United States Citizenship and Immigration Services
P.O. Box 25920
Overland Park, KS 66225

U.S. Citizenship and Immigration Services

August 8, 2018

Amy Ann Becerra Cotrina
[redacted]

File#: [redacted]
Form: I-130

Re: Angelia Rose Becerra Haight

DENIAL NOTICE

On September 18, 2017, you submitted Form I-130, Petition for Alien Relative, to U.S. Citizenship and Immigration Services (USCIS) on behalf of Angelia Rose Becerra Haight. You sought to classify the beneficiary as the adopted child of a United States Citizen pursuant to Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (INA), as amended.

After a thorough review of your petition and the record of evidence, we must inform you that we are denying your petition for the following reason(s):

- You have failed to demonstrate that the adoption does not fall under the Hague Convention; and
- You have failed to demonstrate that you have had legal custody of the beneficiary for two years prior to filing this Form I-130.

Generally, to demonstrate that an individual is eligible for approval as the beneficiary of a petition filed under INA 201(b)(2)(A)(i), a petitioner must establish the beneficiary falls within the definition of a child under INA 101(b)(1)(E).

> .... (1) The term "child" means an unmarried person under twenty-one years of age who is-
>
> (E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years...

The documentary evidence submitted with the petition and in response to the Request for Evidence issued on May 17, 2018 was insufficient to establish eligibility for the benefit sought. You have provided the following evidence in support of this petition:

- A copy of your U.S. Passport issued September 14, 2015;
- An unsigned affidavit from you dated September 15, 2017;
- A copy, and English translation, of a "Judgment" from The Judiciary of Peru dated June 23, 2017 concerning an "Adoption for Exceptional Case";

- A copy, and English translation, of an "Official Letter" dated October 22, 2014;
- A copy, and English translation, of a "Court Order No 8" from the First Family Court dated October 22, 2014 concerning "Family Foster Care";
- A copy, and English translation, of a "Leave Certificate" from the Centro de Atención Residencial "Casa de Paz" dated October 23, 2014;
- A copy, and English translation, of a "Court Order No 9" from the First Family Court dated October 23, 2014 concerning "Family Foster Care";
- An affidavit from the Becerra family dated July 16, 2018;
- A copy, and English translation, of the beneficiary's Birth Certificate from Peru with a registration date of February 5, 2018;
- A copy of Marco Antonio Becerra Cotrina's U.S. Passport issued April 23, 2012; and
- Copies of various family photos.

A review of the evidence indicates that you have provided a copy of the beneficiary's birth certificate issued by the Registro Nacional de Identificacion Y Estado Civil in Peru after the adoption, as requested.

However, the evidence submitted did not demonstrate the following:

Hague:

Generally, to demonstrate that an adopted child is eligible to be classified as the child of a United States Citizen under INA 201(b)(2)(A)(i), a petitioner must establish the beneficiary falls within the definition of a child under INA 101(b)(1)(E). But, classification under INA 101(b)(1)(E) is available only if the claimed adoption was not subject to the Hague Adoption Convention (the Convention). See the Intercounty Adoption Act of 2000 ("IAA"), Pub. L. 106-279, 114 Stat. 285 (2000) implementing the Convention in the United States, and the implementing regulations published at 72 Fed. Reg. 56382 (2007).

Peru is party to the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Adoption Convention) (Convention), which became effective on April 1, 2008. Per 8 C.F.R. 204.2(d)(2)(vii)(D), a person **may not** file a Form I-130 for an adoption that falls under the Convention. However, pursuant to 8 C.F.R. 204.2(d)(2)(vii)(F), you may file a Form I-130 if you submit evidence that the adoption does not fall under the Convention by showing that the petitioner was not habitually resident in the U.S. or the child was not habitually resident in the Convention country of origin at the time of adoption.

USCIS has provided guidance for determining whether the Convention applies to an adoption in the United States after the Hague Adoption Convention entered into force. This guidance, from the Adjudicator's Field Manual (AFM), is available at https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-3481/0-0-0-5550.html.

Habitual Residence of Parent

1) You were notified in the Request for Evidence that you may show that you were not habitually resident in the U.S. by showing that you lived with the adopted child outside of the U.S. for two years while having primary parental control and legal custody of the adopted child.

