



U.S. Citizenship  
and Immigration  
Services

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## Interoffice Memorandum

To: Field Leadership

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Date: October 31, 2008

Re: Intercountry adoption under the Hague Adoption Convention and the USCIS Hague Adoption Convention rule at 8 CFR 204, 213a, and 322

Revisions to chapter 21 of the Adjudicators Field Manual  
AFM Update AD09-26

### 1. Purpose

This memorandum provides guidance to USCIS adjudicators for adjudicating visa petitions in light of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (“Hague Adoption Convention” or “Convention”), section 101(b)(1)(G) of the Immigration and Nationality Act (“Act”), as amended, and the interim rule published in the *Federal Register* on October 4, 2007, at 72 *Fed. Reg.* 56832 (“Hague Adoption Convention rule”).

### 2. Background

The Hague Adoption Convention entered into force for the United States on April 1, 2008. On the same day, title III of the Intercountry Adoption Act (“IAA”), Pub. L. 106-279, and subpart C of 8 CFR part 204 (“Hague Adoption Convention rule”) also entered into force. The Secretary of Homeland Security published the Hague Adoption Convention rule in the *Federal Register* on October 4, 2007, at 72 *Fed.Reg.* 56832. Preliminary guidance was issued on March 28, 2008 for USCIS Field Offices regarding

implementation of the Hague Adoption Convention and the effect of the Hague Adoption Convention rule.

The Hague Adoption Convention rule added subpart C to 8 CFR part 204, and establishes procedures for adjudicating petitions and applications filed with respect to adoptions under the Hague Adoption Convention. The rule also amended 8 CFR 204.2 as it relates to the adjudication of Form I-130, *Petition for Alien Relative*; 8 CFR 322.3 as it relates to the adjudication of Form N-600K, *Application for Citizenship and Issuance of Certificate Under Section 322*; and 8 CFR 213a as it relates to Form I-864, *Affidavit of Support Under Section 213A of the Act*.

### **3. Field Guidance and Adjudicator's Field Manual (AFM) Update.**

The adjudicator is directed to comply with the following guidance.

1. Chapter 21.4 of the AFM entitled, "Petition by Citizen or Lawful Permanent Resident for a Child, Son or Daughter" is amended by:
  - a. Adding a **Note** at the end of section (d)(5)(A); and
  - b. Adding new section (d)(5)(F).

The amendments read as follows:

#### **21.4 Petition by Citizen or Lawful Permanent Resident for a Child, Son or Daughter**

\* \* \* \* \*

(d) \* \* \*

(5) Child Adopted while under the Age of 16.

(A) \* \* \*

**Note:** In section 101(b)(1)(E) of the Act, "adopted while under the age of 16" means that the court or other entity must actually have entered the adoption order *before* the child's 16<sup>th</sup> birthday. An adoption order that was entered on or after the child's 16<sup>th</sup> birthday does not meet this requirement, *even if the court or other entity makes the order effective as of some date before the 16th birthday. See Matter of Cariaga, 15 I&N Dec. 716 (BIA 1976).*

This conclusion does not mean that USCIS is not recognizing the validity of the adoption, for purposes of domestic relations law or any other purpose. This conclusion only means that the parent-child relationship was not created by the age required in the statute for immigration purposes.

An order that was entered *on or after* the child's 16<sup>th</sup> birthday can support the approval of a Form I-130 *only if* that order was entered to correct an error in an order that actually was entered *before* the child's 16<sup>th</sup> birthday. For example, if a court intended to enter an adoption order but, mistakenly, entered a guardianship order, an order correcting the earlier order would support approval of a Form I-130, if all the other requirements of section 101(b)(1)(E)

are met. *See Allen v. Brown*, 953 F.Supp. 199 (N.D. Ohio 1997). In these circumstances, the petitioner should present *both* the original order and the later order correcting the original order.

\* \* \* \* \*

- (F) Child from a Hague Adoption Convention country. USCIS may not approve a Form I-130 that is filed by a citizen who is habitually resident in the United States on behalf of a child, son or daughter who is habitually resident in a country, other than the United States, that is a Party to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (“Hague Adoption Convention”), unless the citizen completed the adoption of the child before April 1, 2008.

