



November 9, 2018

PM-602-0165

## Policy Memorandum

SUBJECT: Guidance on Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption

### Purpose

This policy memorandum (PM) amends the Adjudicator's Field Manual (AFM) to provide guidance on issues related to prospective adoptive parent (PAP)<sup>1</sup> suitability that may arise when adjudicating intercountry adoption cases. Suitability issues may arise during the adjudication of any of the following forms<sup>2</sup> and their related supplements:

- Form I-600A, *Application for Advance Processing of an Orphan Petition*
- Form I-600, *Petition to Classify Orphan as an Immediate Relative*
- Form I-800A, *Application for Determination of Suitability to Adopt a Child from a Convention Country*
- Form I-800, *Petition to Classify Convention Adoptee as an Immediate Relative*
- Form I-824, *Application for Action on an Approved Application or Petition*

This memorandum supersedes:

- The memorandum, *Instructions for Processing Requests for Changes or Action After Approval of Form I-600A*, issued June 20, 2008.
- The guidance in the memorandum, *Notification to Department of State of Intercountry Adoption Approval*, issued October 23, 2008, only for USCIS international offices<sup>3</sup> and communication of suitability-related concerns for all USCIS officers.<sup>4</sup>
- The guidance in the internal memorandum, *Process to facilitate resubmission of electronic fingerprints for clearance in adoption and overseas military naturalization cases*, issued March 13, 2009, only for intercountry adoption cases.<sup>5</sup>

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<sup>1</sup> Throughout this memorandum, USCIS uses the term PAP to refer to the applicant/petitioner and any spouse.

<sup>2</sup> Forms I-600A and I-800A are applications used to determine PAP suitability.

<sup>3</sup> USCIS is not superseding the October 23, 2008 memorandum with respect to how the USCIS National Benefits Center (NBC) sends notification of intercountry adoption approvals.

<sup>4</sup> USCIS is superseding the October 23, 2008 memorandum for all USCIS officers, including the NBC and USCIS international offices, with respect to communication of suitability-related concerns.

<sup>5</sup> USCIS is not superseding the March 13, 2009 memorandum for military naturalization cases, only for intercountry adoption cases.

## Scope

This policy memorandum applies to and shall be used to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees.

## Authorities

- Immigration and Nationality Act (INA) sections 101(b)(1)(F) and 101(b)(1)(G)
- Title 8 of the Code of Federal Regulations, part 204, section 3 (8 CFR 204.3), 8 CFR 204.301, 8 CFR 204.311, and 8 CFR 204.309
- Adjudicator's Field Manual (AFM) Chapter 21.5
- Adjudicator's Field Manual (AFM) Chapter 21.6

## Background

The Intercountry Adoption Universal Accreditation Act of 2012 (UAA) impacted the adjudications of intercountry adoption cases in four suitability-related ways: home study preparation, home study elements, definitions, and the duty of disclosure. The UAA superseded parts of the orphan regulations at 8 CFR 204.3 and made certain portions of the regulations governing adoptions completed under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) at 8 CFR 204.300 through 204.314 applicable to orphan cases.<sup>6</sup> As a result and unless an exception applies,<sup>7</sup> the Form I-600A/Form I-600 (orphan) and Form I-800A/Form I-800 (Hague) suitability determinations are now very similar.<sup>8</sup>

## Purpose

In the process of implementing the UAA and in response to feedback from the adoption community, USCIS identified the need to clarify several suitability-related areas.

As a result, this memorandum seeks to provide clarity on the following 22 suitability-related issues:

1. Terminology (used to describe home studies, the duty of disclosure, and recommendation for adoption)
2. Pre-adoption requirements
3. Specific recommendation for adoption
4. Suitability determination points
5. Updated home study events
6. Updated home study requirements
7. Updated home study format
8. Valid home study preparers
9. Home studies for PAPs residing abroad
10. Significant changes in a household
11. Duty of disclosure and timeframe for notification

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<sup>6</sup> See the memorandum [Guidance on the Implementation of the Intercountry Adoption Universal Accreditation Act of 2012 and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications](#) (UAA Policy Memo) for more information.

<sup>7</sup> The UAA Policy Memo explains when the UAA does not apply.

<sup>8</sup> See the memorandum [The Jurisdiction of Amended Home Studies and the Application of Home Study Age Restrictions for Prospective Adoptive Child\(ren\) in Intercountry Adoption Cases](#) for scenarios where USCIS needs to make a suitability determination outside of an initial suitability adjudication.

12. Communication between USCIS and the Department of State (DOS) on updated home study events
13. Requests for action on approved and valid suitability applications
14. Forms of child abuse
15. Child abuse registry checks
16. Children in the home
17. Behavioral issues
18. Substance abuse
19. Probation, parole, supervised release, or other similar arrangement
20. Spouse's immigration status
21. Suitability-related information and the responsibility to make an independent decision
22. Biometrics, electronic refreshes, and police clearance letters

In addition, USCIS is now:

- Improving communications between USCIS and DOS by:
  - Allowing USCIS international offices to communicate approvals and other notifications to USCIS and DOS offices directly,
  - Promoting direct communication of suitability-related concerns between USCIS and consular officers, and
  - Notifying the other agency of intercountry adoption-related denials, withdrawals, and revocations when possible
- Standardizing how all USCIS offices process Form I-600 concurrent or “combination”/“combo” filings.<sup>9</sup>
- Clarifying Hague grandfathering provisions for countries where the Hague Adoption Convention entered into force after the United States.<sup>10</sup>

### **Implementation**

Effective immediately, USCIS will apply the following policies except as specified in sections 11, 14, and 16 below.<sup>11</sup>

#### ***Clarification on Suitability-Related Issues***

##### **1. Terminology**

Except when quoting the regulations, USCIS will use the following terminology:

- **Updated home study**: The term “updated home study” (or “home study update”) will be used rather than “home study amendment” or “amended home study.” An updated home study is required when any of the events described on page 6 occur.

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<sup>9</sup> 8 CFR 204.3(d)(3) allows for a PAP to file Form I-600 along with the supporting documentation for Form I-600A to accomplish what is known as a concurrent or “combination” filing to request that USCIS make both a suitability determination and a determination on if the child meets INA 101(b)(1)(F) at once. This is unlike the Hague process where PAPs are required to file and have Form I-800A approved before filing a Form I-800.

<sup>10</sup> The Hague Adoption Convention entered into force for the United States on April 1, 2008.

<sup>11</sup> The guidance in this memo does not apply to UAA-grandfathered cases, which are governed by the home study requirements at 8 CFR 204.3(e).

- Duty of disclosure: The term “duty of disclosure” refers to the duty described at 8 CFR 204.311(d). This term will be used rather than “duty of candor.”
- Specific recommendation for adoption: The term “specific recommendation for adoption” describes the requirement at 8 CFR 204.311(r). This term will be used rather than “specific approval for adoption.”<sup>12</sup>

## 2. Pre-adoption requirements

If a child will be coming to the United States for adoption,<sup>13</sup> the PAPs must provide evidence with their suitability application that they have complied with any state pre-adoption requirements. Form I-600A, Form I-600, Form I-800A, and Form I-800 contain space for the PAP to describe any state pre-adoption requirements and indicate if they have been met or will be met at a later date. While USCIS currently compares this information with available records of such state requirements, these requirements periodically change as state law changes.

If the child will be coming to the United States for adoption, then the home study must:

- Describe the state pre-adoption requirements for any state in which the child will reside, describe what requirements they will or will not have met and why, and cite any relevant state statutes and regulations; or
- Explain that the state(s) of intended residence do not have any pre-adoption requirements.

Home study preparers must be licensed or otherwise authorized under the law of the jurisdiction in which they conduct a home study. This helps ensure that home studies comply with any state pre-adoption requirements.

When adjudicating an intercountry adoption-related application or petition for a child coming to the United States for adoption, USCIS will compare what the PAPs have written on their application and/or petition with USCIS records and with what the home study preparer has indicated. USCIS will generally rely on the home study preparer’s statement on pre-adoption requirements, but has discretion to further investigate and/or issue a request for evidence (RFE) as needed.

## 3. Specific recommendation for adoption

8 CFR 204.311(r) requires that the home study contain the home study preparer’s specific recommendation of the PAPs for adoption and the reasons for the recommendation. The home study preparer must state the number of children that s/he recommends the PAPs adopt

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<sup>12</sup> For cases that are not subject to the UAA, the regulatory term “specific approval for adoption” as used at 8 CFR 204.3(e)(6) will still be used.

<sup>13</sup> USCIS considers a child to be coming to the United States for adoption if: 1) the PAPs will not complete the child’s adoption abroad and will only obtain legal custody abroad for the purposes of emigration and adoption in the United States, 2) only one PAP of a married couple adopts the child abroad, so that it will be necessary for the other spouse to adopt the child in the United States, or 3) in orphan cases, if at least one PAP did not see or observe the child before or during the adoption proceedings.

and the specific country/countries that s/he recommends they adopt from.<sup>14</sup> The home study preparer's recommendation must state if there are any specific restrictions to the adoption, such as age, gender, or other characteristics of the children (for example, special need, disability, and/or impairment).

While USCIS carefully considers the home study preparer's recommendation, USCIS has the sole authority to make suitability determinations, and may issue an approval notice that varies from the home study preparer's recommendation.

USCIS will look for one recommendation section in a home study. If there are multiple recommendations that are inconsistent, USCIS should issue an RFE to clarify the inconsistencies so that USCIS can appropriately assess suitability.

