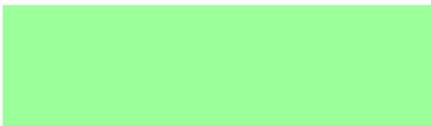
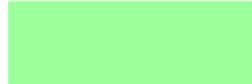


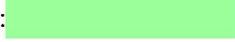


U.S. Citizenship  
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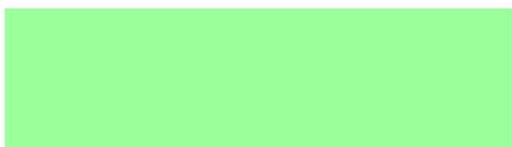


DATE: **AUG 18 2014** Office: NATIONAL BENEFITS CENTER File: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

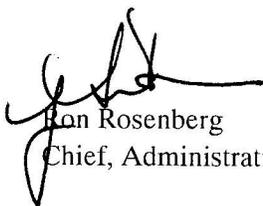


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the National Benefits Center (the director) provisionally approved the Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800), but ultimately denied the petition after proper notice. The director affirmed the denial of the petition on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> 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). The director denied the petition because the petitioner failed to submit an adoption report compliant with Article 16 of the Hague Convention (Article 16 report). Through counsel, the petitioner submits a brief and additional evidence on appeal.

*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 Hague<sup>2</sup> . . . 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, Provided, That –

\* \* \*

(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[.]

The regulation at 8 C.F.R. § 204.313(d) provides, in pertinent part, that the following is required evidence for the Form I-800:

\* \* \*

<sup>1</sup> The petitioner indicates that this appeal also applies to petitions filed on behalf of the beneficiary's siblings, [REDACTED]

<sup>2</sup> 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.

(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;
- (ii) Determined, after having given due consideration to the possibility of placing the child for adoption within the Convention country, that intercountry adoption is in the child's best interests;
- (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 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, in the required legal form, to the child's adoption;
- (v) Ensured that the child, after having been counseled as appropriate concerning the effects of the adoption; has freely consented in writing, in the required legal form, to the adoption, if the child is of an age that, under the law of the country of the child's habitual residence, makes the child's consent necessary, and that consideration was given to the child's wishes and opinions; and
- (vi) Ensured that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed.

\* \* \*

As defined at 8 C.F.R. § 204.301, the term *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.

The term *Competent Authority* is defined at 8 C.F.R. § 204.301, and, “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.”

### *Facts and Procedural History*

The petitioner is a 51-year-old unmarried U.S. citizen. On September 14, 2010, the petitioner filed the instant Form I-800, through counsel, on behalf of the beneficiary who was born in the Republic of Guinea on April 3, 1996. The petition was provisionally approved on October 27, 2010; however, upon subsequent review, the director issued a Notice of Intent to Deny (NOID) the petition on September 20, 2012. The petitioner’s response to the NOID was found to be insufficient to establish eligibility, and the director denied the petition on December 6, 2012. On January 15, 2013, the petitioner filed a motion to reopen and reconsider the decision, which the director granted; however, the petition remained denied based on the director’s determination, in a decision dated March 20, 2013, that the record lacked the required Article 16 report issued by the Ministry of Social Affairs, Women and Children in the Republic of Guinea.<sup>3</sup>

The petitioner asserts on appeal that she believed that the Ministry of Justice was the Central Authority for adoption matters in the Republic of Guinea; she submitted a detailed and complete report from the Ministry of Justice that addressed adoption information and details required by Article 16 of the Hague Convention; and the Ministry of Justice report should therefore satisfy Article 16 of the Hague requirements. The petitioner asserts further that, pursuant to U.S. Department of State (DOS) guidance, acquisition of an Article 16 report begins with a letter from the U.S. consular office, and that DOS failed to initiate the Article 16 report process with the Central Authority in Guinea.

In addition, the petitioner asserts that a Simple Adoption that she obtained for the beneficiary in the Republic of Guinea on December 18, 2009, was initiated by the beneficiary’s birth mother, and that, according to the U.S. Consulate, the Simple Adoption does not qualify as a full and final adoption for immigration purposes. She therefore does not need to terminate, or otherwise vacate the order pursuant to 8 C.F.R. § 204.209(b)(1).<sup>4</sup> Although the effect of the December 2009, Simple Adoption

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<sup>3</sup> According to the Department of State (DOS) website on adoption matters, the adoption authority in the Republic of Guinea is the Ministry of Social Affairs, Women and Children. See [www.adoption.state.gov](http://www.adoption.state.gov).

