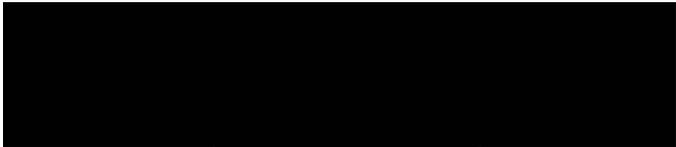




U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
SIM 08 296 01053

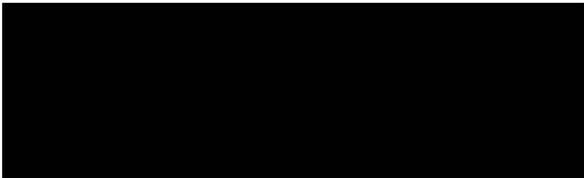
Office: NATIONAL BENEFITS CENTER

Date:

IN RE: Applicants: [Redacted]
Beneficiary: [Redacted]

APPLICATION: Application for Determination of Suitability to Adopt a Child From a Convention Country Pursuant to 8 C.F.R. § 204.310

ON BEHALF OF APPLICANTS:



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-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country Pursuant, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

After initially approving the Form I-800A, the director reopened, and subsequently denied, the application on the basis of his determination that the applicant¹ had failed to disclose to the preparer of the home study (1) that the applicants had been maintaining a residence in Belize; and (2) that the applicants had obtained physical custody of the prospective convention adoptee, and that the child was residing with the applicant's wife in Belize.

Section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), states, in pertinent part, the following:

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—

- (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

¹ The regulation at 8 C.F.R. § 204.301 defines "applicant" as follows:

Applicant means the U.S. citizen (and his or her spouse, if any) who has filed a Form I-800A under this subpart . . . Although the singular term "applicant" 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 applicant" could refer to either spouse. In an effort to ease the reading of this discussion, the AAO will refer to [REDACTED] as the "applicant" (as he was named on the Form I-800A as the applicant) and to [REDACTED] as the "applicant'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.

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.

The regulation at 8 C.F.R. § 204.310 states, in pertinent part, the following:

- (a) *Completing and filing the Form.* A United States citizen seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must:

* * *

- (3) File the Form I-800A with the USCIS office that has jurisdiction under 8 C.F.R. [§] 204.308(a) to adjudicate the Form I-800A, together with:

* * *

- (viii) A home study that meets the requirements of 8 C.F.R. [§] 204.311. . . .

The regulation at 8 C.F.R. § 204.311, which sets forth the requirements for home studies, states, in pertinent part, the following:

- (d) *Duty to disclose.*

- (1) The applicant, and any additional adult members of the household, each has a duty of candor and must:

- (i) Give true and complete information to the home study preparer. . . .

* * *

- (2) This duty of candor is an ongoing duty, and continues while the Form I-800A is pending, after the Form I-800A is approved, and while any subsequent Form I-800 is pending, and until there is a final decision admitting the Convention adoptee to the United States with a visa. The applicant and home any additional adult member of the household must notify the home study preparer and USCIS of any new event or information that might warrant submission of an amended or updated home study.

* * *

- (i) *Checking available child abuse registries.* The home study preparer must ensure that a check of the applicant, and of each additional adult member of the household, has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th birthday. . . .

* * *

- (r) *Specific approval for adoption.* If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child from the specific Convention country. . . .

- (s) *Home study preparer's authority to conduct home studies.* The home study must include a statement in which the home study preparer certifies that he or she is authorized under 22 C.F.R. part 96 to complete home studies for Convention adoption cases. The certification must specify the State or country under whose authority the home study preparer is licensed or authorized, [and] cite the specific law or regulation authorizing the preparer to conduct home studies . . . The certification must also specify the basis under 22 C.F.R. part 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention home studies.

- (u) Home study updates and amendments.
 - (1) A new home study amendment or update will be required if there is:
 - (i) A significant change in the applicant's household, such as a change in residence. . . .

* * *
 - (2) Any updated or amended home study must:

* * *
 - (iii) Include a statement from the preparer that he or she has reviewed the home study that is being updated or amended and is personally and fully aware of its contents. . . .

