

# Frequently Asked Questions: Intercountry Adoptions

USCIS has received many questions related to the new Hague intercountry adoption process and the orphan adoption process since the implementation of the Hague Adoption Convention on April 1, 2008.

## Hague and Orphan Adoptions

**Q: I obtained a full and final adoption of a child in a Hague Convention Country prior to April 1, 2008, but did not file a Form I-600A or Form I-600 prior to April 1, 2008. May I still file the Form I-600A or Form I-600?**

**A:** Yes, a **Form I-600A, (Application for Advance Processing of Orphan Petition)** or **Form I-600, (Petition to Classify Orphan as an Immediate Relative)** (see the related links section of this page) *may* be filed on or after April 1, 2008, in this situation. The definitions for “Convention adoptee” and “Convention adoption” in 8 CFR 204.301 state that an intercountry adoption is subject to the Hague Convention and the Hague Convention adoption rules *only if* the adoption occurs on or after April 1, 2008. The USCIS Hague interim rule, therefore, does not apply to a case in which the adoption was already completed before April 1, 2008. Therefore, a Form I-600A or I-600 may be filed after April 1, 2008, if the adoption was completed before April 1, 2008. If the prospective adoptive parents are suitable as adoptive parents and the child qualifies as an orphan, the Forms I-600A and I-600 may be approved and the child may immigrate under section 101(b)(1)(F) of the Immigration and Nationality Act (INA).

**Q: I obtained temporary or legal custody of a child in a Hague Convention country prior to April 1, 2008 and I plan to adopt the child on or after April 1, 2008. May I still seek a Hague Convention adoption? What forms do I file?**

**A:** The Hague Adoption Convention and the USCIS Hague interim Rule apply to any adoption, on or after April 1, 2008, of a child from a Hague Convention country *unless* a Form I-600A or Form I-600 was filed before April 1, 2008. However, the Hague interim rule requires denial of a **Form I-800 (Petition to Classify Convention Adoptee as an Immediate Relative)** (see the related links section of this page) if the prospective adoptive parents adopted the child, or acquired custody for purposes of adoption, before the provisional approval of the Form I-800. This provision, however, was not in force before April 1, 2008. Therefore, a prospective adoptive parent who obtained custody before this date would not have been under any obligation to defer the acquisition of custody. If it can be established that the prospective adoptive parents obtained custody for purposes of adoption *before* April 1, 2008, USCIS will not deny the Form I-800 based solely on the basis of legal custody which was obtained before a Form I-800 had been provisionally approved, since the Hague Convention was not in force at the time of the grant of custody.

**Q: I obtained legal custody of a child in a Hague Convention country for purposes of emigration and adoption after April 1, 2008, but before the provisional approval of Form I-800. May I still seek a Hague Convention adoption?**

**A:** The Hague Adoption Convention and USCIS Hague interim rule provides that a Form I-800 cannot

generally be provisionally approved if the prospective adoptive parents adopted a child or obtained custody for purposes of emigration and adoption before the provisional approval of a Form I-800. In these circumstances, for prospective adoptive parents to file Form I-800 and be eligible for a provisional approval, they will typically need to show that a legal custody order was voided, vacated, annulled, or otherwise terminated. The Form I-800 may generally be approved only if a new adoption or custody order is granted *after* the first custody order was voided, annulled, or otherwise terminated, *and* after USCIS has provisionally approved Form I-800.

**Q: I adopted or obtained custody of a child for emigration and adoption after April 1, 2008, but before the provisional approval of Form I-800, and I cannot void or vacate the adoption or custody order. May I still seek a Hague Convention adoption?**

**A:** Adopting or obtaining custody of a child before provisional approval of a Form I-800 is not consistent with the principles of the Hague Adoption Convention, and may complicate the adjudication of the child's Form I-800. A cardinal principle of the Hague Adoption Convention is that a child's eligibility to immigrate to the prospective adoptive parent's country should be resolved before completion of the proposed adoption. The purpose of this principle is to minimize the risk that a child will not be able to join his or her prospective adoptive family in their home country. As clearly stated in the instructions to Forms I-800A and Form I-800, and in 8 CFR 204.309(b)(2), prospective adoptive parents are cautioned not to accept a proposed adoption placement, or complete an adoption that is subject to the Convention, until after USCIS has provisionally approved the Form I-800 and the Department of State has issued the article 5 notice under 22 CFR 42.24(i).

