



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

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

In Re: 24378588

Date: MAR. 10, 2023

Appeal of National Benefits Center Decision

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 under section 101(b)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(G). The Director of the National Benefits Center (Director) denied the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative (Convention adoptee petition), concluding that the Beneficiary did not meet the definition of a child for immigration purposes under the Act. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and reasserts the Beneficiary's eligibility for the benefit sought. The burden of proof is on the Petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

A Convention adoptee is defined as 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, who has been adopted in a foreign country that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), or who is emigrating from such a foreign country to be adopted in the United States by a U.S. citizen and spouse jointly or by an unmarried U.S. citizen who is at least 25 years of age. Section 101(b)(1)(G) of the Act.

Regarding the deadlines for submitting a Convention adoptee petition to U.S. Citizenship and Immigration Services (USCIS), the regulation at 8 C.F.R. § 204.313(c) states the following:

*(c) Filing deadline.*

- (1) The petitioner must file the Form I-800 before the expiration of the notice of the approval of the Form I-800A and before the child's 16th birthday. Paragraphs (c)(2) and (3) of this section provide special rules for determining that this requirement has been met.
- (2) If the appropriate Central Authority places the child with the petitioner for intercountry adoption more than 6 months after the child's 15th birthday but before the child's 16th

birthday, the petitioner must still file the Form I-800 before the child's 16th birthday. If the evidence required by paragraph (d)(3) or (4) of this section is not yet available, instead of that evidence, the petitioner may submit a statement from the primary provider, signed under penalty of perjury under United States law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified in the statement. Submission of a Form I-800 with this statement will satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday, but no provisional or final approval of the Form I-800 will be granted until the evidence required by paragraph (d)(3) or (4) of this section has been submitted. When submitted, the evidence required by paragraph (d)(3) and (4) must affirmatively show that the Central Authority did, in fact, make the adoption placement decision before the child's 16th birthday.

(3) If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date of the Form I-800, provided the Form I-800 is filed not more than 180 days after the initial approval of the Form I-800A.

## II. ANALYSIS

The Beneficiary, a native and citizen of Ghana, was born on [REDACTED] 2005. The Petitioner filed a Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, on December 31, 2020, and it was approved on April 13, 2021. The Petitioner filed the instant Convention adoptee petition on behalf of the Beneficiary on November 30, 2021, when he was 16 years old. The Director denied the orphan petition, noting that the Petitioner was not eligible for the benefit sought because the Beneficiary did not meet the definition of a child for immigration purposes under the section 101(b)(1)(G) of the Act.<sup>1</sup>

On appeal, the Petitioner does not dispute that she filed the Convention adoptee petition after the Beneficiary's 16th birthday.<sup>2</sup> Rather, she argues that the Beneficiary turned 16 years old during the COVID-19 pandemic and that, the family "worked tirelessly on obtaining the documents necessary to file the I-800 petition during the course of 2021[;] [however,] the COVID-19 pandemic delayed the family from filing the petition." She requests an immediate appeal of the decision, arguing that it will affect the Beneficiary's future and well-being indefinitely.

Section 101(b)(1)(G)(i) requires the submission of a Convention adoptee petition prior to a child's 16th birthday. The regulation at 8 C.F.R. § 204.313(c) reiterates, and provides two special rules to satisfy, the age requirement and further requires that the Convention adoptee petition be filed before the expiration of the Form I-800A. Moreover, the regulation makes clear that, if the report required under Article 16 of the Convention is not yet available, the petitioner may submit "a statement from the primary provider . . . confirming that the Central Authority has . . . made the adoption placement on the date specified in the statement" and that such evidence will "satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday . . . ." *Id.* The instructions for the

---

<sup>1</sup>The Director also noted that the Petitioner filed another Form I-800 for a second child she claimed was the biological sibling of the Beneficiary. However, the Director determined that the second child did not have the same biological parents as the Beneficiary so he could not qualify as a Convention adoptee under the sibling exception.

<sup>2</sup> The Beneficiary was 16 years old and 7 days when the Convention adoptee petition was filed.

Convention adoptee petition at the time the Petitioner filed the Form I-800A reiterated the same. *See* Instructions for Form I-800, Petition to Classify Convention adoptee as an Immediate Relative (Form I-800 Instructions), at 1 (Mar. 10, 2017 ed.). Here, the Petitioner filed the Convention adoptee petition prior to the expiration of the Form I-800A, but after the Beneficiary's 16th birthday and she has not demonstrated that she met the special rules at 8 C.F.R. § 204.313(c)(2) or (3). While we acknowledge the Petitioner's arguments on appeal and do not seek to diminish the hardship this result may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Accordingly, as the Beneficiary was not under 16 years of age when the Convention adoptee petition was filed, he is not eligible for immediate relative classification under section 101(b)(1)(G) of the Act.

### III. CONCLUSION

The Petitioner has not overcome the basis of the Director's decision on appeal. Accordingly, she has not established the Beneficiary's eligibility for classification as an immediate relative, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.