The applicant and his wife are citizens of the United States. They filed the Form I-800A on July 22, 2008. The director issued a request for additional evidence on September 29, 2008. The applicant submitted a timely response on October 9, 2008. The Form I-800A was approved on October 15, 2008. Upon receipt of additional information, the director issued a service motion to reopen the application, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), on February 6, 2009. The applicant submitted a response on March 24, 2009. The director denied the application on June 24, 2009.

As noted previously, the director denied the application on the basis of his determination that the applicant had failed to disclose to the preparer of the home study (1) that the applicant had been maintaining a residence in Belize; and (2) that the applicants had obtained physical custody of the prospective convention adoptee, and that the child was residing with his wife in Belize.

In order to determine whether the director was correct in his determination that the applicant failed to disclose these matters, the AAO looks first to the home study submitted with the Form I-800A at the time the application was filed on July 22, 2008. The July 13, 2008 home study did not state that the applicant's wife was living in Belize. At page 7 of the home study, the preparer stated the following:

██████ and ██████ report that they have lived in the State of Washington since their eighteenth birthday[s]. ██████ and ██████ indicate that they *have not lived in any other State or foreign country* since their eighteenth birthday [emphasis added]. . . .

At page 9 of the home study, the preparer stated the following:

██████████ and ██████████ report that they have lived in the following states and foreign countries since their eighteenth birthday[s].

<u>Dates</u>	██████████ residency
January 1972 to present	Washington

<u>Dates</u>	██████████ residency
May 1973 to present	Washington

No reference to any period of residency in Belize, by either individual, was made.

In response to the director's September 29, 2008 request for additional evidence, the applicant submitted an October 2, 2008 addendum to the home study. That addendum did not indicate that the applicant's wife was living in Belize, either. Rather, the home study preparer stated, at page 5, the following:

██████████ reported that she has lived in the in the following locations (domestically and internationally) since her eighteenth birthday. . .

<u>Dates</u>	██████████ residency
May 1973 to present	Washington

As the home study stated that the applicant's wife had lived nowhere but the State of Washington since 1973, the director did not request evidence of criminal background checks or child abuse clearances from Belize.

Nor did the July 13, 2008 home study indicate that the applicant and his wife were already caring for the beneficiary. Rather, the language used by the preparer of the home study indicated the reverse was true. The preparer stated, in general terms, that the couple wished to adopt a healthy child up to twelve months old.

The director approved the Form I-800A on October 15, 2008. On November 17, 2008, the Department of Human Services in Belize City issued an 18-page report regarding the adoption pursuant to 8 C.F.R. § 204.313(d)(3) (the "Article 16 report"). Although several issues were raised in the Article 16 report, the AAO takes particular note of the following:

- At page 1, the Article 16 report stated that the beneficiary's "current placement" was with the applicant and his wife.
At page 2, the Article 16 report stated that the beneficiary was in the care of the applicants, who were residing in Belize while awaiting completion of the adoption.

- At page 6, the Article 16 report indicated that the applicant's wife was living in Belize prior to the beneficiary's birth on April 5, 2008.³
- At page 7, the Article 16 report indicated that the applicant's wife was living in Belize at the time of the beneficiary's birth on April 5, 2008.⁴
- At pages 8 and 9, the Article 16 report indicated that the applicant's wife was in contact with the beneficiary's birth mother prior to the beneficiary's April 5, 2008 birth.
- At page 9, the Article 16 report stated that the beneficiary had been in the "care and control" of the applicant and his wife since his April 5, 2008 birth.⁵
- At page 12, the Article 16 report stated that the beneficiary had been in the care of the applicant and his wife since his April 5, 2008 birth.
- At page 17, the Article 16 report stated that the beneficiary had been in the care of the applicant and his wife since his April 5, 2008 birth.

Moreover, in connection with the couple's Form I-800,⁶ which had been filed on December 5, 2008, the applicant submitted a June 17, 2008 document entitled "Consent to an Adoption Order in Respect of the Infant named [REDACTED]" in which the beneficiary's birth mother consented to an adoption order.⁷

Upon receipt of this information, which indicated that the applicant and his wife had failed to disclose important information to USCIS, the director reopened the application. Since the record now indicated that the applicant and his wife were living in Belize, and had been doing so at the time the Form I-800A had been filed, the director notified the applicant in his February 6, 2009 notice that another home study addendum was necessary.

