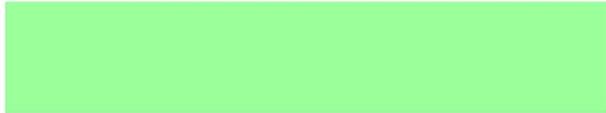




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 22 2014** Office: NATIONAL BENEFITS CENTER File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Determination of Suitability to Adopt a Child From a Convention Country Pursuant to 8 C.F.R. § 204.310

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, National Benefits Center (the director), denied the Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

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, 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)[.]

The regulation at 8 C.F.R. § 204.310 provides, in pertinent part, the following filing requirements for the Form I-800A:

(a) Completing and filing the Form. A United States citizen seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must:

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.

(1) Complete Form I-800A, including a Form I-800A Supplement 1 for each additional adult member of the household, in accordance with the instructions that accompany the Form I-800A.

(3) File the Form I-800A with the USCIS office that has jurisdiction under 8 CFR 204.308(a) to adjudicate the Form I-800A, together with:

(i) The fee specified in 8 CFR 103.7(b)(1) for the filing of Form I-800A;

(ii) The additional biometrics information collection fee required under 8 CFR 103.7(b)(1) for the applicant and each additional adult member of the household;

(viii) A home study that meets the requirements of 8 CFR 204.311 and that bears the home study preparer's original signature. . . .

(b) Biometrics. Upon the proper filing of a Form I-800A, USCIS will arrange for the collection of biometrics from the applicant and each additional adult member of the household, as prescribed in 8 CFR 103.16, but with no upper age limit. . . .

The regulation at 8 C.F.R. § 204.311 provides, in pertinent part, the following on convention adoption home study requirements:

(c) Study requirements. . . .

(2) If there are any additional adult members of the household, identify each of them by name, alien registration number (if the individual has one), and date of birth.

(3) Include an interview by the preparer of any additional adult member of the household and an assessment of him or her in light of the requirements of this section.

The regulation at 8 C.F.R. § 204.301 provides, in pertinent part, the following definitions:

Adult member of the household means:

(1) Any individual other than the applicant, who has the same principal residence as the applicant and who had reached his or her 18th birthday on or before the date a Form I-800A is filed; or

(2) Any person who has not yet reached his or her 18th birthday before the date a Form I-800A is filed, or who does not actually live at the same residence, but whose presence in the residence is relevant to the issue of suitability to adopt, if the officer adjudicating the Form I-800A concludes, based on the facts of the case, that it is necessary to obtain an evaluation of how that person's presence in the home affects the determination whether the applicant is suitable as the adoptive parent(s) of a Convention adoptee.

The applicant is a citizen of the United States. He filed the Form I-800A on January 4, 2013. On February 13, 2013, the director issued two requests for evidence (RFEs) for the applicant to provide the following information related to the household nanny he employs, A-P-²: (1) a Form I-800A, Supplement 1, Listing of Adult Member of the Household; (2) an updated home study including an interview and assessment of A-P-; and (3) the appropriate biometrics fee for A-P-. The applicant responded to the RFEs with additional evidence, which the director found to be insufficient to establish eligibility. On June 14, 2013, the director denied the application because the applicant failed to provide: (1) evidence that the biometrics fee for A-P- had been paid; and (2) a Form I-800A, Supplement 1, for A-P-.

On appeal, the applicant states on the Form I-290B (appeal notice) that his agency sent the "missing forms." He indicates that he will send a brief or additional evidence to the AAO within 30 days of filing the appeal. The applicant filed the appeal on July 15, 2013. As of the date of this decision, he has not submitted a Form I-800A, Supplement 1, for his household nanny, A-P-. Nor has he submitted evidence that he paid the additional biometrics information collection fee, as required under 8 C.F.R. § 103.7(b)(1), for A-P-. Although the applicant submitted evidence that A-P- was fingerprinted for a background check through a private company for the home study, this evidence does not satisfy the Form I-800A filing requirements. The regulations for the filing of the Form I-800A state that an applicant must provide to United States Citizenship and Immigration Services (USCIS) an additional biometrics information collection fee for the applicant and each additional adult member of the household. 8 C.F.R. § 204.301. Upon the proper filing of a Form I-800A, USCIS will arrange for the collection of biometrics from the applicant and each additional adult member of the household. *Id.* In the RFE, the director provided specific instructions for the applicant to submit the appropriate biometrics fee to USCIS, including the fee amount and the location for remittance. As the applicant has still not met the Form I-800A requirements, his application must remain denied.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.

² Name withheld to protect identity.