



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 30 2019** Office: NATIONAL BENEFITS CENTER File: [REDACTED]

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:

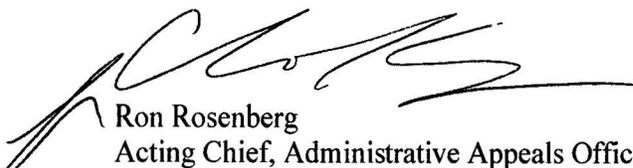
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification of the beneficiary 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).

Applicable Law

For the purpose of classifying an intending 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:

- (i) a child, younger than 16 years of age at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative 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 Hague¹. . . 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 who is at least 25 years of age[.]

Regarding the deadlines for submitting a Form I-800 to U.S. Citizenship and Immigration Services (USCIS), the regulation at 8 C.F.R. § 204.313(c) states the following:

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

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.

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.

Facts and Procedural History

The petitioner is a citizen of the United States. The beneficiary was born in Venezuela on January 17, 1996. The petitioner submitted an Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I-800A) on October 25, 2011 when the beneficiary was fifteen years old. USCIS approved the Form I-800A on January 12, 2012. The petitioner submitted the instant Form I-800 on August 13, 2012 when the beneficiary was sixteen years old.

When denying the petition, the director noted the regulation at 8 C.F.R. § 204.313(c)(3), which allows for the submission of a Form I-800 after a child's sixteenth birthday only when the Form I-800A was filed after the child's fifteenth birthday and before the child's sixteenth birthday and the Form I-800 petition is submitted within 180 days of the Form I-800A approval date. Here, the petitioner was required to submit the Form I-800 before July 12, 2012; however, she did not submit the petition until 31 days later.

On appeal, the petitioner submits additional evidence and states that because her Form I-800A approval notice (Form I-797) informed her that she had to submit a Form I-800 before the expiration of the Form I-797, she thought that she had complied with the instructions because she submitted the Form I-800 prior to the Form I-800A's February 28, 2013 expiration date.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the director did not make an error in denying the petition.

Section 101(b)(1)(G)(i) requires the submission of a Form I-800 prior to a child's sixteenth birthday. The regulation at 8 C.F.R. § 204.313(c) provides two special rules to satisfy that age requirement and further requires that the Form I-800 be filed before the expiration of the Form I-800A. While the instructions on the Form I-800A approval notice only addressed the second requirement, the AAO has no authority to waive the age requirements of section 101(b)(1)(G)(i) of the Act and its implementing regulations.

The petitioner filed the Form I-800 prior to the expiration of the Form I-800A, but after the beneficiary's sixteenth birthday and she failed to meet the special rule at 8 C.F.R. § 204.313(c)(3). Consequently, the beneficiary is ineligible to be classified as an orphan because he does not meet the age requirement specified at section 101(b)(1)(G)(i) of the Act.

Conclusion

As always, the burden of proving eligibility for the benefit sought rests solely 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 remains denied.