³ Again, at page 7 of the July 13, 2008 home study, the preparer stated that the couple had indicated to him that they had never lived in any state or foreign country other than the State of Washington. At page 9 of that home study, the preparer stated that the applicant's wife reported to him that she had lived in the State of Washington (and nowhere else) since the age of eighteen. The October 2, 2008 home study addendum did not disclose her residence in Belize, either. Such residence was ongoing at the time both documents were prepared, but was not reported.

⁴ See footnote 3.

⁵ Again, the July 13, 2008 home study made no mention of this fact. At the time the home study was prepared the applicant and his wife would have been caring for the beneficiary for over three months, yet they did not mention this fact to USCIS. Rather, the language used by the preparer of the home study, that the couple wished to adopt a healthy child up to twelve months old, indicated that they were not currently caring for a child.

⁶ See Form I-800, SIM 09 069 10022, filed December 5, 2008 and denied June 24, 2009. The applicants have appealed that decision, and the AAO has dismissed that appeal.

⁷ Once again, the July 13, 2008 home study made no mention of this fact. At the time the home study was prepared this document had been in existence for nearly a month, yet the home study made no mention of the beneficiary. Rather, the language used by the preparer of the home study, that the couple wished to adopt a healthy child up to twelve months old, indicated that they were not currently caring for a child.

The applicant replied to the director's notice on March 24, 2009. The applicant submitted a March 3, 2009 home study addendum, which addressed his wife's residence in Belize, as well as a letter from the preparer of the original home study which stated that he had reviewed the document, and that he continued to recommend the applicant and his wife as adoptive parents.

In the interim, the applicant had submitted a letter in response to a notice of intent to deny the Form I-800 which also addressed, in part, the applicant's failure of disclosure. In that December 22, 2008 letter, the applicant's wife stated that neither she, nor her husband, have legal custody of the beneficiary. Rather, they are caring for him. With regard to the failure to disclose that the applicant's wife was living in Belize, the applicant's wife stated that she and her husband told the home study preparer that she was staying in Belize while she cared for the beneficiary, and that the couple did not consider her to have been "maintaining a residence." The applicant also submitted a letter from [REDACTED], the couple's Belizean attorney, in which he stated legal custody of the beneficiary had not been granted to the applicant's wife. Rather, legal custody of the beneficiary was vested in a guardian ad litem.⁸

The director denied the application on June 24, 2009. As noted previously, the director denied the application on the basis of the applicant's failure to disclose that his wife had been maintaining a residence in Belize, and that his wife had obtained physical custody of the beneficiary and that the beneficiary was residing with his wife in Belize.

On appeal, counsel contends that the director erred in denying the application. In his August 17, 2009 letter, counsel contends that USCIS was in fact notified of the applicant's wife's residence in Belize. He contends further that, pursuant to a policy memorandum issued in 2008, although the applicant and his wife were temporarily living abroad, they are "habitually domiciled" in the United States. He also contends that USCIS was also in fact notified that the beneficiary was placed with the applicant's wife after his birth. Counsel states that the applicant and his wife never concealed any of this information from USCIS, and that the "information has been openly available to USCIS throughout the pendency of these proceedings."

In his September 28, 2009 letter, counsel reiterates his earlier assertions that the applicant and his wife in fact disclosed both the applicant's residence in Belize and the placement of the beneficiary with the applicant's wife to USCIS. Counsel also submits a July 15, 2008 letter from the home study preparer to the Yakima, Washington USCIS Field Office.

Upon review of the entire record of proceeding, the AAO has determined that the director properly denied this application, and the AAO does not find persuasive counsel's assertions on appeal.

The AAO will first address the director's determination that the applicant failed to disclose the residency in Belize. Counsel's argument on appeal rests on the premise that the applicant did in

⁸ The Article 16 report did not reference a guardian ad litem.

fact disclose such residency. Counsel contends that the applicant disclosed the foreign residence to USCIS on the following documents:

- The October 2, 2008 home study addendum, at page 2;
- The November 17, 2008 Article 16 report;
- The Form I-800;⁹ and
- A July 15, 2008 letter to the Yakima, Washington USCIS Field Office.