<sup>4</sup> The regulation at 8 C.F.R. § 204.209(b)(1) states, in pertinent part, that a U.S. Citizenship and Immigration Services (USCIS) officer must deny a Form I-800 if:

[T]he petitioner completed the adoption of the child, or acquired legal custody of the child for purposes of emigration and adoption, before the provisional approval of the Form I-800 under 8 CFR 204.313(g). This restriction will not apply if a competent authority in the country of the child’s habitual residence voids, vacates, annuls, or terminates the adoption or grant of custody and then, after the provisional approval of the Form I-800, and after receipt of notice under article 5(c) of the Convention that the child is, or will be, authorized to enter and reside permanently in the United States, permits a new grant of adoption or custody. The prior adoption must be voided, vacated, annulled or otherwise terminated before the petitioner files a Form I-800.

was an issue for the director at the NOID and pre-motion decision stages, the issue is not identified as a basis of determination in the director's denial decision, dated March 20, 2013. The issue therefore appears to have been resolved, and is not before us on appeal.<sup>5</sup>

### Analysis

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the evidence in the record does not demonstrate the beneficiary's eligibility to be classified as a child under section 101(b)(1)(G) of the Act.

The regulation provides at 8 C.F.R. § 204.313(d)(3), that the Form I-800 must be accompanied by an Article 16 report from the competent authority in the Republic of Guinea. The Department of State advises at: <http://adoption.state.gov> that the competent authority in the Republic of Guinea is the Ministry of Social Affairs, Women and Children:

After conducting an investigation into the background of the child to be adopted and determining that the child is eligible for adoption, the Ministry will send an Article 16 report on the child for inclusion with the Form I-800 filed with USCIS.

The petitioner indicates that DOS, and not the petitioner, must acquire the Article 16 report from the competent authority in the Republic of Guinea, and that DOS failed to initiate the process with the Central Authority in Guinea. To support her assertions, she refers to the process for obtaining an Article 5 letter from DOS; however, the process for obtaining an Article 16 report, and that for acquisition of an Article 5 letter refer to separate and distinct Hague Convention adoption requirements.<sup>6</sup> The regulation at 8 C.F.R. § 204.313(d) specifies that it is the petitioner's burden to submit the Article 16 report with the filing of the Form I-800 ("the petitioner must submit the following evidence with the properly completed Form I-800 . . . (3) The report required under article 16 of the Convention[.]").

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<sup>5</sup> Correspondence and affidavit evidence from the petitioner indicates that she may have obtained a full and final adoption of the beneficiary in, or around, December 2010. There is no documentary evidence of a full and final adoption in the record, however, and the issue was not addressed in the director's denial decision.

<sup>6</sup> DOS advises at: <http://adoption.state.gov> that:

The consular officer will send a letter (referred to as an "Article 5 Letter") to the Guinean Central Authority in any intercountry adoption involving U.S. citizen parents and a child from Guinea where all Convention requirements are met and the consular officer determines that the child appears eligible to immigrate to the United States. This letter will inform the Guinean Central Authority that the parents are eligible and suited to adopt, that all indications are that the child may enter and reside permanently in the United States, and that the U.S. Central Authority agrees that the adoption may proceed. Do not attempt to adopt or obtain custody of a child in Guinea before a U.S. consular officer issues the Article 5 Letter in any adoption case.

The petitioner failed to establish that the April 13, 2002 report prepared by the Justice Ministry, Office of Associate Bailiffs contained in the record satisfies Article 16 report requirements. Article 16 of the Hague Convention requires the report to be prepared by the competent authority in the Republic of Guinea, the requirement is codified at section 101(b)(1)(G)(i)(V)(aa) of the Act and incorporated into the regulation at 8 C.F.R. § 204.313(d)(3), and USCIS lacks the authority to waive this requirement. The record does not contain an Article 16 report prepared by the Ministry of Social Affairs, Women and Children, the competent authority on adoption matters in the Republic of Guinea. The petitioner therefore did not meet regulatory requirements contained in 8 C.F.R. § 204.313(d)(3).

*Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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