#### 4. Suitability determination points

Throughout the intercountry adoption process, USCIS must be satisfied that the PAPs remain suitable to adopt a child. This involves PAP obligations,<sup>15</sup> USCIS review of suitability, and a USCIS suitability determination at all of the following points:

- A. **Before USCIS can approve any suitability application, extension request, request for an updated approval notice, or change of country request:**<sup>16</sup> PAPs must submit a home study or an updated home study that accurately reflects the current composition of the household, the number and characteristics<sup>17</sup> of the child(ren) they are recommended to adopt, and addresses any state pre-adoption requirements if the child will be coming to the United States for adoption.
- B. **Before USCIS (or DOS, where designated) can approve any intercountry adoption-related petition:** If since the last home study or updated home study they submitted to USCIS, there has been a significant change in the PAP's household, a change in the number of or characteristics of the child(ren) the PAPs adopted or obtained legal custody of, or a change that requires that the home study preparer address any applicable state pre-adoption requirements, the PAPs must submit an updated home study.
- C. **Before DOS issues any immigrant visa and the child immigrates to the United States:** If since the last home study or updated home study they submitted to USCIS, there has been a significant change in the PAP's household, a change in the number

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<sup>14</sup> Home studies for cases that are not subject to the UAA are not required to state the specific country/countries that the PAPs are recommended for. 8 CFR 204.3(e)(6).

<sup>15</sup> See Duty of disclosure and timeframe for notification on page 9 below for more on when PAPs are required to notify USCIS and their home study preparer of any new event or information that might require them to submit an updated home study.

<sup>16</sup> Extension requests, requests for an updated approval notice, and change of country requests are all "requests for action" on an approved and valid suitability application that are addressed in Requests for action on approved and valid suitability applications on page 11 below.

<sup>17</sup> As discussed in Updated home study events on page 6 below, characteristics include age, gender, nationality, and/or special need, disability, and/or impairment.

of or characteristics of the child(ren) the PAPs adopted or obtained legal custody of, or a change that requires that the home study preparer address any applicable state pre-adoption requirements, the PAPs must submit an updated home study.

5. Updated home study events

An updated home study is required when there is an updated home study event. Such an event occurs when:

- There is a significant change in the PAP's household (as further defined on page 8).
- There is a change in the number or characteristics (such as age, gender, nationality, and/or special need, disability, and/or impairment) of the child(ren) the PAPs intend to adopt or have adopted that was not previously assessed in the home study.
- There is a change that requires that the home study preparer address state pre-adoption requirements or address a new state's requirements<sup>18</sup> if:
  - The child will be coming to the U.S. for adoption, and
  - The prior home study submitted did not address these requirements.
- PAPs request an extension of Form I-600A/Form I-800A approval.
- PAPs request a change of country, if the prior home study submitted did not recommend the PAP for the new country.
- A home study is more than 6 months old at the time it is submitted to USCIS.<sup>19</sup>

6. Updated home study requirements

Every home study update must comply with 8 CFR 204.311(u).<sup>20</sup>

For all updates, USCIS requires that the home study preparer:

- Fully address anything that has changed since the last home study or updated home study submitted to USCIS
- Update the required screening, which requires that the home study preparer:
  - Update the child abuse registry checks<sup>21</sup>
  - Re-ask the questions about abuse or violence
  - Re-ask the questions about criminal history, and if applicable, rehabilitation
- Include the results, date, and location/mode of the updated screening

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<sup>18</sup> Such changes could include: 1) the PAPs relocate to another state or there is a change in the child's proposed state of residence, 2) the PAPs intended to adopt the child, but end up only obtaining legal custody for the purposes of emigration and adoption in the U.S., 3) now only one PAP of a married couple will adopt the child abroad, or 4) in orphan cases, if at least one PAP does not see or observe the child before or during the adoption proceedings.

<sup>19</sup> This means that more than 6 months have passed since the home study preparer signed and dated the home study.

<sup>20</sup> For cases that are not subject to the UAA, see 8 CFR 204.3(e)(9).

<sup>21</sup> As discussed in Child abuse registry checks on page 12 below, for a home study update, USCIS only requires the results of such child abuse registry checks for the current residence and any state or foreign country in which the PAPs or adult members of the household (AMHs) have resided since the last home study or home study update submitted to USCIS. The home study preparer does not need to re-check child abuse registries for prior residences that were included in a prior home study/home study update unless the PAPs or AMHs have resided in that state or foreign country since the last check was completed.

- Confirm that the other areas of the last home study or updated home study submitted to USCIS have not changed
- Include a statement from the preparer that he or she has reviewed the home study being updated and is personally and fully aware of its contents
- Address whether the preparer recommends the PAPs and the specific reasons for the recommendation
- Sign and date the update<sup>22</sup>

USCIS views a home study as an ongoing process. Thus, unless the family has moved, the law of the jurisdiction requires it, or the home study preparer requires it, USCIS does not require that the home study preparer conduct another home visit. Instead, the home study preparer may conduct the above update requirements by any means—in-person (at the home or another location), or by Skype, FaceTime, phone, email, etc.—but must state the number of interviews/visits, the participants, date, and location/method of each interview/visit, and the date and location/method of any other contacts with the applicant and any additional adult member of the household.

#### 7. Updated home study format

While 8 CFR 204.311(u)(2) identifies the home study update requirements, it does not prescribe a set format.

So long as a home study update meets the Updated home study requirements listed above, it will look like either an update that just addresses the circumstance(s) that require the update, or a new and complete home study. “Addendums” or “corrections” that do not address all necessary requirements are not sufficient. The length of a home study update will vary depending on the circumstances. There are no limits to how many times a home study preparer can update a home study.

#### 8. Valid home study preparers

The following persons are valid home study preparers:

- An accredited agency
- Approved person
- Supervised provider
- Exempted provider
- A public domestic authority
- A public foreign authority

The home study preparer (other than a public domestic or public foreign authority) must hold any license or other authorization that is required to conduct home studies under the law of the jurisdiction in which the home study is conducted. An accredited agency must review and approve any home study that was not conducted by an accredited agency before it is

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<sup>22</sup> Like with an original home study, the home study preparer’s signature on an update must be original, and the home study must be no more than 6 months old when submitted to USCIS.

submitted to USCIS.<sup>23</sup> The requirement for accredited agency review and approval, however, does not apply to a home study that a public domestic or public foreign authority conducts.<sup>24</sup>

9. Home studies for PAPs residing abroad

An accredited agency, approved person, or supervised provider, with authorization to conduct home studies under the law of the jurisdiction where the home study is conducted, or a public foreign authority, may conduct home studies abroad for PAPs who reside abroad.

If the PAPs reside abroad and have no actual or proposed residence in the United States, then generally there may be no applicable state law standards to apply to the home study under 8 CFR 204.311(e). However, if the PAPs residing abroad intend to finalize the child's adoption in the United States, then the applicable standards for the state where the adoption will be finalized may potentially apply.

10. Significant changes in a household

8 CFR 204.311(u)(1) provides a non-exhaustive list of events that USCIS considers to be a "significant change" in the PAP's household that require an updated home study.<sup>25</sup> These include events ranging from a change in marital status and household composition to a change in residence, financial resources, criminal history, etc. Because these lists are non-exhaustive, USCIS has the discretion to consider any new information or event that might impact a PAP's suitability to constitute a significant change in the household that requires an updated home study.

As such, USCIS is providing additional guidance on how we generally view the following scenarios:

- *Household composition.* Any change in the number and/or identity of children residing in the PAP's household or adult members of the household (AMHs) is a significant change.
- *Financial resources.* Generally only a significant decrease in the PAP's financial resources that causes USCIS or the home study preparer to be reasonably concerned about the PAP's financial suitability is considered a significant change in the household. This includes, but is not limited to, any decrease that causes the family's income to fall below the Department of Health and Human Services' (HHS) poverty guidelines, a significant increase in debts or expenses, or a loss of assets that would

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<sup>23</sup> If home study review and approval is needed, the date of the home study preparer's signature (and not the reviewer and approver's signature) is the applicable date for the purposes of the requirement that the home study be no more than 6 months old at the time it is submitted to USCIS.

<sup>24</sup> The requirement that home studies be no more than six months older than the date of the home study preparer's signature applies to all home studies submitted to USCIS, including those that a public domestic or public foreign authority conducts.

<sup>25</sup> For cases not subject to the UAA, see 8 CFR 204.3(e)(9)(ii).



impact the PAP's financial suitability or put the family below the HHS poverty guidelines.<sup>26</sup>

- *Pregnancy.* Unless USCIS or the home study preparer concludes that a household member's pregnancy needs to be addressed (for example, because it is significantly impacting a household member's physical, mental, emotional, or behavioral health or because it significantly decreases the PAP's financial resources), pregnancy by itself is not a significant change that necessitates an updated home study. However, once the household member gives birth, if the child is part of the household, this is considered a change in household composition and would count as a significant change.
- *Miscarriage.* Unless the miscarriage significantly decreases the PAP's financial resources, or USCIS or the home study preparer concludes that the miscarriage has significantly impacted a household member's physical, mental, emotional, or behavioral health, a miscarriage is not a significant change.
- *Serious health conditions.* A household member's development of a serious health condition is a significant change. Serious health conditions include, but are not limited to, heart attacks, heart conditions requiring operation, cancers, strokes, conditions requiring extensive therapy or surgical procedures, chronic obstructive pulmonary disease (COPD), severe respiratory conditions or nervous disorders, mental disorders or dementia, and severe injuries.
- *History of arrest, substance abuse, sexual abuse, child abuse/neglect, and/or family violence as an offender.* Any change in the history of arrest, substance use, sexual abuse, child abuse/neglect, and/or family violence as an offender, not just a change in criminal history, is a significant change.

#### 11. Duty of disclosure and timeframe for notification

PAPs and adult members of the household (AMHs) have an ongoing duty of disclosure under 8 CFR 204.311(d) throughout the intercountry adoption process, to include:

- While any Form I-600A/Form I-800A is pending,
- After any Form I-600A/Form I-800A is approved,
- While any Form I-600/Form I-800 is pending, and
- Until there is a final decision admitting the child to the United States with a visa, or until final Form I-600/Form I-800 approval for PAPs who reside abroad and do not seek an immigrant visa for their child.

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<sup>26</sup> PAPs generally need to demonstrate income at 125% of the poverty level for their household size unless the 100% exemption applies. The HHS poverty guidelines are a key tool that USCIS uses when evaluating financial resources, but are not the sole factor.

The duty of disclosure requires that PAPs and AMHs notify the home study preparer and USCIS of any new event or information that might require them to submit an updated home study<sup>27</sup> while this duty is ongoing. The regulation, however, does not specify a timeframe for when this notification must occur.