The AAO will address each of these documents in turn. The portion of the October 2, 2008 home study addendum to which counsel refers the AAO states the following:

Dates of Contacts:

May 29, 2008	Home Interview with [REDACTED]
May 29, 2008	Telephone Interview with [REDACTED]
May 29, 2008	Home Interview with [REDACTED]
May 29, 2008	Collateral contacts (references)
June 5, 2008	Collateral Contacts (background clearances)
June 10, 2008	Telephone Interview with [REDACTED]
June 10, 2008	Telephone Interview with [REDACTED]
June 30, 2008	Home Interview with [REDACTED]

[emphasis added]

Counsel asserts that, since the preparer of the home study included the word “Belize” in parentheses, USCIS was therefore placed on notice that [REDACTED] was residing in Belize. According to counsel, “[t]herefore it was disclosed and evidence existed of the fact that the applicant was temporarily residing in Belize at that particular time.” The AAO disagrees with counsel’s argument. First, the home study did not state that [REDACTED] was living in Belize at the time of the telephone interview. It did not even state that she had called from Belize. It simply stated “Belize.” Moreover, the AAO incorporates here its previous discussion regarding the home study: again, at page 7 of the July 13, 2008 home study, the preparer stated that the couple had indicated to him that they had never lived in any state or foreign country other than the State of Washington. At page 9 of that home study, the preparer stated that the applicant’s wife reported to him that she had lived in the State of Washington (and nowhere else) since the age of eighteen. The home study preparer did not withdraw such language, and the AAO does not accept the assertion that insertion of the word “Belize” at page 2 of the home study addendum rendered such assertions meaningless.

⁹ Counsel mistakenly refers the AAO to the Form I-800A. However, the item to which counsel refers, question 25, does not exist on the Form I-800A.

Nor does the AAO agree with counsel's assertion that the Article 16 report constituted disclosure on the part of the applicants. The AAO notes first that this document was prepared after the October 15, 2008 approval of the Form I-800A. Thus, even if the AAO agreed with counsel's argument, as this document did not come into existence until after a decision had been issued on the application, the applicant would not be able to use it as evidence that he had notified USCIS of the residency issue during the pendency of the application. More important, however, is the fact that the Article 16 report was not issued by the applicant; it was issued by the Belizean Department of Human Services. This report, therefore, cannot be used as evidence that the applicant placed USCIS on notice of the Belizean residency of the applicant. In fact, it was the Article 16 report that placed USCIS on notice of the applicant's residence in Belize, and that initiated the process that led to the ultimate denial of the Form I-800A. Given this set of facts, the applicant cannot now use this report as evidence that he disclosed the residency to USCIS.

Nor is the applicant's answer to question 25 of the Form I-800 evidence that he disclosed the residency in Belize to USCIS. Again, the application at issue here, the Form I-800A, was filed on July 22, 2008 and approved on October 15, 2008. The applicant filed the Form I-800 on December 5, 2008.

Finally, the AAO turns to the July 15, 2008 letter to the Yakima USCIS Field Office. In that letter, the home study preparer requests that the applicant's wife's fingerprinting take place in Belize, since she had been living there for several months. In his September 28, 2009 letter, counsel states that this letter "is submitted to substantiate that USCIS was aware that [REDACTED] was temporarily living in Belize." The AAO disagrees. First, this letter was sent to USCIS before the Form I-800A was filed, which explains why it is not contained in the record of proceeding. Second, this letter was not submitted to the National Benefits Center, the office having jurisdiction over the Form I-800A. Third, there is no evidence that this letter was actually sent on the date claimed by counsel. More importantly, however, is the fact that even if this letter was actually been sent, and had been sent to the National Benefits Center in support of the application so that it could be included in the record of proceeding, the applicant still made contradictory testimony to the preparer of the home study. Again, at page 7 of the July 13, 2008 home study, the preparer stated that the couple had indicated to him that they had never lived in any state or foreign country other than the State of Washington and, at page 9 of that home study, the preparer stated that the applicant's wife reported to him that she had lived in the State of Washington (and nowhere else) since the age of eighteen.

