

In so ruling, the AAO noted that Section 505 of the Intercountry Adoption Act, 24 U.S.C. § 14952, provides USCIS with authority to establish alternative procedures for adoption of children from Convention nations by relatives, but determined that no such regulations had been promulgated that would circumvent application of the relevant regulations in this case. Although that statute also gives the Secretary the authority on a case-by-case basis to waive applicable statutory or regulatory requirements in the interests of justice or to prevent grave physical harm to a child, such authority may not be delegated to the USCIS and thus a request for such a waiver must be made directly to the Secretary of State.⁵⁷

The AAO observed that documentation deficiencies provided three additional grounds, beyond those identified by the director, for disapproving the visa. The consent form from the parents did not satisfy all of the technical requirements of the regulations,⁵⁸ there was no documentary evidence that a competent authority in India had approved the child's emigration for adoption,⁵⁹ and the document submitted from India's Central Adoption Resource Authority regarding the child's circumstances did not satisfy the requirements for an Article 16 report, which must be submitted with the I-800 prior to approval.⁶⁰ The opinion thus may indicate that

⁵⁷ *In re [Name Redacted]*, AAU SIM 09 155 10014, 2009 WL 6520496 (INS)(AAO October 6, 2009).

⁵⁸ *See* 8 C.F.R. § 204.301.

⁵⁹ 8 C.F.R. § 204.301 defines "competent authority" as "a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption."

⁶⁰ The requirements for the Article 16 Report, reflecting the standards established in Article 16 of the Convention itself, are described in 8 C.F.R. § 204.313 (d)(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:

- (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