Also, 8 CFR 204.311(f)(3) requires that a home study preparer advise PAPs of the duty of disclosure, but is silent with regard to AMHs. Since AMHs are subject to the duty of disclosure as well, USCIS will require that a home study preparer also inform AMHs of the duty of disclosure and sign under penalty of perjury that they have advised all AMHs of the duty of disclosure.<sup>28</sup>

While there is no defined time for notification in the regulations, USCIS generally requires the following<sup>29</sup>:

- If the event is a change in arrest, conviction, or history of substance abuse, sexual abuse, child abuse, and/or family violence, or any other criminal history as an offender, PAPs must notify USCIS and the home study preparer as soon as practicable, but no later than 30 days\* of the event.
- If the event is anything else besides the above, it is best practice to notify USCIS and the home study preparer within 30 days.\* If the PAPs do not notify USCIS and the home study preparer within 30 days,\* they must do so at the next suitability determination point.<sup>30</sup>

***\*The only exception to this is if any event occurs after petition approval, but before the child immigrates to the United States, the PAPs must notify USCIS and the home study preparer immediately. To prevent significant delays, the PAPs should also notify the DOS visa-issuing post as soon as the event occurs.***

If USCIS has evidence that an individual failed to disclose any event that requires an updated home study, USCIS may issue an RFE, Notice of Intent to Deny (NOID), or in the case of finally-approved applications/petitions, issue a Notice of Intent to Revoke (NOIR). If the response to the RFE, NOID, or NOIR and explanation for the failure to disclose is not reasonable, USCIS will issue a NOID, denial, or revocation.

USCIS will deny or revoke a suitability application if the PAPs or AMHs:

- Failed to disclose, concealed, or misrepresented any fact about the PAPs or AMHs concerning the arrest, conviction, or history of substance abuse, sexual abuse, child abuse, and/or family violence, or any other criminal history as an offender;<sup>31</sup>
- Failed to cooperate in having available child abuse registries checked; or

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<sup>27</sup> See Updated home study events on page 6 above for a list of these events.

<sup>28</sup> USCIS will require that home studies comply with this policy beginning 90 days from the date of this memo.

<sup>29</sup> USCIS will require that home studies comply with this policy beginning 90 days from the date of this memo.

<sup>30</sup> As discussed in Suitability determination points on page 5 above.

<sup>31</sup> PAPs and AHMs must still disclose an arrest, conviction, or other criminal history even if it has been expunged, sealed, pardoned, or the subject of any other amelioration. 8 CFR 204.309(a).

- Failed to disclose each and every prior adoption home study, if completed or not, including those that did not favorably recommend the PAPs or AMHs for adoption or custodial care.<sup>32</sup>

If USCIS denies or revokes a suitability application due to one of these grounds, the PAPs will generally be barred from filing a new suitability application for one year. Such a denial or revocation is a factor that will be considered in the totality of the evidence for future filings.<sup>33</sup>

## 12. Communication between USCIS and DOS on updated home study events

Generally, both USCIS and DOS are involved in various stages of an intercountry adoption case.<sup>34</sup> USCIS and DOS case management systems do not have the capability to communicate or sync with each another. Thus, if either USCIS or DOS becomes aware of a suitability-related concern, they should immediately and regularly communicate until they resolve the concern. Officers should communicate through phone, email, or in accordance with local policy. See *Additional Issues, Approval and Other Notification Between USCIS and DOS* on page 17 below.

## 13. Requests for action on approved and valid suitability applications

These requests include:

- Updated approval notice requests due to:
  - A significant change in the household
  - A change in the number of or characteristics of the child(ren) that USCIS has approved the PAP to adopt
  - A home study preparer needing to address state pre-adoption requirements
- Extension requests
- Change of country requests
- Duplicate approval notice requests

## 14. Forms of child abuse

Child abuse can take various forms and includes child neglect. The Child Abuse Prevention and Treatment Act (CAPTA) identifies a minimum set of acts or behaviors that define child abuse and neglect, which include: “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation” or “an act or failure to act which presents an imminent risk of serious harm.”<sup>35</sup>

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<sup>32</sup> 8 CFR 204.309(a).

<sup>33</sup> 8 CFR 204.307(c)(1)(i) and (ii) for Hague cases and 8 CFR 204.3(h)(4) for non-Hague cases. For non-Hague cases, the one-year bar does not apply to a failure to disclose all prior home studies. The PAP will also be barred from filing a Form I-600 combo for one year. Compare 8 CFR 204.3(h)(4) with 8 CFR 204.307(c)(1)(i).

<sup>34</sup> The Hague process begins with the filing of a suitability application with USCIS at the National Benefits Center (NBC), but State issues final petition approval and visas. Page 30 of [Guidance on Conducting Form I-604, Determination on Child for Adoption, Orphan Determinations](#) illustrates the possibilities in non-Hague cases for USCIS and/or State involvement depending on the circumstances.

<sup>35</sup> See <https://www.childwelfare.gov/topics/can/defining/federal/> for more information.

An unregulated custody transfer (UCT)<sup>36</sup> occurs when a parent places his/her child in the care of other persons with the intent to transfer permanent custody of the child, or receives a child with the intent to gain permanent custody, without involving the child welfare or other state/local authorities or following the state/local process.<sup>37</sup> UCT has the potential to place children in imminent risk of harm due to its informal and unsupervised nature. USCIS views UCT as a form of child abuse or neglect.

Because USCIS considers UCT to be a form of child abuse or neglect, the home study preparer must ask the PAPs and any AMHs if they have ever transferred or received permanent custody of a child outside of the state/local authorities or outside of the state/local process and include their responses in the home study.<sup>38</sup> If the PAPs or AMHs have transferred or received permanent custody outside of the state/local process, USCIS will treat it as an adverse suitability factor. The home study preparer will need to assess and address whether the PAPs and/or AMHs have been appropriately rehabilitated before USCIS can make a favorable suitability determination.

If the individual failed to disclose any history of child abuse or neglect as an offender, including any investigations at any time even if closed or unsubstantiated, to USCIS and/or the home study preparer, USCIS will follow the steps in “Duty of disclosure and timeframe for notification” on page 9 above and may issue an RFE or NOID, as appropriate.

Though not all custody transfers will rise to the level of UCT and be an adverse suitability factor, the home study preparer must broadly ask the PAPs and AMHs if they have ever relinquished custody of any child. The home study preparer must then ask more narrow questions to try and determine if they ever transferred or received permanent custody of a child outside of the state/local authorities and include their responses in the home study. USCIS may issue an RFE or NOID if the home study preparer did not adequately address this issue.

#### 15. Child abuse registry checks

8 CFR 204.311(i) requires that a home study preparer check any available child abuse registries for any state or foreign country in which PAPs or AMHs have resided since his/her 18<sup>th</sup> birthday and include the results of these checks in the home study.

USCIS requires that all such child abuse registry checks be no older than 15 months at the time of the home study preparer’s signature. USCIS also requires that an original home study

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<sup>36</sup> A 2013 Reuters investigation called, “[The Child Exchange: Inside America’s underground market for adopted children](#)” drew attention to the practice of “re-homing” or unregulated custody transfer (UCT).

<sup>37</sup> The Interstate Compact on the Placement of Children (ICPC) governs the placement of children from one state to another. See <http://www.aphsa.org/content/AAICPC/en/resources/ICPCFAQ.html> for more information. While the ICPC only applies to interstate transfers and exempts certain categories of relative transfers, for purposes of determining PAP suitability, USCIS views UCT as any intent to make a permanent transfer without involving the child welfare or other state/local authorities or following the state/local process, whether intra or interstate, to anyone.

<sup>38</sup> USCIS will require that home studies comply with this policy beginning 90 days from the date of this memo.

contain the full results of such child abuse registry checks. For a home study update, however, USCIS only requires the results of such child abuse registry checks for the current residence and any state or foreign country the PAPs or AMHs have resided in since the prior home study or home study update submitted to USCIS. The home study preparer does not need to recheck child abuse registries for prior residences that were included in a prior home study/home study update unless the PAPs or AMHs have resided in that state or foreign country since the last check was completed.

If USCIS determines that a home study preparer did not check the child abuse registry in all required states/countries, USCIS will issue an RFE if the state/country has a child abuse registry. If a U.S. state or foreign country does not have a child abuse registry or if the child abuse registry is not “available,”<sup>39</sup> the home study preparer must note this in the home study.

For state child abuse registries, USCIS will generally rely on a home study preparer’s statement that a state either does not have a child abuse registry or that it is not available. USCIS though has the discretion to further review and verify any information provided in the home study or from other sources and may issue an RFE as needed.

For foreign country child abuse registries, USCIS will generally refer to the list of countries on [uscis.gov](http://uscis.gov). USCIS may issue an RFE if the home study does not include a child abuse registry check for a country where one is available.

While 8 CFR 204.311(i)(4) states that the home study preparer must make a written request for the information and wait 6 months for a response, this is longer than the maximum RFE response period.<sup>40</sup> Therefore, USCIS strongly encourages PAPs to wait to file until the home study preparer has obtained this information. If USCIS has issued an RFE for missing child abuse registry checks from a state/country with a known/available child abuse registry and the state/country has not responded before the RFE response deadline, the PAP must formally respond to the RFE before the deadline with evidence of the home study preparer’s unsuccessful attempts to obtain the information. If USCIS does not receive a response to the RFE or if the response does not sufficiently address the deficiency in the filing, we may deny the case.<sup>41</sup>

If a country no longer exists or if its name has changed, the home study preparer must identify the geographic location where the PAPs and/or AMHs lived to determine what country it is now and check its child abuse registry accordingly. If a country’s border has changed, the home study preparer must generally check with both the new and former country.

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<sup>39</sup> A child abuse registry is not “available” if the state or foreign country will not release the information to either the home study preparer or the individual to whom the information relates, or has not done so within 6 months of a written request for the information. 8 CFR 204.311(i)(4).

<sup>40</sup> The maximum response time for an RFE is 84 days, plus 3 for mailing if the PAPs reside in the United States (for a total of 87 days) or 14 days if the PAPs reside abroad (for a total of 98 days). See [PM-602-0040](#).