Accordingly, the AAO does not find that any of these documents support counsel's assertion that the couple disclosed the foreign residency to USCIS. The home study submitted in support of the Form I-800A specifically stated that the couple had reported to him that both individuals had lived in the State of Washington (and nowhere else) since the age of eighteen. It was only after USCIS received information to the contrary, in particular the Article 16 report, that the couple disclosed the foreign residence. The foreign residency in this case would not, in and of itself, have necessarily resulted in denial of the Form I-800A. However, the applicant and his wife are subject to the duties of candor and disclosure, as set forth at 8 C.F.R. § 204.311(d). The

applicant's wife had been living in Belize for several months by the time the Form I-800A was filed on July 22, 2008, and for several months more by the time it was initially approved on October 15, 2008. They did not disclose the foreign residence until after USCIS received the Article 16 report. The duty of candor is an ongoing duty, and continues while the Form I-800A is pending, and after the Form I-800A is approved. *Id.* The appeal consists of assertions that the couple did in fact disclose the Belizean residency to USCIS, which the AAO does not find persuasive, as discussed above. The AAO finds that the applicant and his wife have failed to explain why they told they told the preparer of the home study that they had never lived anywhere other than the State of Washington.¹⁰

Nor does the AAO find convincing counsel's apparent assertion that the applicant's wife was not actually living in Belize. In his August 17, 2009 letter, counsel cites to an October 31, 2008 policy memorandum from Don Neufeld.¹¹ Counsel also cites to 8 C.F.R. § 204.303, which states that a U.S. citizen is habitually resident in the United States if that individual (1) has his or her domicile in the United States, even if that person is living temporarily abroad; or (2) is not domiciled in the United States, but is able to demonstrate either that the individual will establish domicile in the United States on or before the date of the child's admission to the United States, or that the individual will bring the child to the United States before the child's eighteenth birthday. Counsel then argues that although the applicants were living abroad, their "habitual domicile"¹² was in the United States. Although counsel does not make an argument or reach a conclusion after making these statements, the AAO presumes he is arguing that the applicant and his wife were not required to disclose the residence in Belize (even though he previously argued that they did make such disclosure) because they were, in his words, "habitually domiciled" in the United States. The AAO disagrees.

First, as has now been noted on multiple occasions, the preparer of the home study specifically stated that he was told by the applicant and his wife that they had never lived anywhere other than the State of Washington. He did not state that the couple had told him they had been domiciled, habitually resident, or "habitually domiciled" in Washington. He used no such terminology.

¹⁰ The AAO acknowledges the December 22, 2008 letter from the applicant's wife submitted in response to the director's notice of intent to deny the Form I-800, which had been filed after the initial approval of the Form I-800A. In her letter, the applicant's wife stated that the preparer of the home study was aware that she was in Belize. Even if such was the case, the preparer of the home study stated nonetheless that the applicant and his wife specifically told him that they had lived nowhere but Washington State.

¹¹ See Memorandum from Don Neufeld, Acting Associate Director, Domestic Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, *Intercountry adoption under the Hague Adoption Convention and the USCIS Hague Adoption Convention rule at 8 C.F.R. §§ 204, 213a, and 322; Revisions to Chapter 21 of the Adjudicators Field Manual; AFM Update AD09-26, HQ DOMO 70/6.1.1-P* (October 31, 2008).

¹² The phrase "habitual domicile" appears in neither the regulation cited by counsel nor the policy memorandum he cites. It appears as though counsel has combined the terms "habitual residence" and "domicile."

More importantly, however, the AAO notes the underlying importance of the duties of candor and disclosure in Convention adoption cases, as such candor and disclosure relates to residence. The regulation at 8 C.F.R. § 204.311(i), which was set forth earlier in this decision, requires the preparer of the home study to ensure that a check of the applicant has been made with available child abuse registries in any State or foreign country in which the applicant has resided since that individual's eighteenth birthday. If I-800A applicants do not fully disclose their residence history, preparers of home studies cannot ensure that such databases are checked. As set forth by Congress at section 101(b)(1)(G)(i)(I) of the Act, 8 U.S.C. § 1101(b)(1)(G)(i)(I), the Attorney General must be satisfied that proper care will be furnished the child if admitted to the United States. The regulation at 8 C.F.R. § 204.311(i) was enacted in furtherance of the goal of protecting Convention adoptees. These policy goals are different than those discussed at 8 C.F.R. § 204.303, cited by counsel, and the concept of "habitual residence" described at that regulation is not interchangeable with the phrase "has resided in" found at 8 C.F.R. § 204.311(i). As such, the AAO does not find counsel's assertions regarding the concept of habitual residence.

Having agreed with the director's determination regarding the applicant's failure to disclose the residency in Belize, the AAO turns next to the director's determination that the applicant failed to disclose his wife's physical custody of the beneficiary. In his June 24, 2009 decision, the director stated that the home study "made no mention of the fact that your spouse was residing abroad in the country of Belize with the child whom you intended to classify as a Convention adoptee."

