



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF W-I-N-J-

DATE: APR. 22, 2016

APPEAL OF NATIONAL BENEFITS CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify a Convention adoptee as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(G), 8 U.S.C. § 1101(b)(1)(G). A child under the age of 16 from a country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption may be classified as an immediate relative and adopted abroad by an eligible U.S. citizen if the child is the beneficiary of an approved Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and the Central Authority of the selected Convention country has proposed placing the child for adoption with the U.S. citizen.

The Director, National Benefits Center, denied the petition. The Director concluded that the Petitioner did not provide evidence to establish that the Beneficiary's mother meets the definition of sole parent, that both parents are incapable of providing care to the Beneficiary, and that both parents irrevocably consented to the adoption. The petition was denied accordingly.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the non-custodial parent abandoned the Beneficiary, the custodial parent is unable to care for the Beneficiary, irrevocable consent of both parents is available, and the Petitioner should not be harmed or punished due to the incompetence of the immigration consultant who prepared the case.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify a Convention adoptee as an immediate relative. Section 101(b)(1)(G) of the Act provides, in pertinent part:

- (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 on May 29, 1993, 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-

- (I) the Secretary of Homeland Security 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 Secretary of Homeland Security 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 Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents)[.]

II. ANALYSIS

The issues in the Petitioner's case are whether the Beneficiary's mother meets the definition of sole parent, whether both parents are incapable of providing care to the Beneficiary, and whether irrevocable consent of both parents was provided. The Director issued a Request for Evidence (RFE) of, among other items, a complete Article 16 report as detailed in 8 C.F.R. § 204.313(d)(3) and missing Article 16 supporting documentation as listed in 8 C.F.R. § 204.313(d)(4)(iv)(D). The Petitioner responded to the RFE, but it was lacking for the reasons mentioned in the denial. The Director concluded that the Petitioner did not provide evidence to establish that the Beneficiary's mother meets the definition of sole parent, including evidence that the Beneficiary's father's rights were severed and that he abandoned or deserted the Beneficiary or disappeared from his life; that both parents are incapable of providing care to the Beneficiary; and that irrevocable consent of both parents was not provided for the adoption of the Beneficiary.

On appeal, the Petitioner claims that the non-custodial parent abandoned the Beneficiary, the custodial parent is unable to care for the Beneficiary, irrevocable consent of both parents is available, and an unregistered immigration consultant prepared the case and the Petitioner should not be harmed or punished due to the incompetence of the immigration consultant. The evidence submitted on appeal establishes that the Beneficiary's parents have irrevocably consented to his adoption; however, the Petitioner has not established that the Beneficiary's mother is a sole parent or that she is incapable of providing proper care to the Beneficiary.

A. Eligibility

As stated above, the Beneficiary has been found ineligible to be classified as an immediate relative as a Convention adoptee under section 101(b)(1)(G) of the Act. As a preliminary matter, the Petitioner claims that an unregistered immigration consultant charged him several thousands of dollars and failed to review the facts and properly respond to U.S. Citizenship and Immigration Services (USCIS) inquiries. Although the Petitioner has not established these facts, the Petitioner now has the opportunity to address the relevant issues in this case as described in the Director's decision.

1. Sole Parent

The Petitioner asserts that the Beneficiary should be classified as an immediate relative under section 101(b)(1)(G) of the Act because he is a Convention adoptee whose sole parent has freely given written irrevocable consent to the termination of their relationship with the Beneficiary, and to the Beneficiary's emigration and adoption. The regulation at 8 C.F.R. § 204.301 defines sole parent as:

- (1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life; or
- (2) The child's father, when the competent authority has determined that the child's mother has abandoned or deserted the child, or has disappeared from the child's life; except that
- (3) A child's parent is not a sole parent if the child has acquired another parent within the meaning of section 101(b)(2) of the Act and this section

The regulation at 8 C.F.R. § 204.301 also provides:

Competent authority 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 regulation at 8 C.F.R. § 204.313(d)(4)(iv)(D) provides:

If a sole birth parent was the legal custodian, the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child's life. . . .