<sup>41</sup> If the PAP establishes these good faith efforts by a preponderance of the evidence, USCIS will generally consider that 8 CFR 204.311(i)(4) has been satisfied. USCIS will not apply the one year bar from 8 CFR 204.307(c)(1)(i) or 8 CFR 204.3(h)(4) if there is evidence of a good faith effort to comply with child abuse registry checks.

16. Child(ren) in the home<sup>42</sup>

A home study must identify and list each child resident in the PAP's household by name, date of birth, country of birth, alien registration number (if any), and relationship to the PAPs. The home study preparer's recommendation must also include a discussion of any children in the home, including how their characteristics would impact the overall suitability of the home and the PAP's ability to care for additional children.

In addition, the home study preparer should include the following information about any children in the home in the home study:

- Each child's overall wellbeing, including his or her physical, mental, emotional, and behavioral health,
- Any special needs,
- Any criminal history, and
- Any additional information that is relevant to the overall suitability of the home and the PAP's ability to care for additional children in light of the children already in the home.

When possible, the home study preparer should observe any child in the home during the home visit or at some point during the home study process. If observation is not possible, the home study preparer should explain why.

17. Behavioral issues

Behavioral issues are a component of mental health/capabilities.<sup>43</sup> As a result, a home study must also fully address any PAP and/or AMH behavioral issues.<sup>44</sup>

18. Substance abuse

8 CFR 204.311(c)(14) requires that a home study include an evaluation of PAP suitability in light of any PAP or AMH disclosure of a history of substance abuse.<sup>45</sup> The regulation then explains that a person has a history of substance abuse "if his or her current or past use of alcohol, controlled substances, or other substances impaired or impairs his or her ability to fulfill obligations at work, school, or home, or creates other social or interpersonal problems that may adversely affect the applicant's suitability as an adoptive parent."

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<sup>42</sup> USCIS will require that home studies comply with this policy beginning 90 days from the date of this memo.

<sup>43</sup> 8 CFR 204.311(c)(15) requires that a home study address the "physical, mental, and emotional health" of the PAPs and AMHs. For cases not subject to the UAA, 8 CFR 204.3(e)(2)(i) likewise requires assessment of "physical, mental, and emotional capabilities."

<sup>44</sup> Consistent with 8 CFR 204.311(m) and (d)(1)(iii), which requires assessment of "behavioral issues," home studies must also address any PAP and/or AMH behavioral issue.

<sup>45</sup> 8 CFR 204.311(j) requires that the home study preparer ask PAPs and AMHs about any history of abuse, including substance abuse, even if it history did not result in an arrest or conviction. (j)(1) requires dates for any such history.

If the home study preparer determines that a PAP's and/or AMH's alcohol or drug use is substance abuse, the substance abuse must be addressed in the home study.<sup>46</sup> The home study must also address the individual's rehabilitation.<sup>47</sup>

19. Probation, parole, supervised release, or other similar arrangement

8 CFR 204.311(l) indicates that a home study preparer cannot make a favorable recommendation based on rehabilitation while a PAP or AMH is on probation, parole, supervised release, or other similar arrangement for any conviction. In addition, USCIS will not make a favorable recommendation if there are pending criminal charges or deferred decisions against such individuals. If a PAP or AMH is on probation, parole, supervised release, or other similar arrangement for any conviction, or if criminal charges are pending or adjudication is deferred, USCIS may issue an RFE. If the individual completes his or her period of probation, parole, supervised release, or other arrangement, resolves the pending or deferred criminal adjudication, and the PAP is able to provide a favorable home study recommending that the individual has been appropriately rehabilitated within the RFE response period, USCIS may consider that 8 CFR 204.311(l) has been satisfied.

20. Spouse's immigration status

A spouse who resides in the U.S. must have a lawful immigration status. A spouse who resides abroad will be factored into USCIS' suitability determination, but USCIS may not view his/her residing outside of the United States adversely.

21. Suitability-related information and the responsibility to make an independent decision

8 CFR 204.312(b) and 8 CFR 204.3(h)(2) give USCIS the responsibility to make an independent decision about suitability factors in Hague and non-Hague cases, respectively, and the authority to consult with other governmental entities and licensed professionals as appropriate. This responsibility includes considering any relevant information which may impact suitability.

As permitted by law or regulation and if necessary, USCIS may discuss suitability-related information with other federal, state, local, and foreign government agencies and authorized organizations without a Privacy Act waiver or consent to disclose from the applicant/petitioner. Officers will coordinate the release of such information with the USCIS Office of the Chief Counsel to ensure compliance with any and all Privacy Act or other confidentiality protections.

22. Biometrics, electronic refreshes, and police clearance letters

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<sup>46</sup> Home study preparers should evaluate current or past use of state-legal marijuana consistent with other controlled substances.

<sup>47</sup> 8 CFR 204.311(l). Note that 8 CFR 204.311(g)(4) requires that the home study preparer refer an individual to a substance abuse counselor if there are areas beyond his/her expertise that need to be addressed.

USCIS allows for a one-time, no-fee biometric refresh for intercountry adoption cases if the 15-month validity period has or will expire before final adjudication of a PAP's case. PAPs and AMHs are not required to maintain continuous biometric validity. However, all biometrics must be valid for USCIS to approve a:

- Suitability application,
- Request for action on an approved suitability application, or
- Form I-600/Form I-800 petition.

With this memorandum, USCIS supersedes the guidance in the March 13, 2009 internal memorandum (*Process to facilitate resubmission of electronic fingerprints for clearance in adoption and overseas military naturalization cases*). When USCIS receives a no-fee extension or a one-time, no-fee fingerprint request, USCIS will first attempt to refresh<sup>48</sup> all PAP and AMH biometrics rather than requiring that the individual attend a biometric services appointment.<sup>49</sup> If USCIS is unable to refresh an individual's biometrics (for example, because his/her fingerprints are unclassifiable), USCIS will require that individual to appear in person to provide biometrics.<sup>50</sup>

In the course of final adjudication, if USCIS discovers that the biometrics for an individual, who has already received his or her one-time, no-fee fingerprinting, have expired or that an additional individual needs to provide biometrics, USCIS will issue an RFE.

If USCIS receives 2 consecutive sets of unclassifiable biometrics,<sup>51</sup> USCIS will issue an RFE for police clearances<sup>52</sup> for all residences for the last 5 years. If a U.S. state record is available, it is required in place of a clearance from a local police department:

- When an arrest record is needed to complete required information on a conviction,
- To document that there were no arrests, or
- To document that an arrest did not lead to court action.

Police clearances are not available from certain countries.<sup>53</sup> If a police clearance is generally available, but a country is unable to provide one, the PAP should provide a letter from the appropriate foreign authority stating that it is not available.

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<sup>48</sup>USCIS will attempt to resubmit that individual's information and request that the Federal Bureau of Investigation (FBI) refresh his/her fingerprint results without that individual having to attend another in-person appointment. The NBC will follow its local process and International Operations officers will follow the International Operations Fingerprinting Standard Operating Procedures (SOP) when refreshing fingerprints.

<sup>49</sup> Since there are no Application Support Centers (ASCs) abroad, individuals who reside abroad must submit a completed FD-258, Applicant Fingerprint Card, or appear for electronic biometrics where available.

<sup>50</sup> Individuals residing abroad must either submit a completed FD-258 or appear for electronic biometrics.

<sup>51</sup> The physical condition of certain hands or fingers may make it difficult to capture a useable set of fingerprints. For example, individuals could have a condition rendering their joints inflexible, or they may have worked with harsh chemicals that damaged the surface of their fingers. If the Federal Bureau of Investigation (FBI) deems an individual's fingerprints unclassifiable, that individual must provide a 2<sup>nd</sup> set of biometrics unless USCIS grants an exemption.

<sup>52</sup> The term "police clearance" means official evidence of a record of arrests, lack of arrests, or confirmation that an arrest did not result in court action from a local police department or from a state agency responsible for maintaining arrest records.



The date of any such police clearance letter will become the start date of the 15-month validity period. If more than one letter is submitted, the date of the earlier letter will become the validity period start date.

### ***Additional Issues***

#### **Approval and Other Notification Between USCIS and DOS**

The October 23, 2008 memorandum requires that the USCIS National Benefits Center (NBC) and international offices send intercountry country adoption approvals and other notifications to the U.S. Department of State (DOS) via the National Visa Center (NVC) and states that “USCIS is not to send any adoption information to overseas posts directly.”

USCIS supersedes this memorandum in part as it applies to USCIS international offices. USCIS international offices may communicate directly with DOS consular officers on adoption cases, including transmitting notifications and approvals, in the manner in which the office deems most appropriate and consistent with local policy.

USCIS also supersedes this memorandum in part as it applies to NBC and DOS communication on updated home studies. Effective immediately, the NBC and DOS consular officers can and should communicate immediately and regularly if either becomes aware of a suitability-related concern until there is a resolution. International Operations and consular officers should do this as well. Officers should communicate through phone, email, or in accordance with local policy.

USCIS should notify DOS (via the NVC for the NBC and directly for international offices) when USCIS has denied or revoked an intercountry adoption application, petition, or suitability-related approval and when an applicant or petitioner withdraws. If a PAP withdraws a petition s/he filed with DOS abroad, the consular officer should send the file and written letter of withdrawal to the USCIS office with jurisdiction abroad.

#### **Form I-600 Concurrent (“Combination”) Filings**

Unlike the Hague process, 8 CFR 204.3(d)(3) allows for PAPs to file Form I-600 and also request a suitability determination as part of the Form I-600 adjudication instead of having to file Form I-600A first. To improve processing, USCIS is standardizing how we will handle such filings.

When USCIS reviews a concurrent filing, we may issue an RFE for any missing supporting documentation (including a home study that matches the particular child the PAPs have petitioned for) related to the PAP’s suitability/eligibility and the child’s eligibility.

When possible, before making a determination on the child’s eligibility (beyond the age requirements), USCIS will make a suitability determination. If favorable, USCIS will notify the prospective parent of the suitability determination and then adjudicate the child’s eligibility. If USCIS makes an unfavorable suitability determination, we will deny the Form I-600.

