

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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Washington, DC 20536

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MEMORANDUM FOR INTERIM REGIONAL DIRECTORS, SERVICES
ACTING DIRECTOR, OFFICE of INTERNATIONAL AFFAIRS

FROM: William R. Yates /s/
Acting Associate Director for Operations,
Bureau of Citizenship & Immigration Services

SUBJECT: The “Adjudicate Orphan Status First” Pilot Program

Purpose

The purpose of this memorandum is to provide guidance in adjudicating the Application for Advance Processing of Orphan Petition (Form I-600A) and the Petition to Classify Orphan as an Immediate Relative (Form I-600) where the sending country or child identified is from a participating country in the “Adjudicate Orphan First” pilot program. This memorandum should be read in conjunction with pertinent regulations.

Background

As a result of circumstances encountered regarding adoptions in Cambodia, an Adoptions Task Force was created in January 2002. One of the many recommendations and findings of the task force was the need to provide changes to the adjudication process that allow for the determination of a child’s status as an orphan under the Immigration and Nationality Act (the Act) *prior to* a United States citizen adopting or obtaining legal custody of a child. If a prospective adoptive parent (PAP) opts to participate in the pilot program, then the Request for and Report on Overseas Orphan Investigation (Form I-604) into the child’s status as an “orphan” will be completed prior to final adjudication of the Form I-600. This program should prevent situations (such as were encountered in Cambodia) where a PAP has traveled overseas, completed an adoption in the foreign-sending country, and then been unable to return to the United States with that child because the Form I-604 investigation revealed that the child did not meet the Act’s definition of “orphan.” The pilot program involves the following five countries: Haiti, Honduras, Philippines, Poland, and Sierra Leone. Updates will be forwarded as countries are added or removed from this list.

Processing

- The PAP(s) submit a Form I-600A to the Bureau of Citizenship & Immigration Services (the Bureau) which is adjudicated under established procedure.
- If the Form I-600A is approved, the Bureau will send the PAP a letter explaining the special “adjudicate orphan status first” pilot program along with the Form I-600A approval notice (Form I-171H/I-797C). This letter will include instructions outlining the terms of the pilot program and, if returned to the Bureau, indicate that the PAP wishes to participate (please refer to the attachments).¹
- The PAP may opt to participate in the pilot program at the time the Form I-600 is filed, in either a field office in the United States or at a United States Embassy or consulate abroad, so long as no adoption or legal custody arrangement has taken place. The Form I-600 should be accompanied by all supporting information required at 8 CFR 204.3(d), except for the final adoption decree or custody decision.
- When the Form I-600 is received identifying an orphan from one of the pilot countries, the designated person will input the required information into the orphan first spreadsheet (as explained further on) and forward to a cc:mailbox designated for the collection of quality assurance data **regardless** of whether the PAP(s) are participating in the pilot program.
- The Form I-600 will be reviewed for prima facie eligibility. If documents submitted clearly indicate that the child is not an orphan on statutory grounds because, for example, the child has two parents and it is a private relinquishment, or the child is over the statutory age of eligibility at the time the petition is filed, a Form I-604 investigation should not be requested. Rather, the normal procedures for adjudication, including a request for further evidence if appropriate, or denial, should be followed.
- If the supporting documents establish that the identified child is prima facie eligible as an orphan, the officer should prepare the Form I-604 and all supporting original documents will be forwarded to the National Visa Center (NVC), clearly identifying the case as a participant in the Adjudicate Orphan Status First Pilot Program. The NVC will then forward the Form I-604 package by express mail to the overseas BCIS or State Department (DOS) office having jurisdiction over the Form I-604 investigation. A duplicate of the Form I-604 and supporting documents which have been sent to the NVC should be retained in the Form I-600 file which remains at the field office.

¹ The letter may also serve to indicate whether the PAP wishes to opt out from participation in the pilot program. They may, at any time during the adjudication process, request to opt out from participation in the pilot program and proceed to have their Form I-600 adjudicated under established procedures.