The prospective adoptive parent should make every effort, under the law of the sending country, to have the premature adoption or custody order voided, vacated, annulled, or otherwise terminated, before filing the Form I-800. If the prospective adoptive parent presents evidence from the Central Authority of the country of the child's habitual residence establishing that the law of that country does not permit the adoption to be voided, vacated, annulled, or otherwise terminated, USCIS will notify the prospective adoptive parent of any additional evidence that may need to be presented in order to support provisional approval of the Form I-800. Prospective adoptive parents should keep in mind that, in at least some cases, adopting the child before provisional approval of the Form I-800 may require USCIS to determine that the adoption does not comply with the Convention and, consequently, cannot be the basis for approval of a Form I-800.

**Q: May I foster a child from a Hague Convention country prior to the I-800A approval?**

**A:** Typically, accepting a foster care arrangement before completing the Hague Adoption Convention process would not be consistent with the general purpose of the Convention, which promotes placing the child in the care of prospective adoptive parents only if both the sending country and the receiving country have determined that an intercountry adoption is permitted. Whether a foster care arrangement would actually be contrary to the Hague Adoption Convention and regulations, however, will have to be reviewed on a case-by-case basis. Note that, even if a foster care arrangement is not "custody for purposes of emigration and adoption," as defined in 8 CFR 204.301, the steps taken to obtain a foster care arrangement may well involve "contact" with the child's birth parent(s) or other caregiver. Article 29 of the Convention and 8 CFR 204.309(b)(2) restricts the ability to have contact with the birth parent(s) or other caregivers.

USCIS strongly recommends that prospective adoptive parent(s) apply for intercountry adoption through the Hague Adoption Convention process by using Forms I-800A and I-800, and obtaining approval of their Form I-800A, *Application for Determination of Suitability to Adopt a Child from a Convention Country*, and a provisional approval of their Form I-800, before assuming responsibility for providing foster care for a child. Carefully following the Hague Adoption Convention process serves the child's best interest by ensuring that all of the steps designed for protection of the child are completed before placement.

If there is an emergency that appears to warrant taking responsibility for a child before the filing and approval of Forms I-800A and I-800, the prospective adoptive parent(s) should work through the Central Authority of the sending country to arrange foster care, to ensure that any contact with the child, the birth parent(s), or other caregivers that occurs in this process, is permissible under the Hague Adoption Convention and the USCIS Hague interim rule.

**Q: May a prospective adoptive parent with an approved, *grandfathered* I-600A indicating that they intend to adopt from a non-Hague country change to a Hague Convention Country and still continue an orphan adoption?**

**A:** Yes. The Hague interim rule allows prospective adoptive parent(s) who filed an I-600A or I-600 prior to April 1, 2008, to be grandfathered under U.S. law. Included in this grandfathering provision is the ability for a prospective adoptive parent to change his/her Form I-600A approval from a non-Hague Convention country to a Hague Convention country, as long as the Form I-600A was filed prior to April 1, 2008, and continues to be valid at the time the request for change of overseas site notification is submitted. For a prospective adoptive parent who filed Form I-600A before April 1, 2008, but did not designate a specific country at the time of filing Form I-600A, he/she may designate a Convention country at a later time.

**PLEASE NOTE:** It is important that families who filed an I-600A prior to April 1, 2008 and desire to change to a Hague Convention country understand that while their case is grandfathered under U.S. law, this does not mean that the other Hague Convention country must permit the adoption to take place under U.S. orphan regulations. The other country could require that the case proceed as a Hague adoption, which would require the filing of Forms I-800A and I-800.

**Q: May a prospective adoptive parent with an approved I-600A, who filed after April 1, 2008 indicating that they intend to adopt from a non-Hague Convention country, change to a Hague Convention country and still continue with an orphan adoption?**

**A:** No. A prospective adoptive parent with an approved I-600A, who filed after April 1, 2008 indicating that they intend to adopt from a non-Hague Convention country may not change to a Hague Convention country. If the prospective adoptive parent wants to adopt from a Hague Convention country, forms I-800A and I-800 must be filed.

**Q: My I-600A was filed before April 1, 2008 (implementation of Hague Convention). Is it possible to extend the I-600A approval?**

**A:** Yes. An approved I-600A is valid for 18 months. A prospective adoptive parent may request a one-

time, no-charge extension of your I-600A. To request this extension, submit a request in writing for an extension of your approved I-600A to the USCIS office that approved your I-600A. There is no specific form to fill out – simply submit a written request for a one-time, no-charge extension of your valid, approved Form I-600A. An updated or amended home study must accompany this request. Apply prior to 90 days before the expiration of the I-600A. If your request for extension is approved, your I-600A approval will be extended 18 months from the expiration date of the original I-600A.