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<sup>53</sup> Officers must check [DOS’ reciprocity tables](#) to determine a country’s police clearance availability.

Before Form I-600 petition approval, the PAP will need to notify USCIS if there is a:

- Significant change in the PAP’s household,
- Change in the characteristics of the child(ren) noted in the home study preparer’s recommendation for adoption, and/or
- Change that requires the home study preparer to address state pre-adoption requirements.

After Form I-600 approval, but before the child immigrates to the U.S., the PAPs must request an updated suitability determination if any of the above-listed changes occur.

### Hague Grandfathering Provisions

The Hague Adoption Convention entered into force in the United States on April 1, 2008. The transition provisions in the Intercountry Adoption Act of 2000 do not address cases of children immigrating to the United States from countries where the Convention enters into force after April 1, 2008. Certain cases may continue to follow the orphan process rather than having to start over to follow the Hague process, despite the Hague Adoption Convention entering into force. This is known as “Hague grandfathering.”

Provided that the new Hague partner country agrees to process non-Hague adoptions,<sup>54</sup> USCIS will consider a case to be Hague grandfathered if a PAP:

- Filed Form I-600A before the country’s entry into force date,<sup>55</sup>
- Filed Form I-600 before the country’s entry into force date, or
- Completed an adoption before the country’s entry into force date.

Accordingly, the AFM is revised as follows:

- ☞ 1. Chapter 21.5(b) of the AFM is revised in accordance with the above guidance.

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

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#### **(b) Adjudication of Form I-600A.**

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#### **(2) Evidence That the PAP (and Spouse, If Married) Is Prima Facie Eligible.**

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<sup>54</sup> The new Hague partner country may have additional restrictions or requirements.

<sup>55</sup> The Form I-600A does not need to be country-specific. PAPs, however, cannot use their one-time, no-fee change of country for the purposes of becoming Hague grandfathered if they already designated a country. The PAP’s Form I-600A approval must remain valid until the PAPs file the Form I-600 petition in order for the case to remain grandfathered. If the PAPs were approved to adopt more than one child, the Form I-600A approval must remain valid at the time each Form I-600 petition is filed in order for each child’s case to be considered grandfathered. PAPs may not file a second Form I-600A to extend their grandfathered case.

- If the PAP is married, his or her spouse must be a United States citizen or be in lawful immigration status if residing in the United States. Evidence of the spouse's citizenship or lawful immigration status must be submitted with the [Form I-600A](#).

\* \* \* \* \*

If the spouse resides in the United States and does not have LPR status, the current immigration status (nonimmigrant, parole, etc.) and the reason and impact of this status on the stability of the home should be reviewed. For instance, some spouses may elect to retain nonimmigrant status for tax purposes. Or, there may be instances where a United States citizen who ordinarily resides abroad is temporarily assigned to a job in the United States and the spouse may be eligible for a valid nonimmigrant status during the term of the United States citizen's temporary assignment to the United States. The lack of LPR status of the spouse does not preclude a favorable determination by USCIS.

\* \* \* \* \*

### (3) Fingerprinting Requirements.

The PAP, the PAP's spouse, and any adult members of the household (AMHs) must be fingerprinted. If the PAP is residing in the United States, USCIS will schedule the fingerprinting at an Application Support Center (ASC).

If the PAP is residing outside of the United States, fingerprints may be taken at a U.S. Embassy, consulate, military installation or USCIS office. If the [Form I-600A](#) is ultimately denied, and the criminal record was a ground for such denial, a copy of the denial and of the record of proceeding of the Form I-600A should be made a part of the A file.

All required procedures on fingerprints must be followed including those relating to "idents," and "unclassifiable" fingerprints. When you receive a no-fee extension, or a one-time, no-fee fingerprint request, first attempt to refresh all PAP and AMH biometrics rather than requiring that the individual attend a biometric services appointment. If you are unable to refresh an individual's biometrics (for example, because his/her fingerprints are unclassifiable), you must require that individual to appear in person to provide biometrics if he or she resides in the United States. If the individual resides abroad, he or she must submit a completed FD-258, Applicant Fingerprint Card, or appear for electronic biometrics where available.

If you receive 2 sets of unclassifiable biometrics, issue an RFE for police clearances for all residences for the last 5 years. If a state record is available, it is required over a clearance from a local police department:

- When an arrest record is needed to complete required information on a conviction,
- To document that there were no arrests, or
- To document that an arrest did not lead to court action.

Police certificates are not available from certain countries. Check the Department of State's [reciprocity tables](#) to determine a country's police clearance availability. If a police clearance is generally available but a country is unable to provide one, the PAP should provide a letter from the appropriate foreign authority stating that it is not available.

\* \* \* \* \*

(4) Home Study Requirements for non-UAA Cases.

The Intercountry Adoption Universal Accreditation Act of 2012 (UAA), effective July 14, 2014, imposes certain requirements on any case that does not meet the transition criteria outlined in UAA Section 2(c). The UAA has significant implications for Form I-600A and Form I-600 adjudications, including home study preparation and required home study elements, among others. See Chapter 21.5(e) to determine if the UAA applies to a particular case and what to do if it does apply. Chapter 21.5 (e)(2)(C) lists the home study requirements when the UAA applies.

\* \* \* \* \*

- An assessment of the physical, mental, behavioral, and emotional capability of the applicant and his or her spouse, if married, to properly parent a child has been conducted.

\* \* \* \* \*

- The applicant, his or her spouse, and all adult members of the household were asked if they had any history of abuse (sexual, substance, or child—including unregulated custody transfer (UCT), where a parent places his/her child in the care of other persons with the intent to transfer permanent custody of the child, or receives a child with the intent to gain permanent custody, without involving the child welfare or other process) domestic violence, or any other criminal history even if it did not result in an arrest or conviction. This information must be checked against the fingerprint check. Failure to disclose an arrest, conviction, or history of substance, sexual and/or child abuse, and/or domestic violence to the agency conducting the home study and to USCIS may result in the denial or revocation of the application or petition. A new application or petition may not be submitted for reconsideration until a one-year period has elapsed from such a denial or revocation.
- The applicant, his or her spouse, and all adult members of the household were asked if they ever relinquished custody of any child.
- If the state where the applicant resides has a child abuse registry, evidence that the applicant, his or her spouse, and all adult members of the applicant's household were checked against this registry must be included, and the results of the check must also be included. These checks must not be older than 15 months at the time the home study preparer signs the home study. An original home study must contain the full results of such child abuse registry checks. For a home study update, however, only the results of such child abuse registry checks for the current residence and any state the PAPs or AMHs have resided in since the prior home study or home study update submitted to USCIS are required. The home study preparer does not need to recheck child abuse registries for prior residences that were included in a prior home study/home study update unless the PAPs or AMHs have resided in that state since the last check was completed.

- Failure to cooperate in having child abuse registries checked WILL result in denial of the application or petition. Any new application or petition filed within a year of such denial will also be denied.
- If the state where the applicant resides does not have a child abuse registry or will not release information to the home study preparer or to the applicant, his or her spouse, and all adult members of the household, this must be noted in the home study.
- If the child will be coming to the U.S. for adoption (either because the PAPs will only obtain legal custody for the purposes of emigration and adoption in the U.S. or because only one PAP of a married couple will adopt the child), the home study must indicate this and contain a description of any state pre-adoption requirements and the steps that the PAPs have or will take to comply with them. The home study preparer must cite any relevant state statutes and regulations. If a state does not have pre-adoption requirements, the home study preparer must indicate this.

\* \* \* \* \*

- There is a specific recommendation and discussion of the reasons for the recommendation contained in the home study. The recommendation must state the number of children the PAP is recommended to adopt, and may state other characteristics such as age, gender, nationality, and/or special need, disability, and/or impairment.

\* \* \* \* \*

(B) The officer who is adjudicating the [Form I-600A](#) must be satisfied that proper care will be provided for the orphan. Given the responsibility to make an independent decision in [8 CFR 204.3\(h\)\(2\)](#), if there is reason to believe that a favorable home study was based on inadequate or erroneous evaluation of all of the facts, the officer must attempt to resolve these issues with the home study preparer, the applicant(s), and the state agency that reviewed the home study (if any). Issues that may need to be addressed include but are not limited to: criminal history; disabilities of the applicant(s); threatening/dangerous behavior when working with USCIS; and financial issues. As permitted by law or regulation and if necessary, you may discuss suitability-related information with other federal, state, local, and foreign government agencies and authorized organizations without a Privacy Act waiver or consent to disclose from the applicant/petitioner. Officers will coordinate the release of information with the USCIS Office of the Chief Counsel to ensure compliance with any and all Privacy Act or other confidentiality protections.

(C) If the home study will be more than six (6) months old at the time of submission to USCIS, the applicant must ensure that it is updated by the home study preparer. Also, if there have been any significant changes in the applicant(s) circumstances (such as change of residence, marital status, criminal history, significant decrease in financial resources, and/or the addition of one or more children or other dependents to the family), the applicant must ensure that an amended home study addressing the changed circumstances is submitted to USCIS.

\*\*\*\*

(5) Preadoption Requirements.

If the child will be coming to the U.S. for adoption (either because the PAPs will only obtain legal custody for the purposes of emigration and adoption in the U.S. or because only one PAP of a married couple will adopt the child), the home study must indicate this and contain a description of any state pre-adoption requirements.

(6) Child from a Hague Adoption Convention Country.

The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Adoption Convention or Convention) entered into force for the United States on April 1, 2008. AFM [Chapter 21.6](#) 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 when a U.S. citizen habitually resident in the United States adopts a child habitually resident in a Hague Convention country on or after April 1, 2008. If the Convention and these regulations apply to a case, then the child may not immigrate as an “orphan” under [section 101\(b\)\(1\)\(F\)](#) of the Act unless the case is Hague grandfathered.

(A) Grandfathering provisions for countries where the Convention entered into force **before** April 1, 2008.