- The receiving office will give these cases the same high priority as other cases involving the immediate relatives of U.S. citizens. Cases which under the current process would be approved after a verification that the documentation is authentic and is in order, would continue to be approved after a similar review of the documentation. Cases which currently would lead to follow up questions regarding documentation would, under the new process, also require the same processing steps.
- If the Form I-604 investigation leads to an assessment that the child is an orphan as those terms are defined in the Act and 8 CFR 204.3, the overseas post will return the Form I-604 package directly to the sending domestic field office. The field office will issue a request for evidence (RFE) notifying the PAPs of the findings and instructing them to finalize the adoption/custody arrangement and submit documentation of such action. Following submission of the final adoption decree, the Form I-600 will be adjudicated as all others. In instances where a PAP wishes to travel abroad in order to adopt the child or is required by local laws to be physically present in the sending country, the BCIS stateside office will forward the unadjudicated Form I-600 packet to the overseas post having jurisdiction. If the overseas post determines that the Form I-600 is not clearly approvable the procedures for possible denial remain the same (i.e. DOS forwards to BCIS office overseas for appropriate action).
- If the Form I-604 investigation indicates that the identified child is not, or may not be, an orphan as defined in the Act and 8 CFR Section 204.3, and a field investigation, if appropriate, has been conducted without resolving the problem favorably, the overseas post will return the Form I-604 package directly to the sending domestic Field Office. The field office will then prepare a Notice of Intent to Deny (NOID), if appropriate.² This NOID shall inform the PAP that the child is not eligible for immigration as an orphan, and provide a summary of the results of the Form I-604 investigation and any additional evidence considered.
- If, at some point in this process, such as in the response to the NOID, new evidence submitted by the PAP or obtained through a field investigation supports an assessment that the child would be eligible for immigration as an orphan, the process followed would be that followed for a favorable assessment: a cover letter and a Request for Further Evidence (Form I-72) requesting a copy of the adoption decree or custody decision for completion of the evidence that is required for adjudication of the Form I-600 Petition. Should the PAP be required to be physically present by the local laws of the sending country, the BCIS stateside office will forward the unadjudicated Form I-600 packet to the overseas post having jurisdiction.

² In instances where DOS has referred an I-600 as not readily approvable to the INS overseas post having jurisdiction (for overseas filings) or back to the referring BCIS domestic office, the Service shall make the final determination as to the issuance of a NOID.

- Procedures for the adjudication of a Form I-600 filed at an overseas post remain the same, in that the Form I-604 must be completed *prior to* the approval or denial of the Form I-600. However, in order to qualify for the pilot program the PAP may not have already adopted the child identified in the Form I-600. If the overseas post determines that the Form I-600 is not clearly approvable the procedures for possible denial remain the same (i.e. DOS forwards to BCIS office overseas for appropriate action).
- If a Denial is issued and overturned on appeal, the process would be the same as the process described when a favorable determination of orphanhood is found.
- For all pilot countries, whether the PAP participated in the pilot program or not, any decision of denial that is issued by the Service should be forwarded to Joseph D. Cuddihy, Senior Management Counsel to the Director of the Office of International Affairs, via cc:mail, for analysis of the success of the program.

Orphan Adoption Quality Assurance Data Collection

As part of the Quality Assurance of the “Adjudicate Orphan First” pilot program, a data collection capability will be implemented. It is intended to help determine the success and progress of the pilot program and to compare the timeliness and validity of the pilot program with the current process. In order to gather the necessary data needed for program evaluation, all BCIS field offices, and the five overseas posts identified will conduct data entry using an Excel spreadsheet which will be distributed for this purpose (please refer to the attachments).

There are seven fields to be completed in the spreadsheet for domestic offices and six fields in the spreadsheet for overseas posts (see appendix A). Additionally, the spreadsheet will indicate the reporting FCO/overseas post and an individual case number. Each field must be annotated with the pertinent date of the action.

The following steps outline how, when, and where the data will be recorded and transmitted.

- All Form I-600’s that identify a country participating in the pilot program (Haiti, Honduras, Philippines, Poland, Sierra Leone, for orphan adoption) will require tracking and data entry under the pilot program *whether or not* the PAP has opted to participate in the program (or withdraws from participation).
- Upon receipt of the Form I-600 (or when the file comes under the control of the adjudicating officer) a case tracking number/identifier will be assigned to each individual filing under the pilot program (or identifying a country covered under the pilot), if one was not assigned previously by a forwarding office.

The tracking number naming format is as follows: It has 4 alphanumeric parts separated by a hyphen. It starts with a two letter sending country code; [**HT** (Haiti), **HD** (Honduras), **PO** (Poland), **SA** (Sierra Leone), **PI** (Philippines)]. The last part is a sequential number assigned to pilot cases in each office, starting with **001**, for each of the five sending countries. A column follows in which a “Y” for yes or an “N” for no will be entered in order to indicate whether the petitioner has chosen to participate in the pilot program. If, at some point in the process the petitioner decides to withdraw from participation this may be noted in the “comments” column on the spreadsheet.