Adjudicators may find a list of countries that are parties to the Hague Adoption Convention at:

[www.travel.state.gov/family/adoption/convention/convention\\_4197.html](http://www.travel.state.gov/family/adoption/convention/convention_4197.html)

If the citizen adopted the child from a Hague Adoption Convention country on or after April 1, 2008, a Form I-130 may be approved only if the citizen establishes that, at the time of the adoption,

- EITHER the citizen was not habitually resident in the United States; OR
- The child was not habitually resident in the other Hague Adoption Convention country.

The Hague Adoption Convention regulation, at 8 CFR 204.303, explains when the adoptive parent and adopted child are deemed to be “habitually resident” in a particular country.

A U.S. citizen is deemed to be “habitually resident” in the United States if he or she is domiciled in the United States, that is, if he or she actually lives in the United States with the intent to maintain that residence for the indefinite future.

A U.S. citizen is also deemed to be “habitually resident” in the United States if he or she is domiciled abroad, but the U.S. citizen plans to take either of the following actions before satisfying the 2-year residence and custody requirements that would permit the child to immigrate under section 101(b)(1)(E):

- establishing a domicile in the United States on or before the date of the child’s admission for permanent residence (and, therefore, will be living with the child in the United States after the adoption); or
- bringing the child to the United States temporarily to obtain the child’s naturalization under section 322 of the Act;

Thus, a U.S. citizen will be deemed to be “habitually resident” in the United States if the citizen seeks to bring the child to the United States as a direct consequence of the adoption.

A child is generally deemed to be habitually resident in a Hague Adoption Convention country if he or she is a citizen of that country. If the child is actually residing in a country other than the country of citizenship, however, the child may be deemed to be habitually resident in that other country if the Central Authority of that other Convention country, or another competent authority in either a Convention or non-Convention country determines that the child's status in that country is sufficiently stable to make it appropriate for that country to exercise jurisdiction over the adoption of the child. See the **Note** later in this AFM chapter concerning when and how this determination may be made with respect to a child who is actually residing in the United States.

**Note:** Under 8 CFR 204.2(d)(2)(vii)(E), the citizen will be deemed, for purposes of adjudicating a Form I-130, *not* to have been habitually resident in the United States at the time of the adoption *if* the citizen completes the two-year custody and joint residence requirement by living with the child outside the United States. In this situation, the adoptive parent may file a Form I-130 instead of following the Hague Adoption Convention procedures.

This rule at 8 CFR 204.2(d)(2)(vii)(E) is not the *only* situation in which the adoptive parent may claim not to have been habitually resident in the United States at the time of the adoption. There may be other situations in which the adoptive parent can establish the he or she was not domiciled in the United States, and did not intend to bring the child to the United States as an immediate consequence of the adoption. If so, then the Hague Adoption Convention process would not apply.

There is no basis, however, for waiving the two-year custody and joint residence requirement for a Form I-130 case (except for certain battered children). Even if the citizen adoptive parent did not intend to bring the child to the United States, it might be in the child's best interests, and might facilitate the child's immigration and naturalization, for the citizen parent to try to complete the Hague Adoption Convention process, if it becomes necessary to return to the United States before the two-year custody and joint residence requirement is met. See chapter 21.6(b) of this AFM concerning the issue of the child's having been adopted before the completion of the Hague Adoption Convention process.

**Note:** Under 8 CFR 204.2(d)(2)(vii)(F), a child who is present in the United States, but whose habitual residence was in a Hague Adoption Convention country other than the United States immediately before the child came to the United States, is still deemed to be habitually resident in the other Hague Adoption Convention country for purposes of the filing and approval of a visa petition based on the child's adoption by a citizen who is habitually resident in the United States. Thus, the adjudicator will presume that the child's adoption and immigration are governed by the Hague Adoption Convention, the Intercountry Adoption Act, and 8 CFR 204 subpart C.

Since a child described in 8 CFR 204.2(d)(2)(vii)(F), is still deemed to be habitually resident in the other Hague Adoption Convention country, a citizen who is habitually resident in the United States and who wants to adopt a child from a Hague Adoption Convention country must, generally, follow the Hague Adoption Convention process,

even if the child is already in the United States. 8 CFR 204.309(b)(4) specifically provides that a Form I-800A and Form I-800 can be filed, even if the child is in the United States, if the other Hague Adoption Convention country is willing to complete the Hague Adoption Convention process with respect to the child.