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 governed by the Hague Adoption Convention can continue as an non-Hague orphan case if the PAPs filed a [Form I-600A](#) or a [Form I-600](#) before April 1, 2008. Further, PAPs may file a Form I-600 or Form I-600A if they completed a full and final adoption of a child habitually resident in a Hague Convention country prior to April 1, 2008.

\* \* \* \* \*

(B) Grandfathering provisions for countries where the Convention entered into force **after** April 1, 2008:

Provided that the new Hague partner country agrees to process non-Hague adoptions,\* USCIS will consider a case to be Hague grandfathered if a PAP:

- Filed Form I-600A before the country’s entry into force date,\*\*
- Filed Form I-600 before the country’s entry into force date, or
- Completed an adoption before the country’s entry into force date.

\*Note that the new Hague partner may have additional restrictions.

\*\*The Form I-600A does not need to be country-specific. PAPs, however, cannot use their one-time, no-fee change of country for the purposes of becoming Hague grandfathered if they already designated a country. The PAP’s Form I-600A approval must remain valid until the PAPs file the Form I-600 petition in order for the case to remain grandfathered. If the PAPs were approved to adopt more than one child, the Form I-600A approval must remain valid at the time each Form I-600 petition is filed in order for each child’s case to be

considered grandfathered. PAPs may not file a second Form I-600A to extend their grandfathered case.

(7) Adjudicative Issues.

The purpose of **Form I-600A** is to determine the eligibility and suitability of the prospective adoptive parent(s) to adopt. Although a favorable home study is required to establish suitability, it is not the end of the adjudicator's review. The adjudicating officer must make an independent decision on the merits of the case, the home study, and any other suitability-related evidence the adjudicator is aware of, as required by 8 CFR 204.3(h)(2). As permitted by law or regulation and if necessary, you may discuss suitability-related information with other federal, state, local, and foreign government agencies and authorized organizations without a Privacy Act waiver or consent to disclose from the applicant/petitioner. Officers will coordinate the release of information with the USCIS Office of the Chief Counsel to ensure compliance with any and all Privacy Act or other confidentiality protections.

- ☞ 2. Chapter 21.5(c) of the AFM is revised in accordance with the above guidance.

(c) Post-adjudication Actions.

(1) Approvals.

Prepare a Form I-600A Approval Notice (also known as Form I-171H or Notice of Favorable Determination Concerning Application for Advance Processing of an Orphan Petition) in all cases.

\*\*\*\*

(A) If the PAP intends to travel abroad to adopt or obtain legal custody and intends to file the **Form I-600** while abroad:

- National Benefits Center (NBC) officers forward the **Form I-600A** and the home study to the National Visa Center (NVC). International Operations officers forward directly to the site.
- NBC officers forward the "Visas 37" cable (see **Appendix 21-2**) to the NVC. International Operations officers forward directly to the site.
- Provide the PAP with a copy of the Form I-600A Approval Notice/Form I-171H
- If the **Form I-600A** was accompanied by a properly filed Form **G-28** or Form **G-28I**, provide a copy of the Form I-600A Approval Notice/Form I-171H to the attorney or representative of record. (see Note).

(B) If the PAP intends to file the Form I-600 with USCIS:

- Provide the PAP with a copy of the Form I-600A Approval Notice/Form I-171H.

- If the Form I-600A was accompanied by a properly filed Form G-28 or Form G-28I, provide a copy of the Form I-171H to the attorney or representative of record (see Note).
- Retain the Form I-600A, all supporting documents, and a copy of the Form I-600A Approval Notice/Form I-171H in a file folder. Mark the expiration date on the outside of this file folder.

**Note**

USCIS cannot recognize a Form G-28 or Form G-28I from an adoption agency unless the Department of Justice recognizes the agency as an agency authorized to represent others. Adoption agencies are generally not accredited.

(2) Requests for Action on an Approved and Valid Form I-600A.

Once USCIS has approved a Form I-600A, PAPs may need to make a variety of requests during their Form I-600A validity period. These requests include:

- Updated Form I-600A Approval Notice requests due to:
  - A significant change in the household
  - A change in the number of or characteristics of the child(ren) the PAP has been approved for
  - A change that requires that the home study preparer address state pre-adoption requirements
- Extension requests
- Change of country requests
- Duplicate Form I-600A Approval Notice requests

If you conclude that you can grant the action requested, send an updated Form I-600A Approval Notice (Form 171H) and Visa 37 cable, as appropriate. If USCIS cannot grant a [Form I-600A](#) action request, it does not serve as a revocation or denial of the original approval notice. The PAP has the right to file a subsequent request during the validity period, or to file a new Form I-600A with the required fee and supporting documentation.

**(A) Updated Approval Notice Requests.** PAPs will need to request an updated Form I-600A Approval Notice for 3 main reasons: 1) a significant change in their household, 2) a change in the number of or characteristics of the child(ren) USCIS has approved the PAP to adopt, and/or 3) a change that requires that the home study preparer to address state pre-adoption requirements.

(i) *Significant changes.*

Significant changes include, but are not limited to, changes in the following:

- Marital status
- Residence
- Significant decrease in financial resources



- Number of and/or identify of children in the household and/or AMHs
- Serious health conditions
- History of arrest, substance abuse, sexual abuse, child/abuse neglect, and/or family violence as an offender

Additionally, you should view the following changes accordingly:

- Significant decrease in financial resources– Means a decrease that causes you or the home study preparer to be reasonably concerned about the PAP's financial suitability. This includes, but is not limited to, any decrease that causes the family's income to fall below the Department of Health and Human Services (HHS) poverty guidelines, or an increase in debts or expenses that would impact the PAP's financial suitability or put the family below the HHS poverty guidelines. (Note: PAPs will generally need to demonstrate income at 125% of the poverty level for their household size unless the 100% exemption applies. The HHS poverty guidelines are a key tool that USCIS uses when evaluating financial resources, but are not the sole factor.)
- Pregnancy– Unless you or the home study preparer concludes that a household member's pregnancy needs to be addressed (for example, because it is significantly impacting a household member's physical, mental, emotional, or behavioral health or because it significantly decreases the PAP's financial resources), pregnancy by itself is **not a significant change** until the child is born and is a part of the household.
- Miscarriage– Unless the miscarriage significantly decreases the PAP's financial resources, or you or home study preparer reasonably concludes that the miscarriage has significantly impacted a household member's physical, mental, emotional, or behavioral health, a miscarriage is **not a significant change**.
- Serious health conditions– Include, but are not limited to, heart attacks, heart conditions requiring operation, cancers, strokes, conditions requiring extensive therapy or surgical procedures, chronic obstructive pulmonary disease (COPD), severe respiratory conditions or nervous disorders, mental disorders or dementia, and severe injuries.

If the significant change that occurs is a change in marital status, the PAP cannot request an updated approval notice. The PAP must instead submit a new Form I-600A with a new filing fee. For all other significant changes, the PAP follows the below process and submits an updated home study that evaluates these changes and the impact, if any, on the home study preparer's recommendation.

*(ii) Change in the number of or characteristics of the child(ren) that USCIS has approved the PAP to adopt.*

As Chapter 21.5(b)(4)(A) explains, the home study must state the number of children the PAPs are recommended for, and may state age, gender, country, or other characteristics. USCIS relies heavily on the home study preparer's recommendations but also has the responsibility and authority to make an independent decision. If the PAP wishes to change the number of or characteristics of the child(ren) USCIS has approved him/her for, the PAP must have an updated home study that supports these changes and follow the below process.

*(iii) Change that requires the home study preparer to address state pre-adoption requirements.*

This will happen if the child will be coming to the U.S. for adoption and the PAPs relocate to another state; the PAPs intended to adopt the child, but will only obtain legal custody for the purposes of emigration and adoption in the U.S.; or now only one PAP of a married couple will adopt. If such an event occurs, the PAPs must submit an updated home study.

The PAP must submit the following to the USCIS office that issued his/her Form I-600A Approval Notice to obtain an updated approval notice due to a significant change and/or a change in the number of or characteristics of the child(ren) that USCIS has approved the PAP to adopt:

- A letter explaining the changes and requesting an updated approval notice in light of the changes.
- A copy of the current and valid Form I-600A Approval Notice (Form I-171H).
- An updated home study, as well as a copy of the original home study (or last home study submitted to USCIS).

If you grant the updated approval notice request, issue an updated approval notice that reflects the new information but retains the Form I-600A expiration date.

Generally, both USCIS and the Department of State are involved in various stages of an adoption case. Our respective case management systems do not currently have the capability to communicate or sync with one another. Thus, if either USCIS or the Department of State becomes aware of a suitability-related concern, they should immediately and regularly communicate until they resolve the concern. Officers should communicate through phone, email, or in accordance with local policy.

**(B) Extension Requests.**

A PAP may request a one-time, no-fee extension of his/her Form I-600A Approval Notice.

The PAP must submit the following to the USCIS office that approved his/her Form I-600A:

- A letter requesting the one-time, no-fee extension,
- A copy of the current and valid Form I-600A Approval Notice/Form I-171H,
- An updated home study that addresses any significant change, new information, or new orphan country, as well as a copy of the original home study, and
- Request for one-time, no-fee biometric refresh.

USCIS must receive the extension request before the PAP's Form I-600A Approval Notice expires, but no earlier than 90 days before its expiration. If USCIS grants a Form I-600A extension request, it will expire eighteen months from the expiration date of the initial Form I-600A Approval Notice (Form I-171H) – not from the date USCIS granted the extension.

**(C) Change of Country Requests.**

USCIS will allow for a one-time, no-fee change of country request.

The PAP must provide the following to the USCIS office that approved his/her Form I-600A:

- A letter requesting the one-time, no-fee change of country and indicating the new non-Hague country,
- A copy of the current and valid Form I-600A Approval Notice (Form I-171H), and
- An updated home study if the original home study (or last home study submitted to USCIS) contained a country-specific recommendation that does not include the new country, as well as a copy of the original home study.

For second or subsequent change of country requests, PAPs must file Form I-824, Application for Action on an Approved Application or Petition, with fee.

**(D) Duplicate Approval Notice Requests.**

A PAP may request a duplicate Form I-600A Approval Notice by filing Form I-824 with fee.

(3) Denials.