- There will only be one QA tracking sheet per office, therefore, in instances where offices have more than one officer assigned to adjudicate orphan petitions, it is suggested that it be accessed on a shared computer drive, enabling access by more than one officer.
- The case tracking number should be attached to and physically accompany the Form I-600 case folder (file) as it moves through the adjudication process to allow continuous data entry on data collection worksheets.
- Where a field office has only one officer adjudicating orphan petitions, that officer should also serve in the capacity as point of contact (POC) to headquarters. Where there is more than one officer assigned to adjudicating orphan petitions, a single POC should be established (with a back up POC assigned).
- All tracking information for a particular site is captured on one single spreadsheet. Every time an action is taken on a case, the appropriate field in the spreadsheet should be filled and the file should be re-saved under its initial name. As time passes, the spreadsheet expands, containing data related to all cases filed at that particular field office. Do not keep more than one version of the spreadsheet (except for back-up purposes) as at any time the existing version should be the most complete and up-to-date version.
- The updated QA Excel tracking sheet shall be transmitted to HQ once per month, on or about 1st, for analysis to a dedicated cc:mailbox designated as ORPHAN QA, or for Department of State POCs e-mail to QA.ORPHAN@dhs.gov
- Any updates specific to a case requiring dialogue may also be transmitted to the cc:mailbox but must reference the case by the case tracking number assigned only. If a PAP opts to withdraw from participation in the pilot program, a brief explanation regarding reason(s) expressed for doing so could be included here.

ORPHAN FIRST PROCESSING
INFORMATION FOR PROSPECTIVE ADOPTIVE PARENTS

The Bureau of Citizenship & Immigration Services (BCIS) has developed a program that permits you, a prospective adoptive parent, to obtain a preliminary determination of whether a particular child qualifies as an orphan, as defined in section 101(b)(1)(F) of the Immigration and Nationality Act, **BEFORE** you travel abroad or find yourself legally bound to a child whose eligibility to immigrate as an orphan cannot be established. Currently, this program is available only if the foreign-sending country is Haiti, the Philippines, Honduras, Sierra Leone, or Poland.

Participation in this pilot program is voluntary. If you choose to participate, you should take the following steps:

1. Within 18 months of approval of your Form I-600A, Application for Advance Processing of Orphan Petition, identify a child and submit the Form I-600, Petition to Classify Orphan as an Immediate Relative, with all required documentation ***except the adoption decree or custody document***. Present the written statement indicating that you want to participate in this program, and that you have not yet adopted the child or obtained custody of the child for purposes of adoption. A copy of the written statement accompanies this notice.

In particular, you would present with your Form I-600 the documents from the foreign-sending country that support the finding that the child qualifies as an orphan. **PLEASE NOTE** that, as foreign public records, these documents must be certified as described in 8 CFR 287.6(b) or (c). You may, however, present legible photocopies of properly certified copies.

2. Upon reviewing the petition and associated documents, BCIS (or the Department of State) will determine whether the preponderance of evidence supports the conclusion that the child qualifies as an orphan. This process will include the overseas investigation required by 8 CFR 204.3(k)(1).
3. The BCIS will determine one of the following:
 - The child is an orphan.

OR

- The child does not meet the definition of an orphan.

Please Note: A finding that a child qualifies as an orphan is the only issue that is determined through participation in this program. No other immigrant issues are addressed nor can they be addressed until after you submit the additional documents required.

Please Note: If you proceed with the adoption of a child after the BCIS has determined that the child is not an orphan, it may not be legally possible for the child to immigrate to the United States, unless you live abroad with the child for at least two years. If you choose to participate in this program, please complete the attached statement and include it with your Form I-600. If a number is provided at the end of this letter, please include it on all correspondence.

Note: if BCIS has included a number on its initial correspondence, please include that number on all correspondence on this case.

**Voluntary Participation in "Adjudicate Orphan Status First" Pilot
Attachment To Initial Form I-600 Submission**

I, _____, have freely chosen to participate in the BCIS "Adjudicate Orphan Status First" pilot, and for that reason I provide this statement in support of the attached Form I-600, Petition to Classify Orphan as an Immediate Relative.

1. I have filed a Form I-600 with the _____ office of the Bureau of Citizenship & Immigration Services (*or with the specified consulate, if filed there*).

2. I filed this Form I-600 on behalf of _____, a child who was born on _____, in _____.

3. I believe in good faith that _____ is an orphan, as defined by section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F), on the basis of the evidence that I submitted with my Form I-600.

4. Based on the BCIS Director's recommendation, I have not yet adopted or received either legal or physical custody of _____, so that the BCIS can determine whether (he)(she) is an orphan before I proceed with the adoption.

5. If the BCIS finds that _____ is an orphan, then I intend in good faith to (adopt _____ in _____ according to the laws of that country) (acquire custody of _____ according to the laws of that country), and bring _____, to the United States for adoption according to the laws of the State of _____. (If applicable: Since I am married, my spouse, _____, will also adopt _____.)

6. I understand that in response to this request, the United States government will provide me with information on whether this child is an orphan under United States law, and therefore eligible to immigrate to the United States. I understand that the United States government cannot guarantee that the child's government will allow me / us to adopt / gain custody of _____. I also understand that if information becomes available after I have received the results of the United States' government's evaluation, it could affect the outcome of the Form I-600.

7. Once I have (completed the adoption of _____) (obtained legal custody of _____, and permission to bring him/her to the United States for adoption), I will submit to the BCIS the evidence required by 8 CFR 204.3(d)(1)(iv).

Date: _____ Petitioner _____