Counsel's argument on appeal rests on two premises. First, as was the case with the issue of the foreign residency, counsel argues that the applicant did in fact disclose the fact that the applicant's wife was living with the beneficiary. Second, counsel argues that the applicant has never had legal custody of the beneficiary: "[p]lacement does mean legal custody."

In support of his argument that the couple disclosed to USCIS that the applicant was living with the beneficiary in Belize, counsel again cites the November 17, 2008 Article 16 report. However, this report does not establish that the applicant disclosed to USCIS that she was living with the beneficiary. The AAO notes first that the Article 16 report was prepared after the October 15, 2008 approval of the Form I-800A. Thus, even if the AAO agreed with counsel's argument, as this document did not come into existence until after a decision had been issued on the application, the applicant would not be able to use it as evidence that he had notified USCIS at any point during the pendency of the application that the beneficiary was living with his wife. More important, however, is the fact that this document was not issued by the applicant; it was issued by the Belizean Department of Human Services. This document, therefore, cannot be used as evidence that the applicant placed USCIS on notice that his wife was living with the beneficiary. In fact, it was this document that first placed USCIS on notice of the applicant's residence in Belize, and that initiated the process that led to the ultimate denial of the Form I-800A. Given this set of facts, the applicant cannot now use the Article 16 report as evidence that he disclosed the beneficiary's residence with his wife to USCIS.

The record contains a home study dated July 13, 2008, and a home study addendum dated October 2, 2008. At no point did the preparer of the home study state that the applicant was living with the beneficiary. Rather, as discussed previously, the preparer of the home study stated that the couple wished to adopt a healthy child up to twelve months old. Again, the duty of candor is an ongoing duty, and continues while the Form I-800A is pending, and after the Form I-800A is approved. *See* 8 C.F.R. § 204.311(d).

Nor is counsel's distinction between placement and legal custody relevant for purposes of disclosure. It is undisputed that the beneficiary was living with the applicant's wife at the time the home study was prepared, at the time the Form I-800A was filed, and at the time the Form I-800A was approved. No mention of the applicant's wife's shared residence with the beneficiary was made during that time. Whether she had legal custody or the two were simply living together is immaterial. Again, the issue is one of a failure to disclose.

In accordance with the discussion above, the AAO finds that the applicant has failed to overcome the substantive grounds of the director's denial of the application.

Beyond the decision of the director, the AAO finds that the application may not be approved for an additional reason.

Beyond the decision of the director, the AAO finds the March 3, 2009 home study addendum, which was conducted in Belize, deficient, as it does not comply with the regulations governing home studies set forth at 8 C.F.R. § 204.311. The AAO notes that this addendum was not prepared by the individual who prepared the original home study.

The regulation at 8 C.F.R. § 204.311(r) requires that, if the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child from the specific Convention country. The March 3, 2009 home study addendum contains no such approval, and therefore does not satisfy 8 C.F.R. § 204.311(r).

The regulation at 8 C.F.R. § 204.311(s) requires that the home study include a statement from the preparer of the home study certifying that he or she is authorized under 22 C.F.R. § 96 to complete home studies for Convention adoption cases. Such certification must specify the State or country under whose authority the home study preparer is licensed or authorized, and cite the specific law or regulation authorizing the preparer to conduct home studies. Such certification must also specify the basis under 22 C.F.R. § 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention home studies. The March 3, 2009 home study addendum contains no such statement and certification, and therefore does not satisfy 8 C.F.R. § 204.311(s).

The regulation at 8 C.F.R. § 204.311(u) requires that home study updates and amendments include a statement from the preparer that he or she has reviewed the home study that is being updated or amended and is personally and fully aware of its contents. The March 3, 2009 home study addendum contains no such statement, and therefore does not satisfy 8 C.F.R. § 204.311(u).

The March 12, 2009 letter from the preparer of the original home study does not satisfy these criteria, as he did not prepare the March 3, 2009 home study addendum.

Accordingly, the March 3, 2009 home study addendum does not satisfy the 8 C.F.R. § 204.311. For this additional reason, the application may not be approved.

The applicant has failed to overcome the substantive grounds of the director's denial of the application. Beyond the decision of the director, the AAO finds further that the application may not be approved because the March 3, 2009 home study addendum does not satisfy the regulatory criteria at 8 C.F.R. § 204.311.

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

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