If [Form I-600A](#) cannot be approved, the officer must explain in writing the specific reasons for denial. Remember that under [8 CFR 103.2\(b\)\(16\)](#), a Notice of Intent to Deny (NOID) is not required unless an intended denial is based upon information or evidence of which the applicant is unaware. USCIS should notify the Department of State (via the NVC for the NBC and directly for international offices) when USCIS has denied or revoked an intercountry adoption application or suitability-related approval and when an applicant withdraws.

☞ 3. Chapter 21.5(d) of the AFM is revised in accordance with the above guidance.

(d) Adjudication of Form I-600. \*\*\*\*

\* \* \* \* \*

(4) Evidentiary Requirements If the PAP Did Not First File Form I-600A (Form I-600 Concurrent or “Combination” Filing).

While the majority of petitioners do file a [Form I-600A](#) before filing a [Form I-600](#), this is not a regulatory requirement. Thus, a petitioner who files a Form I-600 without a valid Form I-600A is considered to be filing both the Form I-600 and Form I-600A concurrently. As such, in addition to the required documentation discussed above for the Form I-600, PAPs submitting a combination filing must also submit all documentation that is required for a Form I-600A. PAPs residing in the United States must file Form I-600 with the necessary fees with the USCIS Lockbox facility. PAPs residing abroad must file Form I-600 with the necessary fees with the USCIS office that has jurisdiction over the PAP’s residence or with the Lockbox. Only USCIS has jurisdiction over suitability determinations.

When USCIS reviews a concurrent filing, you may send an RFE for any missing supporting documentation (including a home study that matches the particular child for whom the PAPs have petitioned) related to the PAP’s suitability/eligibility and the child’s eligibility.

When possible, before making a determination on the child’s eligibility (beyond the age requirements), you will make a suitability determination. If favorable, you will notify the prospective parent of the suitability determination and then adjudicate the child’s eligibility. If you make an unfavorable suitability determination, you will deny the Form I-600.

Before Form I-600 petition approval, the PAP will need to notify USCIS if there is a:

- Significant change in the PAP’s household;
- Change in the characteristics of the child(ren) noted in the home study preparer’s recommendation for adoption; and/or
- Change that requires the home study preparer to address state pre-adoption requirements.

After Form I-600 approval, but before the child immigrates to the U.S., if any of the above-listed, the PAPs must request an updated suitability determination.

☞ 4. Chapter 21.5(e) of the AFM is revised in accordance with the above guidance.

(e) Requirements under the Intercountry Adoption Universal Accreditation Act UAA).\*\*

\*\*\*\*

(1) How to Determine If the UAA Applies.

\*\*\*\*

Officers should first determine if a case is grandfathered under option 1 above and only look to option 2 if the case cannot satisfy option 1. If it is not clear that option 2 is satisfied, officers may issue a Request for Evidence (RFE) requesting evidence that would establish that the case is grandfathered under option 2. In cases where an officer cannot determine if a case meets option 2, the officer should consult the appropriate Adoption Division country officer using adoption@state.gov to determine if option 2 is satisfied. When adjudicating Form I-600A or Form I-600, if officers cannot determine if a case is grandfathered based on the evidence in the record, officers should issue an RFE.

(2) Adjudication of Form I-600A When the UAA Applies.

\* \* \* \*

(B) Ensuring Proper Home Study Preparation and/or Approval.

All home studies must be conducted by an individual or agency authorized under 22 CFR Part 96 to conduct home studies for Hague Adoption Convention cases (see definition of home study preparer in 8 CFR 204.301), which includes:

- Public domestic authorities;
- Public foreign authorities;
- Accredited agencies;
- Approved persons;
- Supervised providers; and
- Exempted providers.

\* \* \* \*

While 22 CFR Part 96 allows approved persons to conduct home studies, it requires that an accredited agency review and approve such a home study. Thus, per 22 CFR 96.47(c), an accredited agency must review and approve any home study that was not performed by an accredited agency. The requirement for accredited agency review and approval, however, does not apply to a home study that a public domestic or public foreign authority conducts (see 8 CFR 204.311(t)(2)). If home study review and approval is needed, the date of the home study preparer's signature (and not the reviewer and approver's signature) is the applicable date for the purposes of the requirement that the home study be no more than 6 months old at the time it is submitted to USCIS.

\* \* \* \*

(C) Home Study Requirements.

A valid, original home study must be submitted within one year of the filing of a [Form I-600a](#). If a home study is not submitted within one year of filing a Form I-600A, USCIS must deny the Form I-600A under [8 CFR 204.3\(h\)\(5\)](#). Home studies must be no more than six (6) months old at the time of submission to USCIS and must contain the original signature of the home study preparer.

\* \* \* \*

Based on the requirements of 8 CFR 204.311, the home study must:

\* \* \* \*

- Identify any adult members of the household (AMH) (defined at 8 CFR 204.301) by name, alien registration number (if the individual has one), and date of birth.

\* \* \* \*

- Include at least one interview by the preparer of any **adult member of the household** and an assessment of him or her in light of the requirements of 8 CFR 204.311. According to 8 CFR 204.311(g)(2), the interview should be in person, unless the home study preparer determines that interviewing that individual in person is not reasonably feasible and explains the reason for this conclusion.
- Identify and list each child resident in the applicant's household by name, date of birth, country of birth, alien registration number (if any), and relationship to the applicant. The home study preparer's recommendation must also include a discussion of any children in the home, including how their characteristics would impact the overall suitability of the home and the applicant's ability to care for additional children.

In addition, the home study preparer should include the following information about any children in the home in the home study:

- Each child's overall wellbeing, including his or her physical, mental, emotional, and behavioral health,
- Any special needs,
- Any criminal history, and
- Any additional information that is relevant to the overall suitability of the home and the PAP's ability to care for additional children in light of the children already in the home.

When possible, the home study preparer should observe any child in the home during the home visit or at some point during the home study process. If observation is not possible, the home study preparer should explain why.

- Include the home study preparer's assessment of any potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home.

\* \* \* \*

- Summarize the pre-placement preparation and training already provided to the applicant concerning the issues specified in 22 CFR 96.48(a) and (b), the plans for future preparation and training with respect to those issues, or with respect to a particular child, as specified in 22 CFR 96.48(c). (22 CFR 96.48(a) requires at least ten (10) hours of preparation and training designed to promote a successful intercountry adoption unless an exemption applies under 22 CFR 96.48(g).)
- If the child will be coming to the U.S. for adoption (either because the PAPs will only obtain legal custody for the purposes of emigration and adoption in the U.S. or because only one PAP of a married couple will adopt the child abroad), the home study must indicate this and contain a description of any state requirements and the steps that the PAPs have or will take to comply with them. The home study preparer must cite any relevant state statutes and regulations. If a state does not have any pre-adoption requirements, the home study preparer must indicate this.
- Summarize the plans for post-placement monitoring specified in 22 CFR 96.50, if the child will not be adopted abroad.
- Specify if the home study preparer made any referrals as described in 8 CFR 204.311(g)(4) and include a copy of the report resulting from each referral, the home study preparer's assessment of the impact of the report on the suitability of the applicant to adopt.
- Include results of the child abuse registry checks conducted in accordance with 8 CFR 204.311(i) of every state or foreign country in which the applicant or any adult member of the household has resided since his or her 18th birthday, including that 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. Child abuse registry checks must not be older than 15 months at the time of the home study preparer signs the home study. An original home study must contain the full results of such child abuse registry checks. For a home study update, however, only the results of such child abuse registry checks for the current residence and any state or foreign country the PAPs or AMHs have resided in since the prior home study or home study update submitted to USCIS are required. The home study preparer does not need to recheck child abuse registries for prior residences that were included in a prior home study/home study update unless the PAPs or AMHs have resided in that state or foreign country since the last check was completed. See AFM Chapter 21.6(d)(2) for more on child abuse registries.

- Contain an evaluation of the suitability of the home for adoptive placement of a child in light of any applicant's or additional adult member of the household's history of abuse and/or violence as an offender. A single incident of sexual abuse, child abuse/neglect, or family violence is sufficient to constitute a "history" of abuse and/or violence. USCIS considers "rehomeing" or unregulated custody transfer (UCT) to be a form of child abuse/neglect. "Rehomeing" or UCT occurs when a parent places his/her child in the care of other persons with the intent to transfer permanent custody of the child, or receives a child with the intent to gain permanent custody, without involving the child welfare or other state/local authorities or following the state/local process. The home study preparer must ask the PAPs and any AMHs if they have ever transferred or received permanent custody of a child outside of the state/local authorities/process and include their responses in the home study. If UCT has occurred, the home study preparer will need to assess and address if the PAPs and/or AMHs have been appropriately rehabilitated.

\* \* \* \*

- Contain an evaluation of the suitability of the home in light of any applicant's or adult member of the household's history of substance abuse. A person has a history of substance abuse if his or her current or past use of alcohol, controlled substances, or other substances impaired or impairs his or her ability to fulfill obligations at work, school, or home, or creates other social or interpersonal problems that may adversely affect the applicant's suitability as an adoptive parent. If the home study preparer determines that a PAP's and/or AMH's alcohol or drug use is substance abuse, the substance abuse must be addressed in the home study. Home study preparers should evaluate current or past use of state-legalized marijuana consistent with other controlled substances. The home study must also address the individual's rehabilitation.
- Include a general description of the information disclosed in accordance with 8 CFR 204.311(m) concerning the physical, mental, and emotional health, or behavioral issues of the applicant and any adult member of the household.

\* \* \* \*

- Include a specific recommendation and discussion of the reasons for the recommendation contained in the home study. The recommendation must state the number of children the PAP is recommended to adopt and the country/countries the PAP is recommended to adopt from, and may state other characteristics such as age, gender, and/or special need, disability, and/or impairment.