In most cases, adoption under the Hague Adoption Convention would be in the child's best interest, even if the child is present in the United States. The child may be able to immigrate and, under section 320(a), acquire citizenship by automatic naturalization, as a direct result of the adoption under the Hague Adoption Convention. If the child is adopted without compliance with the Hague Adoption Convention, the parent must have legal custody of the child and live with the child for 2 years before the child can immigrate under section 101(b)(1)(E).

There may be situations, however, in which the parent is not able to complete a Hague Adoption Convention adoption, because the Central Authority of the child's country has determined that, from its perspective, the Hague Adoption Convention no longer applies to the child. The purpose of 8 CFR 204.2(d)(2)(vii)(F) is to prevent the circumvention of the Hague Adoption Convention process. Thus, USCIS has determined that 8 CFR 204.2(d)(2)(vii)(F) must be read in light of the Hague Adoption Convention regulations in subpart C of 8 CFR part 204. If, under subpart C, there is a sufficient basis for saying that the Hague Adoption Convention and the implementing regulations no longer apply to a child who came to the United States from another Hague Adoption Convention country, then USCIS can conclude that 8 CFR 204.2(d)(2)(vii)(F) no longer applies.

The governing regulation, 8 CFR 204.303(b), explains when the child is habitually resident in a country other than the country of citizenship. This regulation does not explicitly apply to children in the United States, but USCIS has determined that it can be interpreted to permit a finding that a child who, under 8 CFR 204.2(d)(2)(vii)(F), is presumed to be habitually resident in another Hague Adoption Convention country can be found to be no longer habitually resident that country, but to be habitually resident, now, in the United States. USCIS will determine that 8 CFR 204.2(d)(2)(vii)(F) no longer precludes approval of a Form I-130 if the adoption order that is submitted with the Form I-130 expressly states that, the Central Authority of the other Hague Adoption Convention country has filed with the adoption court in the United States a written statement indicating that the Central Authority is aware of the child's presence in the United States, and of the proposed adoption, and that the Central Authority has determined that the child is not habitually resident in that country. A copy of the written statement from the Central Authority must also be submitted with the Form I-130 and the adoption order.

If the adoption order shows that the Central Authority of the other Hague Adoption Convention country had determined that the child was no longer habitually resident in that other Hague Adoption Convention country, USCIS will accept that determination and, if all the other requirements of section 101(b)(1)(E) are met, the Form I-130 could be approved.

**Note:** An LPR (unless married to a citizen) may not file a petition under 8 CFR part 204, subpart C, on behalf of a Convention adoptee. An LPR may, therefore, file a Form I-130

on behalf of a child habitually resident in a Hague Adoption Convention country. The Form I-130 cannot be approved, however, unless the two-year custody and joint residence requirements are met.

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2. Chapter 21.5 of the AFM, entitled, "Petition for an Orphan" is amended by adding new chapter 21.5(a)(6), to read as follows:

### **21.5 Petition for an Orphan**

(a) \* \* \*

(6) Child from a Hague Convention country. The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("Hague Adoption Convention") entered into force for the United States on April 1, 2008. Chapter 21.6 of this AFM discusses the adjudication of cases under the Hague Adoption Convention. The Hague Adoption Convention and the implementing regulations, 8 CFR 204.300 through 204.314, generally apply to a case if the child is adopted on or after April 1, 2008. If the Convention and these regulations apply to a case, then the child may not immigrate as a "orphan" under section 101(b)(1)(F) of the Act. Section 505(b) of the Intercountry Adoption Act, 8 CFR 203.3(a)(2) and 8 CFR 204.300(b), provide, however, that a case can continue as an orphan case if the prospective adoptive parents filed a Form I-600A or a Form I-600 before April 1, 2008.

In a case in which the adoption will occur after April 1, 2008, USCIS adjudicators will interpret 8 CFR 204.300(b) to mean that a Form I-600A or Form I-600 is grandfathered as follows:

-- A Form I-600 is "grandfathered," and can be adjudicated after April 1, 2008, under the orphan rules *only if* it is filed before the date on which the approval (including an extension of a prior approval) of a Form I-600A expires.