**Q: If my request for an extension of my I-600A approval is granted, when will the new extension expire – as of the expiration date of the original approval or the date of the decision to extend it?**

**A:** The new approval will be effective as of the expiration date of the original approval, rather than the date of the decision to extend the approval. For example, if the original approval expired January 1, 2008, the extension will expire July 1, 2009.

**Q: What will the immigrant visa classification be for Convention Adoptees?**

**A:** Upon final approval of the I-800 petition, a child may be issued an IH-3, IH-4, or B-2 visa. An IH-3 is a Hague Convention Child adopted abroad and who automatically acquires U.S. citizenship upon entry to the U.S. An IH-4 is a Hague Convention Child coming to be adopted in the U.S. IH-4 children do not automatically acquire U.S. citizenship, but are lawful permanent residents until the adoption is full and final. Children entering as a B-2 temporary visitor for pleasure are admitted under Section 322 interview, naturalization, and then depart the country.

**Q: Will USCIS provide me with documentation of my child's citizenship (IH-3)?**

**A:** Yes. USCIS will issue a Certificate of Citizenship from our Buffalo District Office within 45 days of receipt of the visa packet.

**Q: Will USCIS provide me with proof of my child's lawful permanent resident status (IH-4)?**

**A:** Yes. USCIS will issue a lawful permanent resident card, Form I-551 within days of receipt of the visa packet.

### **National Benefits Center (NBC) Processing of Hague Adoptions**

**Q: Which USCIS office adjudicates and approves Forms I-800A and I-800?**

**A:** The NBC is the only USCIS office that fully adjudicates forms I-800A and I-800 to completion.

**Q: How long does it take for a USCIS field office to send Forms I-800A, I-800, and other required documents to NBC?**

**A:** USCIS field offices generally mail forms I-800A, I-800, and other required documents within 24 hrs of receipt.

**Q: Are forms I-800A being forwarded from NBC to the National Visa Center (NVC), or are I-800As going directly from NBC to an overseas Embassy/Consulate?**

*A:* Approved I-800A applications are sent from the NBC to the NVC.

**Q: What is the NBC's timeframe for processing I-800A applications?**

*A:* Cases are targeted for completion within 90 days of receipt. Cases that are properly filed and submitted with complete home studies may be processed without delay.

**Q: What is the NBC's intended timeframe for processing I-800 petitions?**

*A:* All cases are targeted for completion within 90 days of receipt. Cases that are properly filed and submitted with a complete Hague Convention Article 16 report on the child, may be processed without delay.

**Q: How will adoption agencies and the general public be notified when the direct mail program is implemented for the receipt of forms I-800A and I-800? When do you anticipate it will be operational?**

*A:* On August 26, 2008 USCIS issued an update (see the related links section of this page) announcing the expansion of USCIS' Direct Mail program to include Forms I-800A and I-800. Beginning on September 25, 2008, applicants must submit Forms I-800, I-800A, and all related supplements and forms to the USCIS Chicago Lockbox facility for initial processing, using the following address:

U.S. Citizenship and Immigration Services

P.O. Box 805695

Chicago, IL 60680-4118

If you are filing Hague-related Forms I-601, Application for Waiver of Ground of Inadmissibility; I-864, Affidavit of Support Under Section 213A of the Act; I-864EZ, Affidavit of Support Under Section 213A of the Act; or I-864W, Intending Immigrant's Affidavit of Support Exemption; with Form I-800, you must also send these forms to the Lockbox address.

**Q: What is the procedure for expeditious processing of Special Needs children?**

*A:* At this time, a significant majority of all pending cases are for special needs children. While there is no procedure for expeditious processing, all cases are targeted for completion within 90 days of receipt. Cases that are properly filed and submitted with complete home studies may be processed without delay.

**Hague Adoptions - Home Study**

**Q: If the home study agency/preparer is conducting two home studies at the same time (e.g., domestic and China), does this have to be stated in the home study?**

*A:* Yes. In this situation we may consider the additional home study as a prior home study. Consistent with regulatory requirements the home study preparer should:

- Identify the agency involved in each prior or terminated home study
- State when the prior home study process began
- Include the date the prior home study was completed
- Explain whether the prior home study recommended for or against finding the applicant or

additional adult member of the household suitable for adoption, foster care, or other custodial care of a child. If a prior home study was terminated without completion, the current home study must indicate when the prior home study began, the date of termination, and the reason for the termination.

If the other home study has not yet been completed, please note that in the home study.