The evidence submitted does not establish that you satisfied the 2-year legal custody requirement while residing with the child outside of the United States. In the Request for Evidence, you were notified of the following:

> Based on the evidence provided, it appears that you obtained legal custody of Angela Rose Becerra Haight on the date of adoption, June 23, 2017. You have provided sufficient evidence to demonstrate that you have had joint residence with the adopted child outside of the U.S. for two years while having primary parental control prior to her adoption. However, you have not provided sufficient evidence to demonstrate that you were granted legal custody prior to her adoption and that you have had legal custody for two years prior to filing this Form I-130. You have demonstrated that:
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> - You adopted Angela Rose Becerra Haight on June 23, 2017 in Peru. According to this Adoption order, the procedural guardian of the minor at that time was [redacted]
> - You were granted provisional family foster care of the minor on October 22, 2014 and that she began living with you on October 23, 2014. These documents do not state that you were granted legal custody at this time. Furthermore, the Family Foster Care document specifies that you were "required to take the minor to the court on a monthly basis";
> - On October 23, 2014 you were authorized by the First Family Court of Peru to travel around the national territory with the minor as she had been provisionally adopted.
>
> Per 8 CFR 103.2(b)(1); *Matter of Bardouille* 18 I&N Dec. 114 (BIA 1981); and *Matter of Pazandeh,* 19 I&N Dec. 884, 886 (BIA 1989), you must be eligible for the requested benefit at the time of filing this Form I-130. Based on the evidence submitted, it appears that you obtained legal custody of Angela Rose Becerra Haight on June 23, 2017 and you filed this Form I-130 on September 18, 2017. This equates to 2 months, 3 weeks, and 5 days (or 87 days) of legal custody at the time of filing this Form I-130.
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> Legal custody must be granted by a court or other governmental entity. Legal custody might begin prior to the adoption with a guardianship or similar order. However, if legal custody was not granted prior to a valid adoption, then legal custody would have begun at the date of adoption. In order to demonstrate that you had two years of legal custody of Angela Rose Becerra Haight, you [were informed that you] must submit a copy of the court order granting legal custody issued by the appropriate civil authority before the final adoption.

> In visa petition proceedings, the law of a foreign country is a question of fact which must be proved by the petitioner if he relies on it to establish eligibility for an immigration benefit. See *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

In response to the Request for Evidence, no new evidence was provided to demonstrate that a court or other governmental entity granted you legal custody of the beneficiary prior to the final adoption, and two years prior to filing this Form I-130. Furthermore, no independent objective evidence was provided concerning the laws of the Republic of Peru demonstrating that provisional family foster care and/or provisional adoptions are equivalent to the granting of legal custody. According to Black's Law Dictionary, "Provisional" is defined as "[t]emporary; preliminary; tentative; taken or done by way of precaution or ad interim" (https://thelawdictionary.org/provisional/).

USCIS acknowledges that in the documents you have provided it is indicated multiple times that the beneficiary has been in your care and protection since October 2014. However, they do not state that she has been in your legal custody during this time. Due to this, you have not provided sufficient evidence to demonstrate that you have met this criterion at this time.

2) You were notified in the Request for Evidence that you may show that you were not habitually resident in the U.S. by submitting evidence that you adopted the child outside the U.S. while residing abroad with no intention of returning to the U.S. with the adopted child.

The evidence submitted does not establish that you adopted the child while residing abroad with no intention of returning to the U.S. You have stated in a letter dated September 15, 2017 that you moved ahead of your spouse and the beneficiary back to the U.S. "in anticipation of completing our process prior to the end of 2016, we had already begun the process of relocating back to the states, purchasing our home, securing employment, etc." Consequently, your habitual residence at the time of the adoption is considered to have been in the United States. Therefore, the Form I-130 may not be approved on the beneficiary's behalf. You have not submitted sufficient evidence that the adoption falls outside the scope of the Hague Convention on Intercountry Adoption.

Habitual Residence of Child

You were notified in the Request for Evidence that based on the evidence provided, Angela Rose Becerra Haight was born in Peru, adopted in Peru, and was still residing in Peru prior to filing this Form I-130.

Therefore, the beneficiary's habitual residence at the time of the adoption is considered to be in a Hague Convention country. Thus, 8 CFR 204.2(d)(2)(vii)(F) requires USCIS to deny the petition in this case. You have not submitted sufficient evidence that the adoption falls outside the scope of the Hague Convention on Intercountry Adoption. The petition is denied in accordance with 8 CFR 204.2(d)(2)(vii)(D).

This decision is without prejudice to the filing of Forms I-800A and I-800 to seek benefits under 8 CFR Part 204, Subpart C as an adopted child under The Hague Convention. Please visit

www.uscis.gov for more information including the eligibility requirements of the Forms I-800A and I-800.

This decision does not preclude you from filing another Form I-130 once either you and/or your spouse have resided with the child **outside** the U.S. for two years with legal custody. Please note that if you were to refile, according to the U.S. Department of State:

> In the case of adoptions conducted in a family or civil court [in the Republic of Peru], adoption certificates may be obtained from the court where the adoption process took place. The document will be a final adoption decree with the seals on each page from the court where the adoption process took place with the last page containing the signature of the judge.

Due to the above, it may behoove you to also provide a copy of the final adoption decree that contains seals on each page from the court where the adoption process took place with the last page containing the signature of the judge.

