agrees with the director's determination: (1) that the petitioner has failed to establish that the beneficiary's birthmother had given her irrevocable consent to the beneficiary's adoption; (2) that the petitioner has failed to resolve the allegations of record that he, or an individual or entity acting on his behalf, improperly paid, gave, offered to pay, or offered to give money, or anything of value, to induce or influence a decision; (3) that the petitioner engaged in conduct related to the adoption or immigration of the beneficiary prohibited by 8 C.F.R. § 204.304, or that the petitioner concealed or misrepresented any material facts concerning payments made in relation to the adoption; (4) that placement of the beneficiary with the petitioner at the time of his birth violated Article 17 of the Hague Convention; and (5) that denial of the Form I-800A precludes approval of the Form I-800. Beyond the decision of the director, the AAO finds further that (1) the regulation at 8 C.F.R. § 204.309(b)(2) precludes approval of the Form I-800; and (2) Article 4 of the Hague Convention further precludes approval of the Form I-800. Accordingly, the AAO will not disturb the director's denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149

(9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.