The divorce decree for the Beneficiary's mother and father reflects that the Beneficiary is under the "parental power" of the mother. Therefore, the record reflects that the Beneficiary's mother is the legal custodian of the Beneficiary. However, the record does not include a determination from a competent authority that the Beneficiary's father has abandoned or deserted the child, or has disappeared from the Beneficiary's life as required by 8 C.F.R. § 204.301, nor does it include the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child's life as required by 8 C.F.R. § 204.313(d)(4)(iv)(D). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Although the Petitioner has submitted statements from the Beneficiary's father and mother showing that the Beneficiary's father is not involved in the Beneficiary's life, for the reasons stated above, the requirements of the regulations have not been met.

2. Parents Incapable of Providing Proper Care

The Director also evaluated whether the Beneficiary should be classified as an immediate relative under section 101(b)(1)(G) of the Act as a Convention adoptee whose living and natural parents are incapable of providing proper care. The regulation at 8 C.F.R. § 204.301 provides:

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

In support of this claim, the Beneficiary's father states that he could not support the Beneficiary after he divorced the Beneficiary's mother. He states that he does not have stable income, and he has re-married and is obligated to take care of his new family. In the child study the social worker states that the Beneficiary's father is a computer technician who earns approximately 10,000 to 15,000 baht per month. The record does not include evidence of his expenses and the expenses needed to care for the Beneficiary. The record, therefore, does not establish that he is incapable of providing proper care to the Beneficiary.

In regard to the Beneficiary's mother, the Petitioner states that she has a long history of not being able to support herself, she owns no real property, and his spouse provides a free place for her to live and has supported her financially over several years. The Petitioner's spouse states that she sends the Beneficiary's mother money on a monthly basis, and the Beneficiary's mother has a medical condition

that limits her ability to work. She also states that the Beneficiary's mother lives in her house in Thailand rent-free. The Beneficiary's mother states that she works as a hairdresser, this is her only source of income, and her salon is sponsored by the Petitioner's spouse. She states that she has lost contact with the Beneficiary's father since their divorce and he does not support the Beneficiary. In addition, she asserts that she has spondylosis with nerve root compression which prevents her from working, as she cannot stand for long periods of time. She also asserts that her condition results in a lack of income and she does not have knowledge or skills to work in another field. Lastly, the Beneficiary's mother states the Petitioner's spouse has given her money to raise the Beneficiary. The record includes a doctor's letter, stating that the Beneficiary's mother has herniated disc nerve disease and she cannot stand for a long time, and a social worker's report, stating that adoption is recommended, as the Beneficiary's parents could not give proper care to the Beneficiary. The record does not include information concerning the Beneficiary's mother's expenses or the money the Petitioner's spouse claims she provided to her. In the child study, the social worker states that the Beneficiary's mother runs a salon and earns approximately 10,000 to 13,000 baht per month. The record is not clear as to the severity of her medical condition and her prognosis for recovery. We find that the record lacks sufficient evidence to support finding that she is incapable of providing proper care to the Beneficiary.

3. Irrevocable Consent of Parents

The Director found that irrevocable consent of both parents to the Beneficiary's adoption was not provided and that the intention to terminate the parent-child relationship was not supported by the child study report, which referenced a good relationship between the Beneficiary, his mother, and other relatives.

The regulation at 8 C.F.R. § 204.313(d)(4)(ii) provides:

A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption unless, as permitted under article 16 of the Convention, the law of the country of the child's habitual residence provides that their identities may not be disclosed, so long as the Central Authority of the country of the child's habitual residence certifies in its report that the required documents exist and that they establish the child's age and availability for adoption[.]

The Petitioner asserts that irrevocable consent of the parents is available and declarations are submitted on appeal. In his statement submitted on appeal, the Beneficiary's father states that he gives his consent to the Petitioner and his spouse to adopt the Beneficiary, and he will not claim any rights afterwards. In her statement submitted on appeal, the Beneficiary's mother states that she gives her consent to the Petitioner and his spouse to adopt the Beneficiary, and she will not claim any rights afterwards. Therefore, the record includes copies of the irrevocable consents to the Beneficiary's adoption signed by the Beneficiary's parents, which overcomes the findings of the Director on this issue.

III. CONCLUSION

As the Petitioner has not established that the Beneficiary's mother meets the definition of a sole parent or that both parents are incapable of providing proper care, we find that the requirements to approve a Form I-800 have not been met.

In visa petition proceedings, the petitioner has the burden of establishing 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.

Cite as *Matter of W-I-N-J-*, ID# 16247 (AAO Apr. 22, 2016)