



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF W-J-C-

DATE: DEC. 16, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-800, PETITION TO CLASSIFY CONVENTION ADOPTEE AS AN IMMEDIATE RELATIVE

The Petitioner, a citizen of the United States, seeks to classify a Convention adoptee as an immediate relative. See Immigration and Nationality Act (INA, or the Act) § 101(b)(1)(G), 8 U.S.C. § 1101(b)(1)(G). The Director, National Benefits Center, denied the petition. The matter is now before us on appeal. The decision of the Director, National Benefits Center, is withdrawn. The matter is remanded to the Director, National Benefits Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

In a decision dated May 15, 2015, the Director denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, because the Petitioner did not submit a statement, signed under penalty of perjury by the primary provider, certifying that the Article 16 report is a true, correct, and complete copy of the report obtained from the Central Authority of the Convention country.

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>1</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 –

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<sup>1</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.

....

(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)(3) provides, in pertinent part, that the following is required evidence for the Form I-800:

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

(b)(6)

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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.”

The Petitioner is a [REDACTED] year-old married U.S. citizen. On January 16, 2015, the Petitioner filed the instant Form I-800 on behalf of the Beneficiary, who was born in the People’s Republic of China on [REDACTED]. The Director issued a Request for Further Evidence (RFE) on January 29, 2015. The Petitioner’s response to the RFE was found to be insufficient to establish eligibility, and the Director denied the petition on May 15, 2015.

The regulation at 8 C.F.R. § 204.313(d)(3) provides that the Form I-800 must be accompanied by an Article 16 report from the competent authority in the People’s Republic of China. The Department of State advises at <http://adoption.state.gov> that the competent authority in the People’s Republic of China is the China Centre of Adoption Affairs (CCCWA).

Although the Petitioner submitted an Article 16 report from the CCCWA, he did not include a signed statement under penalty of perjury by the primary provider, certifying that the Article 16 report is a true, correct, and complete copy of the report obtained from the Central Authority of the People’s Republic of China.

On appeal, the Petitioner submits a statement certifying, under penalty of perjury, that the Article 16 report is a true, correct, and complete copy of the report obtained from the Central Authority of the People’s Republic of China. However, it is unclear that this statement is from a primary provider as required by regulation. The Department of State advises that, “[i]n every Convention adoption case, an accredited agency or approved person must be identified as responsible for ensuring that the six adoption services are provided. This agency or person is called the primary provider.” See <http://travel.state.gov/content/adoptionsabroad/en/information-for-you/agencies/primary-and-supervised-providers.html>.

Because the Petitioner submits new evidence to resolve the Director’s concerns about the Article 16 report that may meet regulatory requirements, we are remanding this matter for the Director to consider the authenticity and suitability of the evidence. Upon review of the evidence, the Director shall then issue a new decision which, if adverse to the Petitioner, will be certified to this office for review.

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**ORDER:** The decision of the Director, National Benefits Center, is withdrawn. The matter is remanded to the Director, National Benefits Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of W-J-C-*, ID# 15737 (AAO Dec. 16, 2015)