-- A Form I-600A is "grandfathered," and can be adjudicated after April 1, 2008, under the orphan rules *only if*:

-- the Form I-600A was actually filed before April 1, 2008; OR

-- if the Form I-600A was actually filed after April 1, 2008, it was filed on or before the date on which the approval (including an extension of a prior approval) of a Form I-600A filed before April 1, 2008 expired, *and* a corresponding Form I-600 was not filed on the basis of the prior Form I-600A.

**EXAMPLE:** Form I-600A was approved, with the approval expiring on August 1, 2008. The applicant requested and obtained a one-time extension, with the new approval period expiring February 1, 2010. In January 2010, they still have not filed a Form I-600. On February 1, 2010, they file a new Form I-600A. The "grandfathering" of the original Form I-600A will be extended to the new Form I-600A, since it was filed before the approval of the original Form I-600A expired.

**EXAMPLE:** Form I-600A was approved, with the approval expiring on August 1, 2008. The applicant requested and obtained a one-time extension, with the new approval period expiring February 1, 2010. In January 2010, they still have not filed a Form I-600. On February 1, 2010, they file a new Form I-600A. The "grandfathering" of the original Form I-600A will be extended to include the new Form I-

600A, since it was filed before the approval of the original Form I-600A expired. The new Form I-600A is approved, with the approval (after one extension) expiring March 10, 2013. On March 10, 2013, the applicant files yet another Form I-600A. This third Form I-600A *is not* grandfathered, since, although the expiring Form I-600A was grandfathered, the expiring Form I-600A was actually filed *after* April 1, 2008.

**EXAMPLE:** Form I-600A was approved, with the approval expiring on August 1, 2008. The applicant requested and obtained a one-time extension, with the new approval period expiring February 1, 2010. In January 2010, they still have not filed a Form I-600. However, they do not file a new Form I-600A until February 2, 2010. The “grandfathering” of the original Form I-600A *does not* extend to the new Form I-600A, since it was filed *after* the approval of the original Form I-600A expired.

**EXAMPLE:** Form I-600A was approved, with the approval expiring on August 1, 2008. The applicant did not seek an extension. On September 1, 2008, the applicant files a new Form I-600A. This new Form I-600A *is not* grandfathered, since it was filed *after* April 1, 2008, and *after* the approval of the original Form I-600A expired.

**EXAMPLE:** Form I-600A was approved for one child, with the approval expiring on August 1, 2008. One Form I-600 was filed on July 31, 2008. Since the Form I-600 was filed, no further extension of the Form I-600A approval is permitted. Also, since the Form I-600 was filed, a new Form I-600A for an additional child, or a reopening and re-approval for more than one child, would not be “grandfathered.”

**EXAMPLE:** Form I-600A was approved for two children, with the approval expiring on August 1, 2008. One Form I-600 was filed before August 1, 2008, and the applicant requested and obtained an extension of the approval. The extension expires February 1, 2010. The applicant then files a Form I-600 for an additional child. The Form I-600 is “grandfathered,” since it is based on a “grandfathered” Form I-600A for more than one child. No additional children may be adopted from a Hague Convention country based on the Form I-600A, however. To adopt a third or subsequent child, the Hague Adoption Convention process will apply.

3. Chapter 21.6 of the AFM, entitled “Petition for Hague Convention Adoption” is redesignated “Petition for Hague Convention Adoptee” and amended to read as follows:

## **21.6 Petition for Hague Convention Adoptee**

### **(a) Application of the Hague Adoption Convention.**

On November 16, 2007, the President, acting on the advice and consent of the Senate, ratified the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (“Hague Adoption Convention”). The Hague Adoption Convention entered into force for the United States on April 1, 2008. On the same day, title III of the Intercountry Adoption Act (“IAA”), Public Law 106-279, and the Hague Adoption Convention regulations, 8 CFR 204, subpart C, also entered into force. Title III of the IAA, in section 302, enacted new sections 101(b)(1)(G) and 204(d)(2) of the Immigration and Nationality Act (“Act”), which govern the immigration of an alien child who is habitually resident in a country that is a party to the Hague Adoption Convention and who seeks to immigrate based on the child’s adoption by a United States citizen habitually resident in the United States.