\* \* \* \*

The officer who is adjudicating the [Form I-600A](#) must be satisfied that proper care will be provided for the orphan. Given the responsibility to make an independent decision in [8 CFR 204.3\(h\)\(2\)](#), if there is reason to believe that a favorable home study was based on inadequate or erroneous evaluation of all of the facts, the officer must attempt to



resolve these issues with the home study preparer, the applicant, and the state agency that reviewed the home study (if any). Issues that may need to be addressed include, but are not limited to: criminal history; one or more disabilities and/or impairments of the applicant; threatening/dangerous behavior when working with USCIS; and financial issues. As permitted by law or regulation and if necessary, USCIS may discuss suitability-related information with other federal, state, local, and foreign government agencies and authorized organizations without a Privacy Act waiver or consent to disclose from the applicant/petitioner. Coordinate the release of information with the USCIS Office of the Chief Counsel to ensure compliance with any and all Privacy Act or other confidentiality protections.

An updated home study is required when:

- There is a significant change in the PAP's household.
- There is a change in the number of or characteristics (such as age, gender, nationality, and/or special need, disability, and/or impairment) of the child(ren) the PAPs intend to or have adopted that was not previously assessed.
- There is a change that requires that the home study preparer address state pre-adoption requirements or address a new state's requirements if:
  - The child will be coming to the U.S. for adoption and the last home study submitted did not address these requirements.
- Requesting an extension of Form I-600A/Form I-800A approval.
- Requesting a change of country if:
  - The last home study submitted to USCIS did not recommend the PAP for the new country.
- A home study is more than six (6) months old at the time it is submitted to USCIS.

(D) Preadoption Requirements.

If the child will be coming to the U.S. for adoption (either because the PAPs will only obtain legal custody for the purposes of emigration and adoption in the U.S. or because only one PAP of a married couple will adopt the child), the home study must indicate this and contain a description of any state requirements and the steps that the PAPs have or will take to comply with them. The home study preparer must cite any relevant state statutes and regulations. If a state does not have any pre-adoption requirements, the home study preparer must indicate this.

(E) Form I-600A/I-600, Supplement 1, Listing of Adult Member of the Household.

Applicants are required to submit a Supplement 1 for each adult member of their household, as defined at 8 CFR 204.301. (Note: under 8 CFR 204.301, the term applicant includes the applicant, and his/her spouse, if married). If in the adjudication of Form I-600A, the officer learns about an adult member of the household for whom there is no signed Supplement 1, the officer should issue an RFE. Officers should update CAMINO/ACMS, as appropriate, to indicate that USCIS has received a Supplement 1 for each adult member of the household.

\* \* \* \* \*

(3) Post-Form I-600A Adjudication Actions. See and follow the guidance at Chapter 21.5(c)(1) for what to do after approving Form I-600A. Indicate the home study preparer and the accredited adoption agency, or primary adoption service provider (if any) in the appropriate field on the Visas 37 cable. See and follow the guidance at Chapter 21.5(c)(2) for requests for action on an approved and valid Form I-600A. See and follow the guidance at Chapter 21.5(c)(3) for denials.

\* \* \* \* \*

☞ 5. Chapter 21.5(f) of the AFM is revised in accordance with the above guidance.

(f) Post-Form I-600 Adjudication Actions

(1) Approvals.

Prepare Form I-600 Approval Notice (Form-171) in all cases. Security checks must be current.

(A) If petition is approved by a USCIS office in the United States:

- Forward the **Form I-600** and all supporting documentation to the NVC.
- In the case of a child approved as “adopted abroad,” prepare and forward the “Visas 38” to the NVC.
- In the case of a child approved as “coming to be adopted,” prepare and forward the “Visas 39” to the NVC.
- Provide the petitioner with Form I-171.
- If the **Form I-600** was accompanied by a properly filed **Form G-28 or Form G-28I**, provide a copy of the Form I-171 to the attorney or representative of record.
- Retain a copy of the Form I-171 and a copy of the “Visas 38” or “Visas 39” cable and document the date of mailing in the child’s A-File.

Note:

To forward the approval packet to the NVC expeditiously, the PAP must provide a prepaid envelope from a courier that provides express mailing service.

(B) If a petition is approved by a USCIS international office:

- Forward the **Form I-600** and all supporting documentation directly to the appropriate visa-issuing post via local procedures (i.e. hand-delivery, express courier, diplomatic pouch, etc.). Do not send to the NVC.
- In the case of a child approved as “adopted abroad,” prepare and forward the “Visas 38” to the visa-issuing post.
- In the case of a child approved as “coming to be adopted,” prepare and forward the “Visas 39” to the visa-issuing post.
- Provide the petitioner with the Form I-600 Approval Notice.

- If the **Form I-600** was accompanied by a properly filed **Form G-28 or Form G-28I**, provide a copy of the Form I-600 Approval Notice to the attorney or representative of record.

(2) Denials.

If you cannot approve a **Form I-600**, you must deny the petition and notify the petitioner of the reasons in writing. Under **8 CFR 103.2(b)(16)**, a notice of intent to deny is not required unless the intended denial is based upon information and/or evidence of which the petitioner is unaware. As required in Chapter 10.7(b)(5) of this manual, your decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider.

NBC officers should notify the Department of State of petition denials via the NVC. International Operations officers should notify the Department of State directly.

(3) Revocations.

If the Department of State returns an approved **Form I-600** for possible revocation, follow the applicable provisions of **8 CFR 205.2** regarding notice of intent to revoke and notice of revocation. As required in Chapter 10.7(b)(5) of this manual, your decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider. Remember, however, that when the Department of State returns a case for possible revocation, it is **only** a recommendation.

If the USCIS office that initially approved the **Form I-600** believes that the Consular Return Memo and supporting documentation does not support a revocation, return the Form I-600 to the entity that recommended revocation with an explanation in accordance with local policy as to why revocation is not appropriate.

If USCIS revokes the approval of the Form I-600, NBC officers should notify the Department of State via the NVC. International Operations officers should notify the Department of State directly. In addition, a petition may be subject to automatic revocation (without issuance of a Notice of Intent to Revoke) under **8 CFR 205.1** if any of the following occurs prior to visa issuance: the petitioner dies; the beneficiary dies; the PAP's marital status changes; or the petitioner withdraws the petition.

(4) Withdrawals.

PAPs must provide written notice to withdraw a petition.

If a PAP withdraws a petition he or she filed with the Department of State, the consular officer should send the file and written notice to the USCIS office with jurisdiction abroad. The USCIS international office will record the withdrawal in the appropriate system and send an acknowledgment to the petitioner.

NBC officers will record withdrawals in the appropriate system, send an acknowledgment to the petitioner, and should notify the Department of State via the NVC.

International Operations officers will record withdrawals in the appropriate system, send an acknowledgment to petitioner, and should notify the visa-issuing post.

- ☞ 6. Chapter 21.6(d) of the AFM is revised in accordance with the above guidance.

## 21.6 Petition for Hague Convention Adoptee

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### (d) Home studies and child abuse registries.

- (1) Home studies. Follow the guidance in AFM Chapter 21.5(e)(2)(B) to ensure proper home study preparation and/or approval and the home study requirements under 8 CFR 204.311 in AFM Chapter 21.5(e)(2)(C) to ensure that a home study complies with the necessary requirements.
- (2) Child 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 18th birthday. Child abuse registry checks must not be older than 15 months at the time of the home study preparer signs the home study. An original home study must contain the full results of such child abuse registry checks. For a home study update, however, only the results of such child abuse registry checks for the current residence and any state or foreign country the PAPs or AMHs have resided in since the prior home study or home study update submitted to USCIS are required. The home study preparer does not need to recheck child abuse registries for prior residences that were included in a prior home study/home study update unless the PAPs or AMHs have resided in that state or foreign country since the last check was completed.

If a U.S. state/foreign country does not have a child abuse registry or if the child abuse registry is not “available” (a child abuse registry is not “available” if the state or foreign country will not release the information to either the home study preparer or the individual to whom the information relates, or has not done so within 6 months of a written request for the information), the home study preparer must note this in the home study. For state child abuse registries, USCIS will generally rely on a home study preparer’s statement that a state either does not have a child abuse registry or that it is not available, but has discretion to further review and may still issue an RFE as needed. For foreign country child abuse registries, USCIS will generally refer to the list of countries on [uscis.gov](http://uscis.gov). USCIS may issue an RFE if the home study does not include a child abuse registry check for a country where one is available.

While 8 CFR 204.311(i)(4) states that the home study preparer must make a written request for the information and wait 6 months for a response, this is longer than the maximum RFE response period. Therefore, USCIS strongly encourages PAPs to wait to file until the home study preparer has obtained this information. If USCIS has issued an RFE for missing child abuse registry checks from a state/country with a known/available child abuse registry and the state/country has not responded before the RFE response deadline, the PAP must formally respond to the RFE before the deadline with evidence of the home study preparer's unsuccessful attempts to obtain the information. If USCIS does not receive a response to the RFE or if the response does not sufficiently address the deficiency in the filing, USCIS may deny the case. If the PAP establishes these good faith efforts by a preponderance of the evidence, USCIS will generally consider that 8 CFR 204.311(i)(4) has been satisfied. USCIS will not apply the one year bar from 8 CFR 204.307(c)(1)(i) or 8 CFR 204.3(h)(4) if there is evidence of a good faith effort to comply with child abuse registry checks.

If a country no longer exists or if its name has changed, the home study preparer must identify the geographic location where the PAPs and/or AMHs lived to determine what country it is now and check its child abuse registry accordingly. If a country's border has changed, the home study preparer must generally check with both the new and former country.

7. The AFM **Transmittal Memorandum** button is revised by adding a new entry, in numerical order, to read:

<b>PM-602-0165</b> November 9, 2018	<b>Chapter 21.5(b)</b> <b>Chapter 21.5(c)</b> <b>Chapter 21.5(d)</b> <b>Chapter 21.5(e)</b> <b>Chapter 21.5(f)</b> <b>Chapter 21.6(d)</b>	To provide guidance on issues related to prospective adoptive parent (PAP) suitability that may arise when adjudicating intercountry adoption cases.
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**Use**

This guidance is intended solely for the guidance of USCIS personnel in the performance of their official duties. 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 or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information.**

Forward questions on the guidance contained in this memorandum to Kelley Miller at the Refugee, Asylum and International Operations Directorate, International Operations Division Headquarters.