



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

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

MATTER OF C-Y-W-

DATE: AUG. 25, 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 18 from a country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Convention) may be classified as an immediate relative and adopted abroad by an eligible U.S. citizen or emigrate to the United States for adoption if the U.S. citizen has an approved Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, the central authority of the selected Convention country has proposed placing the child for adoption with the U.S. citizen, and the child's sibling who is under 16 years of age has been adopted, or is coming to the United States for adoption, by the U.S. citizen.

The Director, National Benefits Center, denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative (Convention adoptee petition). The Director concluded that the Petitioner did not establish that the Beneficiary qualified for classification as an immediate relative as a Convention adoptee under section 101(b)(1)(G) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement as well as new and previously submitted evidence. The Petitioner asserts that the Beneficiary is habitually resident in the United States and the central authority of Hong Kong has no objection to his adoption in the United States.

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-

.....

- (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; and

.....

- (iii) subject to the same provisos as in clauses (i) and (ii), a child who--
 - (I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
 - (II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
 - (III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 1151(b) of this title.

The regulation at 8 C.F.R. § 204.313 provides, in pertinent part:

(d) *Required evidence.*

.....

- (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:

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- (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.

II. ANALYSIS

The Beneficiary was born in Hong Kong on [REDACTED] and his brother was born in Hong Kong on [REDACTED]. The record reflects that the Petitioner filed Convention adoptee petitions on behalf of the Beneficiary and his brother on May 20, 2014, when the children were [REDACTED] years and [REDACTED] years of age, respectively. The Director subsequently issued a notice of intent to deny (NOID), providing the Petitioner an opportunity to submit the required documents under 8 C.F.R. § 204.313(d). Specifically, the Director requested the certification of training from a Hague accredited adoption service provider, the Article 16 report from the competent authority, the Beneficiary's birth certificate, irrevocable consent documents, the certification of convention country documents, proof that the birth parents are incapable of providing proper care, and copies of original language documents. The Petitioner responded to the NOID with additional documentation, which the Director found was not sufficient to overcome the intended ground of denial. The Director determined that the Petitioner did

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not establish that the Beneficiary is a Convention adoptee who is eligible to be classified as an immediate relative, and denied the Convention adoptee petition.

On appeal, the Petitioner asserts that the Beneficiary is habitually resident in the United States and has been adopted in Oregon. She contends that the central authority in Hong Kong has no objection to this adoption. The Petitioner asserts that the regulations do not bar an adoption in the United States when the child is residing here. She notes that she submitted all of the required documentation with the exception of the Article 16 report from the central authority in Hong Kong.

The Petitioner submits: affidavits from the Beneficiary's birth parents relinquishing their parental rights and their irrevocable consent to the Beneficiary's adoption; a home study issued by an adoption services agency; an adoption judgment and adoption certificate issued in the Circuit Court of Oregon, [REDACTED] granting the Petitioner and her husband adoption of the Beneficiary; a physician's letter stating that the Beneficiary's mother was diagnosed with schizophrenia; an affidavit from the Beneficiary consenting to the adoption; and a letter from [REDACTED] Director of the Adoption Unit in the [REDACTED] the central adoption authority of that country,¹ indicating that the agency does not have record of the Beneficiary's adoption. All evidence in the record of proceedings has been reviewed.

The Petitioner asserts that the regulations do not bar adoption when the child is in the United States. The Petitioner, however, does not specifically cite to any regulations, or otherwise further explain her assertion. The Petitioner has filed an immigrant petition under section 101(b)(1)(G) of the Act, which pertains to children who are adopted in a foreign country that is a party to the Convention or emigrating from such a foreign country to be adopted in the United States. In the latter situation, the competent authority of the foreign country must first approve the child's emigration to the United States for the purpose of adoption, *see* section 101(b)(1)(G)(i)(V)(aa) of the Act. In this case, evidence in the record demonstrates that the Petitioner adopted the Beneficiary in the United States without approval from the central authority in Hong Kong. The letter from the [REDACTED] concludes that the adoption of the Beneficiary "was not processed through the convention adoption arrangement" and therefore the agency "cannot issue a letter regarding the release of the said adoption."

The Petitioner further asserts that the Beneficiary is habitually resident in the United States and his adoption was in compliance with the laws of Oregon, indicating that we should not require any other documentation. The regulations define a *Convention adoptee* as "a child habitually resident in a Convention country who is eligible to immigrate to the United States on the basis of a Convention adoption." 8 C.F.R. § 204.301. Although the Beneficiary may be living in the United States, habitual residence for a Convention adoptee is defined as generally the country of the child's

¹ See U.S. Department of State, *Intercountry Adoption Hong Kong*, <https://travel.state.gov/content/adoptionabroad/en/country-information/learn-about-a-country/hong-kong.html> (last visited August 10, 2016).

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citizenship and a child “will not be considered to be habitually resident in any country to which the child travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.” 8 C.F.R. § 204.303(b). Consequently, the Petitioner remains a habitual resident of Hong Kong for purposes of the Convention adoptee petition, and must submit the required Article 16 report issued by the [REDACTED] [REDACTED] See 8 C.F.R. § 204.313(d)(3).

As the record does not contain an Article 16 report, the Petitioner does not meet the regulatory requirements contained in 8 C.F.R. § 204.313(d)(3). Accordingly, the Petitioner has not established that the Beneficiary is a Convention adoptee who is eligible to be classified as an immediate relative under section 101(b)(1)(G) of the Act.

III. CONCLUSION

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of C-Y-W-*, ID# 17538 (AAO Aug. 25, 2016)