The Hague Adoption Convention, sections 101(b)(1)(G) and 204(d)(2) of the Act, and the Hague Adoption Convention regulations apply to any case in which a citizen who is habitually resident in the United States seeks to accord immediate relative status upon a child who is habitually resident in a Hague Adoption Convention country other than the United States based on an adoption occurring on or after April 1, 2008.

Adjudicators may find a list of countries that are parties to the Hague Adoption Convention at

[www.travel.state.gov/family/adoption/convention/convention\\_4197.html](http://www.travel.state.gov/family/adoption/convention/convention_4197.html)

If an adopted child is from a Hague Adoption Convention country, the citizen adoptive parent may not file a Form I-130 (under section 101(b)(1)(E)) or a Form I-600 (under section 101(b)(1)(F)), unless the citizen adoptive parent establishes that the child's adoption and immigration are not governed by the Hague Adoption Convention.

The child's adoption and immigration are not governed by the Hague Adoption Convention if the citizen adoptive parent completed the adoption before April 1, 2008.

If, by contrast, the parents acquired custody of the child for purposes of emigration and adoption before April 1, 2008, but did not actually complete the adoption before April 1, 2008, the adoption of the child on or after April 1, 2008, is governed by the Hague Adoption Convention.

For a case involving the adoption, on or after April 1, 2008, of a child habitually resident in a Hague Adoption Convention, the child's adoption and immigration are not governed by the Hague Adoption Convention and the implementing statute and regulations *if* the citizen parent filed a Form I-600A (whose period of approval or extension has not expired) or Form I-600 before April 1, 2008. Rather, these cases will proceed as orphan cases under section 101(b)(1)(F) of the Act.

For a Form I-130 case under section 101(b)(1)(E) of the Act, involving an adoption occurring on or after April 1, 2008, the child's adoption and immigration are not governed by the Hague Adoption Convention and the implementing statute and regulations if the citizen parent establishes that, at the time of the adoption,

- EITHER the citizen was not habitually resident in the United States; OR
- The child was not habitually resident in the other Hague Adoption Convention country.

(b) Determining "habitual residence." The Hague Adoption Convention regulation, at 8 CFR 204.303, gives the principles for determining the whether the adoptive parent and adopted child are deemed to be "habitually resident" in a particular country.

(1)(A) A U.S. citizen is deemed to be "habitually resident" in the United States if he or she is domiciled in the United States, that is, if he or she actually has a *legal* residence in the United States with the intent to maintain that residence for the indefinite future, even if he or she is living temporarily abroad.



(B) A U.S. citizen is also deemed to be “habitually resident” in the United States if he or she is domiciled abroad, but the U.S. citizen plans to take either of the following actions before satisfying the 2-year residence and custody requirements that would permit the child to immigrate under section 101(b)(1)(E):

-- establishing a domicile in the United States on or before the date of the child’s admission for permanent residence (and, therefore, will be living with the child in the United States after the adoption); or

-- bringing the child to the United States temporarily to obtain the child’s naturalization under section 322 of the Act;

Thus, a U.S. citizen will be deemed to be “habitually resident” in the United States if the citizen seeks to bring the child to the United States as a direct consequence of the adoption.

(2) A child is generally deemed to be habitually resident in a Hague Adoption Convention country if he or she is a citizen of that country. If the child is actually residing in a country other than the country of citizenship, however, the child may be deemed to be habitually resident in that other country if the Central Authority of that other Convention country, or another competent authority in either a Convention or non-Convention country determines that the child’s status in that country is sufficiently stable to make it appropriate for that country to exercise jurisdiction over the adoption of the child.

(c) Order entered before the filing of Form I-800.

(1) General. Articles 4, 5 and 17 of the Hague Adoption Convention contemplate that a Hague Convention adoption will not occur before the completion of the Hague Convention adoption process. The receiving country must first determine, *before a placement is made*, that the prospective adoptive parents are suitable for intercountry adoption. The sending country must then determine, *before a placement is made*, that the child is eligible for intercountry adoption. Finally, the receiving country must determine, *before the adoption order is obtained*, that the child will be eligible to immigrate to the receiving country.

