



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

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

In Re: 23533030

Date: JAN. 23, 2023

Appeal of National Benefits Center Decision

Form I-600, Petition to Classify Orphan as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative under section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center denied the Form I-600, Petition to Classify Orphan as an Immediate Relative, because the Petitioner seeks to classify the Beneficiary as an orphan from a country that has signed the Hague Adoption Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Adoption Convention)¹ but has not followed the proper Hague Adoption Convention procedures. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

The Act contains two separate statutory provisions regarding orphan classification: one that applies to Hague Adoption Convention countries and another that covers non-signatory states. Section 101(b)(1)(F) of the Act applies when the country from which a child is adopted has not ratified the Hague Adoption Convention. To classify a child under section 101(b)(1)(F) of the Act, a petitioner files a Form I-600. 8 C.F.R. § 204.3(d). In contrast, section 101(b)(1)(G) of the Act applies to a child seeking to be classified as an orphan from a country that has ratified the Hague Adoption Convention. In this situation, a petitioner must file a Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative. 8 C.F.R. § 204.300(a). Although sections 101(b)(1)(F) and (G) of the Act are both mechanisms to classify a child as an orphan under U.S. immigration law, their statutory frameworks and implementing regulations are different. *Compare* 8 C.F.R. § 204.3 *with* 8 C.F.R. § 204.300-314. Since the Hague Adoption Convention entered into force in the United States in 2008, all orphan petitions filed for children who habitually reside in a Hague Adoption Convention country are adjudicated under section 101(b)(1)(G) of the Act, in conjunction with the implementing regulations at 8 C.F.R. § 204.300-314.

¹ The Hague Adoption Convention is an international treaty that provides important safeguards to protect the best interests of children, birth parents, and adoptive parents who are involved in intercountry adoptions. U.S. Department of State, *Convention Adoption Process*, <https://travel.state.gov/content/travel/en/Inter-country-Adoption/Adoption-Process/how-to-adopt/hague-adoption-process.html>.

As stated, the Director denied the Form I-600 because the Petitioner seeks to classify the Beneficiary as an orphan from Ghana, a country that has signed the Hague Adoption Convention, but did not follow the proper Hague Adoption Convention process. The Hague Adoption Convention entered into force in Ghana on January 1, 2017. USCIS, *Adoption Information: Ghana*, <https://www.uscis.gov/adoption/country-information/adoption-information-ghana>. Prospective adoptive parents who started the intercountry adoption process from Ghana prior to January 1, 2017 either by filing a Form I-600 or Form I-600A, Application for Advance Processing of an Orphan Petition, or obtaining a final adoption of a child in Ghana may be able to continue to use the non-Hague Adoption Convention requirements for immigration processing with U.S. Citizenship and Immigration Services (USCIS) as a “transition case.” *Id.*; see also 8 C.F.R. § 204.3(a)(2) (stating that “USCIS may approve a Form I-600 on behalf of a child who is habitually resident in a Convention country only if the Form I-600A or Form I-600 was filed before the Convention effective date”). All other cases require the Hague Adoption Convention process and the filing of a Form I-800. 5 USCIS *Policy Manual* D.1(C), <https://www.uscis.gov/policy-manual/volume-5-part-d-chapter-1> (explaining that the Hague Adoption Convention process requires the prospective adoptive parent to file a Form I-800 and Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country).

In this case, the Superior Court of [redacted] in the High Court of [redacted] Ghana, granted the Petitioner a final adoption of the Beneficiary on [redacted] 2017, after the Hague Adoption Convention went into effect on January 1, 2017. The Petitioner then filed his Form I-600 in May 2018. Because the Petitioner did not complete the adoption of the Beneficiary or file Form I-600 or Form I-600A prior to the date the Hague Adoption Convention entered into force in Ghana, the Petitioner was required to file a Form I-800 and follow the Hague Adoption Convention requirements to determine the Beneficiary’s eligibility for immigrant classification as a Convention adoptee.

On appeal, the Petitioner submits a letter from the Director of the Department of Social Welfare in [redacted] Ghana, stating that USCIS officials visited Ghana in February 2017 and decided during a meeting that “applications received before January 1, 2017 would be treated under the former system and those received after January 1, would be treated as Convention applications.” The letter claims that because the “pre-court processes” in the Petitioner’s adoption of the Beneficiary started before Ghana acceded to the Hague Adoption Convention, it was “considered as a transitional case” and the Petitioner therefore filed Form I-600. However, although the Petitioner may have started the adoption process prior to January 1, 2017, the exception to the Hague Adoption Convention filing requirements for transition cases applies only to adoptions that were actually finalized prior to that date, which is not the situation here. We have no discretion to waive the statutory and regulatory requirements for a child who is habitually resident in a Hague Adoption Convention country. See *U.S. v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). As the Petitioner completed his adoption of the Beneficiary and filed Form I-600 after Ghana’s implementation of the Hague Adoption Convention, USCIS cannot approve the Form I-600.

ORDER: The appeal is dismissed.