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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

F1

[Redacted]

FILE: [Redacted] Office: NATIONAL BENEFITS CENTER

Date:

AUG 16 2010

IN RE: Petitioner: [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 PETITIONER:

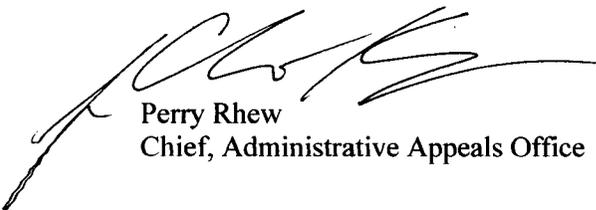
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 the basis of his determination that the petitioner's improper filing of the petition precluded the beneficiary's classification as an immediate relative under the Act.

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 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, 1993,¹ 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 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 proper 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

¹ 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.

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 immigrant status on one or both of such natural parents); and

(V) In the case of a child who has not been adopted –

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence

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

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State. Except as specified in this Part, "Central Authority" also means, solely for purposes of this Part, an individual who or entity that is performing a Central Authority function, having been authorized to do so by the designated Central Authority, in accordance with the Convention and the law of the Central Authority's country.

In this case, the Inter-Country Adoption Board (ICAB) in the Philippines is the central authority.

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

(c) *Filing deadline.*

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

(2) If the appropriate Central Authority places the child with the petitioner for intercountry adoption more than 6 months after the child's 15th birthday but before the child's 16th birthday, the petitioner must still file the Form I-800 before the child's 16th birthday. If the evidence required by paragraph (d)(3) or (4) of this section is not yet available, instead of that evidence, the petitioner may submit a statement from the primary provider, signed under

penalty of perjury under United States law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified in the statement. Submission of a Form I-800 with this statement will satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday, but no provisional or final approval of the Form I-800 will be granted until the evidence required by paragraph (d)(3) or (4) of this section has been submitted. When submitted, the evidence required by paragraph (d)(3) and (4) must affirmatively show that the Central Authority did, in fact, make the adoption placement decision before the child's 16th birthday.

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

The petitioner, a citizen of the United States, filed a Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, on June 4, 2009, and it was approved on August 27, 2009. The petitioner filed the instant Form I-800 on March 2, 2010.

The record indicates that the beneficiary was born in the Philippines on September 8, 1993. As such, the Form I-800A was filed when he was fifteen years of age. The record indicates further that although the central authority received the beneficiary's adoption application on March 10, 2008, when he was fourteen years of age, it did not authorize placement of the beneficiary with the petitioner until February 12, 2010, when he was sixteen years of age.

On March 15, 2010, the director denied the Form I-800 on two grounds. The director found first that 8 C.F.R. § 204.313(c)(2) mandated denial of the petition because the central authority authorized placement of the beneficiary after his sixteenth birthday. Second, the director found that since the Form I-800A was filed after the beneficiary's fifteenth birthday, but before his sixteenth birthday, and the petitioner did not file the Form I-800 within 180 days of the Form I-800A's approval, the regulation at 8 C.F.R. § 204.313(c)(3) also mandated denial of the petition.

Counsel's claim on appeal that the petition should be approved rests primarily on three arguments: (1) that the central authority delayed the adoption paperwork; (2) that the petitioner was informed by an employee of U.S. Citizenship and Immigration Services (USCIS) that he should file the petition even though more than 180 days had passed since approval of the Form I-800A; and (3) that the regulation at 8 C.F.R. § 214.1(c)(4) permits a late filing in this case.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denial of the petition.

The AAO finds none of counsel's assertions persuasive. As the AAO has no authority to amend or waive the regulatory requirements contained at 8 C.F.R. §§ 204.313(c)(2) and (3), counsel's assertion that the central authority delayed the beneficiary's adoption paperwork affords no relief. Nor does counsel's assertion that a USCIS employee told the petitioner to file the petition afford relief. Even if a USCIS employee did provide incorrect information, which the petitioner has not demonstrated, that incorrect advice would not change the filing requirements set forth above. Finally, the AAO notes that 8 C.F.R. § 214.1(c)(4), which counsel cites in support of his proposition that the petitioner's late filing should be excused, pertains to filing extensions of nonimmigrant status. As the petition at issue here involves neither nonimmigrant status nor an extension filing, the regulation at 8 C.F.R. § 214.1(c)(4) has no bearing on this case, and counsel's citation of it is misplaced.

The AAO agrees with the director's analysis. As the central authority authorized placement of the beneficiary after his sixteenth birthday, the regulation at 8 C.F.R. § 204.313(c)(2) mandates denial of the petition. Moreover, because the Form I-800A was filed after the beneficiary's fifteenth birthday, and the Form I-800 was not filed within 180 days of the Form I-800A's approval, the regulation at 8 C.F.R. § 204.313(c)(3) also mandates denial of the petition. The petitioner has failed to overcome the grounds for denial of the petition. The beneficiary, therefore, is ineligible for classification as an immediate relative pursuant to section 101(b)(1)(G) of the Act and the petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.