Because of these Hague Adoption Convention requirements, 8 CFR 204.309(b)(1) provides that a Form I-800 must be denied if the adoptive parents adopted the child, or obtained custody for purposes of adoption, before USCIS has granted provisional approval of the Form I-800. In fact, 8 CFR 204.309(b)(1) requires that the adoptive parents must show that a premature order was voided, vacated, annulled or otherwise terminated, in order to file a Form I-800. The Form I-800 may be provisionally approved, if the adoption or custody order has been terminated before the filing of the Form I-800. Final approval of the Form I-800 could then be granted if a new adoption or custody order is granted *after* the first was voided, vacated, annulled or otherwise terminated, *and* after USCIS has provisionally approved the Form I-800.

**Note:** Because 8 CFR 204.309(b)(1) was not in effect before April 1, 2008, the need to void, vacate, annul or otherwise terminate a custody order that pre-dates provisional approval of a Form I-800 *does not* apply to a custody order that was entered before April 1, 2008. Section 204.309(b)(1) does, however, apply to an adoption order that was entered before provisional approval of the Form I-800, even if there was a custody order entered before April 1, 2008.

(2) Satisfying the requirement of 204.309(b)(1) where legal custody for purposes of adoption or the adoption order were obtained on or after April 1, 2008 but before provisional approval of Form I-800.

Some countries may not have readily available mechanisms for voiding, vacating, annulling or otherwise terminating a premature adoption or custody order. If the petitioner adopted the child before the provisional approval of the Form I-800, the adjudicator should send a request for evidence (“RFE”) asking the petitioner for one or the other of the following items of evidence:

**First option:** an order from a competent authority voiding, vacating, annulling, or otherwise terminating the adoption or custody order OR

**Second option:** Two separate statements, as follows:

-- a statement from the petitioner, signed under penalty of perjury under United States law, explaining why, despite the clearly stated requirement in 8 CFR 204.309(b)(2) and the warnings on the Instructions for Forms I-800A and Form I-800, the petitioner obtained the adoption or custody order before obtaining provisional approval of a Form I-800; AND,

-- a statement from the Central Authority indicating that, under the law of that country, the petitioner is not able to obtain an order voiding, vacating, annulling or otherwise terminating the adoption or custody order.

The RFE should also request a copy of the law governing the voiding, vacating, annulling or termination of adoptions, as well as a certified English translation of that law.

If the petitioner takes the first option, and submits an order voiding, vacating, annulling or otherwise terminating the adoption or custody order, the adjudicator may grant provisional approval of the Form I-800, if it is otherwise approvable.

If the petitioner takes the second option, and the response to the RFE establishes that the petitioner is not able, under the law of the country of the child’s habitual residence, to obtain an order voiding, vacating, annulling, or terminating an adoption or grant of custody that occurred after April 1, 2008, and before the provisional approval of a Form I-800, USCIS will adjudicate the Form I-800 in light of the fact that the adoption or custody order appears to have been obtained without compliance with the Hague Adoption Convention requirements and related U.S. laws and regulations, including section 301(b) of the IAA. Section 301(b) of the IAA provides that it is the Secretary of State’s certification under section 204(d)(2) of the Act that establishes, conclusively, that a Hague Convention adoption or custody order is entitled to recognition in the United States as a valid adoption. This certificate under section 204(d)(2) of the Act will not have been issued at the provisional approval stage. Thus, at the provision approval stage, the validity of the adoption or custody order, under United States law, will not yet have been conclusively established. USCIS may, therefore, deem the “voiding” requirement in 8 CFR 204.309(b)(1) to be satisfied, solely for purposes of *provisional* approval.

In the case of a petitioner who takes the second option, even if the evidence does show that the adoption or custody order cannot be voided, vacated, annulled or otherwise terminated, the Form I-800 will be denied under 8 CFR 204.309(b)(1) if the evidence of record establishes that the petitioner knowingly obtained the adoption or custody order before filing the Form I-800 with the specific intent of circumventing the requirements of the Convention, the IAA, and the implementing regulations.

If the Form I-800 is provisionally approved, the petitioners may then apply for an immigrant visa for the child under 22 CFR 42.24, and the immigration process for the child can go forward. If, in the course of this process, the Department of State issues the section 204(d)(2) certification, this certification will establish substantial compliance with the Hague Convention and the IAA, and that the adoption or custody order is entitled to recognition in the United States as a valid adoption or custody order. USCIS (or the Department of State, on behalf of USCIS) may then grant final approval of the Form I-800.