Lastly, please note that if you were able to demonstrate that the adoption does not fall under the Hague Convention, then you must also establish that the beneficiary falls within the definition of a child under INA 101(b)(1)(E) as described on page 1 of this notice. More specifically, in this case, you must also demonstrate that you have had legal custody of the beneficiary for two years prior to filing a Form I-130 to classify the beneficiary as the adopted child of a United States Citizen pursuant to INA 201(b)(2)(A)(i). In order for an adoption to be recognized for immigration purposes, it must conform to the applicable law of the jurisdiction where it occurred as well as to the statutory requirements of section 101(b)(1)(E) to the Immigration and Nationality Act, USC 1101(b)(1)(E). See *Matter of Perez*, 16 I&N Dec. 743 (BIA 1979).

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may appeal this decision to the Board of Immigration Appeals (BIA) or motion USCIS to reopen or reconsider the decision. If an appeal or a motion is not received, this decision will be final.

To file an appeal, you must complete Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer, within 30 days from the date of the denial. If you intend to be represented on appeal, your attorney or accredited representative must submit Form EOIR-27 with the Form EOIR-29. If you or your attorney wishes to file a brief in support of your appeal, the brief must be received by the USCIS office where you file your appeal either with your appeal or no later than 30 days from the date of filing your appeal. Your appeal will be sent for further processing 30 days after the date USCIS receives it; after that time, no brief regarding your appeal can be accepted by the USCIS office.

To file a motion to reopen or motion to reconsider the decision with USCIS, you must complete a Form I-290B, Notice of Appeal or Motion, within 33 days from the date of the denial.

You must send the Form EOIR-29 or Form I-290B, supporting documentation, and appropriate filing fee to:

National Benefits Center
c/o Chicago Lock Box
Post Office Box 805887
Chicago, IL 60680

For more information about filing requirements for appeals to the BIA or motions to USCIS please see 8 CFR 1003.3 or 8 CFR 103.5, and the Board of Immigration Appeals Practice Manual available at www.usdoj.gov/eoir. You may also visit the USCIS website at www.uscis.gov, or contact the automated Form Request line by calling 1-800-870-3676.

Sincerely,

Robert M. Cowan
Director
OA2586

Enclosure: Supplemental Laws & Regulations

LAWS & REGULATIONS RELATED to ADOPTION I-130

Section 101(b) of the Immigration and Nationality Act (INA):

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household : Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(G) a child, under the age of sixteen 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 at least 25 years of age ...

Title 8 of the Code of Federal Regulations (8 CFR) 204.2(d)(2)(vii) states, in pertinent part:

Primary evidence for an adopted child or son or daughter. A petition may be submitted on behalf of an adopted child or son or daughter...if the adoption took place before the beneficiary's sixteenth birthday, and if the child has been in the legal custody of the adopting parent or parents for at least two years and has resided with the adopting parent or parents for at least two years. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

8 CFR 204.2(d)(2)(vii)(A) states:

Legal custody means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized government entity prior to the adoption, that period may be counted towards fulfilling the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

arrival in the United States was in a Convention country. However, the U.S. citizen seeking the child's adoption may file a Form I–800A and Form I–800 under 8 CFR part 204, subpart C.

8 CFR 204.303(a):

...U.S. Citizens. For purposes of this subpart, a U.S. citizen who is seeking to have an alien classified as the U.S. citizen's child under Section 101(b)(1)(G) of the Act is deemed to be habitually resident in the United States if the individual:

(1) Has his or her domicile in the United States, even if he or she is living temporarily abroad; or
(2) Is not domiciled in the United States but establishes by a preponderance of the evidence that:

i. The citizen will have established a domicile in the United States on or before the date of the child's admission to the United States for permanent residence as a Convention adoptee; or

ii. The citizen indicates...that the citizen intends to bring the child to the United States after adopting the child abroad, and before the child's 18th birthday...

8 CFR 204.303(b):

...Convention adoptees. A child whose classification is sought as a Convention adoptee is, generally, deemed for purposes of this subpart C to be habitually resident in the country of the child's citizenship. If the child's actual residence is outside the country of the child's citizenship, the child will be deemed habitually resident in that other country, rather than in the country of citizenship, if the Central Authority (or another competent authority of the country in which the child has his or her actual residence) has determined that the child's status in that country is sufficiently stable for that country properly to exercise jurisdiction over the child's adoption or custody. This determination must be made by the Central Authority itself, or by another competent authority of the country of the child's habitual residence, but may not be made by a nongovernmental individual or entity authorized by delegation to perform Central Authority functions. The 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.

Adjudicator Field Manual:

USCIS has provided guidance for determining whether the Convention applies to an adoption in the United States after the Hague Adoption Convention entered into force. This guidance, AFM 21.4(d)(5)(G), is available at https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-3481/0-0-0-4805.html#0-0-0-391.

Department of State Website to identify Central Authority:
https://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country.html