**Q: If I receive a raise at work, am I required to submit a home study amendment?**

**A:** No. However, if your income decreases a home study amendment is required.

**Q: How much time can lapse between the visit to the home and the completion of the home study? (Some home studies may take longer if there is difficulty in obtaining child abuse clearances from another country, especially for military cases.)**

**A:** At least one home visit must be completed during the course of the home study process. The home study must not be more than 6 months old at the time it is submitted to USCIS. There is no requirement regarding the timeliness of when, during the home study process, the home visit must occur.

**Q: What if the home study preparer is not able to determine whether a foreign country has a child abuse registry, in order to conduct the child abuse registry checks overseas?**

**A:** The purpose of 8 CFR 204.311(i) is to ensure that USCIS has access to any readily available evidence that may relate to the applicant's suitability as an adoptive parent. There is no obligation, of course, to provide information that simply is not available. If a country does not have a child abuse registry, it is enough for the home study preparer to make this fact clear in the home study.

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. 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 it is a Hague Adoption Convention country) or other competent authority (for 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.

**Q: Are home study preparers required to list each state in which a child abuse registry was checked, or should the documented checks be included in the home study?**

**A:** The home study preparer must ensure that a check of the applicant and of each additional adult household member has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th birthday. The home study must include results of the checks conducted, including when no record was found to exist, that the State or foreign country will not release information to the home study preparer or anyone in the household, or that the State or foreign country does not have a child abuse registry.

**Q: Two questions arise from paragraph (2) of the definition of “adult member of the household” in 8 CFR 204.301:**

- **When must a home study preparer include in the home study an assessment of a household member who “has not yet reached his or her 18<sup>th</sup> birthday?”**
- **When must a home study preparer include in the home study an assessment of someone “who does not actually live at the same residence but whose presence in the residence is relevant to the issue of suitability to adopt?”**

**A:** The home study preparer is never required, under the USCIS rule, to include an assessment of these persons as an adult member of the household, unless USCIS specifically asks the home study preparer to do so. As a matter of routine practice, the home study preparer needs only to assess the prospective adoptive parents and any other adult members of the household, as defined in paragraph (1) of the definition of “adult member of the household.”

In a given case, the home study preparer may be aware of facts about another person that, in the home study preparer’s considered professional judgment, could be relevant to the issue of the applicant(s) suitability to adopt. For example, a child who is not yet 18 could have a criminal history, or a history of drug or alcohol abuse. In such cases, if it is apparent that this person’s history could impact the applicant’s suitability to adopt, it may be prudent for the home study preparer to include this information in the home study and provide an appropriate recommendation. Similarly, if the home study preparer’s reasoned professional judgment is that there is some other person who does not live with the applicant(s) “whose presence in the home is relevant to the issue of suitability to adopt,” such as an extended family member who spends a lot of time at the applicant’s residence, it would be prudent to include information about this person in the home study, so that USCIS can make an informed decision on the case. The USCIS adjudicator reviewing such a home study would then be able to determine whether to request an additional Form I-800A, Supplement 1, with the applicable biometrics fee. Once USCIS determines that an I-800A, Supplement 1 is necessary for another person, Supplement 1 will be sent to the prospective adoptive parent with instructions for that other person and the prospective adoptive parent to complete and submit Supplement 1 to USCIS. The person then must be evaluated by the home study preparer to ensure that the home study addresses the requirements of 8 CFR 204.311 for that person.

However, the home study preparer may limit his or her assessment to the prospective adoptive parents as defined in paragraph (1) of the definition, and need not include anyone else unless USCIS asks for this additional evaluation.

### **Adoptions under section 101(b)(1)(E) - children from Hague countries**

**Q. If a child from a Hague Convention country is already in the United States, can the child be deemed to be “habitually resident” in the United States, so that the child can be adopted without complying with the Hague Adoption Convention and the USCIS Hague interim rule?**

**A:** 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 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 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, USCIS will presume that the child's adoption and immigration are governed by the Hague Adoption Convention, the IAA, 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 Convention country, a U.S. citizen who is habitually resident in the United States and who wants to adopt a child from a Hague 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 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 interests, 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 acquire permanent residence as the child of the U.S. citizen adoptive parent, as defined under section 101(b)(1)(E) of the Act.

There may be situations, however, when the adopting 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 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), provides the principles for determining whether 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 Convention country can be found to no longer be habitually resident in 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 Convention country has filed with the court 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 Convention country had

determined that the child was no longer habitually resident in that other Hague Convention country, USCIS will accept that determination and, if all the other requirements of section 101(b)(1)(E) of the Act are met, the Form I-130 may be approved.

\*For inquiries on adoptions from Hague Convention countries, please call 1-877-424-8374