(d) Home studies – checking abuse registries. Under 8 CFR 204.311(i), the home study preparer must check “available child abuse registries in any State or foreign country,” if the prospective adoptive parents or an additional adult member of the household has resided in that State or foreign country after his or her 18<sup>th</sup> birthday.

To aid adjudicators, USCIS has sought to determine which countries, other than the United States, maintain “child abuse registries” in the sense intended in the regulation. As this information becomes available with respect to a particular country, USCIS will make the information available to adjudicators. Until such time as USCIS is able to verify that a particular country does have such a child abuse registry, USCIS will find that a home study complies with this requirement in 8 CFR 204.311(i) if the home study preparer states in the home study that the home study preparer has consulted the Central Authority of the foreign country (if the Hague Convention Adoption applicant was living abroad in a Hague Adoption Convention country) or other competent authority (for the Hague Convention Adoption applicant was living abroad in a country that is not a Hague Adoption Convention country) and has determined, based on this consultation, that the foreign country does not have a child abuse registry.

(e) Affidavit of Support. With respect to the affidavit of support, the Hague Adoption Convention rule amended 8 CFR 213a.2 to take account of a child immigrating to the United States as a Convention adoptee. As with “orphans” under section 101(b)(1)(F) of the Act, no Form I-864, *Affidavit of Support Under Section 213A of the Act*, is needed for a Convention adoptee who has been adopted abroad, and who will acquire citizenship through automatic naturalization under section 320(a) of the Act upon admission for permanent residence. For a Convention adoptee who will be adopted in the United States, rather than abroad, the child will not become a citizen by automatic naturalization under section 320(a) until the adoption is completed in the United States. If the child will be adopted in the United States, a Form I-864 may be needed unless the child is otherwise exempt. For example, if the adoptive parents, between them, have a total of 40 quarters of work under the Social Security Act, they may be eligible to file Form I-864W, *Intending Immigrant’s Affidavit of Support Exemption*, instead of Form I-864.

(f) Application for Citizenship. With respect to naturalization under section 322 of the Act, the Hague Adoption Convention rule amended 8 CFR 322.3(b)(1)(xii) to facilitate the naturalization of a Convention adoptee under section 322. As with other children of U.S. citizens, this procedure is available in the case of a child from a Convention country who is adopted by a U.S. citizen parent who does not intend to take up residence in the United States subsequent to the adoption. A U.S. citizen domiciled outside the United States may facilitate the child’s naturalization under section 322 by bringing the child to the United States after adoption and before the child’s 18th birthday. The U.S. citizen would still follow the Hague Adoption Convention procedures by filing Form I-800A and then Form I-800 unless the U.S. citizen has already fulfilled the two-year joint residence and legal custody requirement for purposes of INA section 101(b)(1)(E). Once Form I-800 is provisionally approved, the U.S. citizen adoptive parent

will be invited by USCIS to file Form N-600K on behalf of his/her prospective adoptive child. Once Form N-600K has been reviewed and eligibility to receive a certificate has been preliminarily determined, an interview will be pre-arranged and a notice indicating the date, time and place of the interview will be issued to the prospective adoptive parent.<sup>1</sup> Upon receipt of a Form N-600K interview notice and adoption decree and approval of Form I-800, the U.S. Consulate/Embassy will issue a B-2 visa to the child for the purposes of attending the required interview in the United States. At the time of the interview, the U.S. citizen adoptive parent will need to provide evidence of the Form I-800 final approval, the adoption decree, as well as all other documents previously submitted for the child with Form I-800. USCIS is developing Instructions for submitting and processing Form N-600K.

#### **4. Implementation Instructions**

USCIS field offices are instructed to institute local processes that encompass the guidelines provided and should incorporate the processing requirements established in this memorandum within their respective local operations.

#### **5. Contact Information**

Questions regarding the guidance contained in this memorandum should be directed through appropriate channels to USCIS Headquarters Office of Field Operations.

#### **6. Use**

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

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<sup>1</sup> The U.S. citizen parent will have to demonstrate that he/she has the required five years of residence in the United States, or if the parent does not meet the residency requirements, that the parent's U.S. citizen parent (grandparent) has the required five years of residence in the United States.