



Questions and Answers

USCIS International Operations – American Immigration Lawyers Association (AILA) Meeting April 5, 2017

Overview

On April 5, 2017, USCIS hosted an engagement with AILA representatives. USCIS representatives from the International Operations Division and Field Operations Directorate discussed issues relating to intercountry adoptions. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Adoptions

1. Members are reporting that the processing times for I-130 adoption cases involving children from Hague and Non-Hague countries are increasing, with many taking well over a year.
 - a. It is our understanding that many I-600, I-800, and I-130 adoption-related petitions are being handled by a separate division at the NBC facility in Overland Park. Is this still the case? If not, where are cases currently being processed?

Response: The USCIS National Benefits Center (NBC) has a unit in Overland Park, KS, that is dedicated to processing Form I-600, Form I-800, and Form I-130 petitions when the relationship is based on adoption AND the petition is filed concurrently with a Form I-485, Application to Register Permanent Residence or Adjust Status. Previously, when a petitioner filed a Form I-130 by itself without an associated Form I-485 application, the petition was adjudicated at one of the four USCIS service centers rather than at the NBC. However, we are in the process of transferring Form I-130 petitions filed on behalf of adopted children from the USCIS service centers to the NBC and will provide an update at our next meeting.

- b. Thank you for providing contact information for questions involving I-600 and I-800 cases. Would USCIS also consider providing contact information for adoption related I-130 cases?

Response: USCIS has considered providing a dedicated line or email for adoption-related Form I-130s but ultimately decided that such service would overlap with the mission of the National Customer Service Center (NCSC), which is already well-situated to answer Form I-130 case inquiries. When a petitioner requests a status update on a Form I-130 petition that is outside of normal processing time, and when the Form I-130 petition is pending with the Adoptions Division at the NBC, the inquiry (i.e. SRMT) is routed to the Adoptions Division at the NBC for

resolution. Customers may inquire about the status of their case by contacting the NCSC at 1-800-375-5283 or 1-800-767-1833 (TDD for the deaf or hard of hearing).

2. In the USCIS Interim Policy Memo, PM 602-0095, USCIS stated that in cases where the country of origin has a policy of not issuing statements of habitual residence, or where the petitioners show that they have attempted to obtain the statement of habitual residence from the country of origin for at least 6 months with no response, and the child was not paroled into the United States, the I-130 may still be approved if the child actually resided in the United States for a substantial period of time and established compelling ties in the United States.¹ However, members report receiving RFEs asking for proof of some or all of the PM 602-0095 criteria in cases in which they have provided a habitual resident statement. Members also report receiving RFEs in cases involving children from non-Hague countries. Can USCIS address what appears to be a training issue?

Response: If the Central Authority of the child's country of origin issued a statement saying the child is no longer considered habitually resident in the child's country of origin and the petitioner provides a copy of the statement and it is incorporated into an adoption order (or amended order), then the petitioner does not need to provide evidence to meet the intent, residence, or notice criteria listed in USCIS Interim Policy Memo, PM 602-0095. We would appreciate receiving examples of any Requests for Evidence (RFE) that may have been improperly issued so that we can address any training issues.

During the April 21, 2017 meeting, AILA also inquired about RFEs issued by USCIS related to bona fide adoptions and later provided several RFE examples. Please see below the USCIS response after review of the RFEs provided:

A U.S. citizen or lawful permanent resident who petitions to bring an adopted child to the United States must establish that the requirements at section 101(b)(1)(E) of the Immigration and Nationality Act (INA) and 8 CFR 204.2(d)(2)(vii) have been met, however meeting these requirements alone will not necessarily mean a Form I-130 petition is approvable. In *Matter of Huang*, 26 I&N Dec. 627 (BIA 2015), the Board of Immigration Appeals (BIA) [citing *Matter of M-*, 8 I&N Dec. 118, 119 (BIA 1958; A.G. 1959)] explained that Congress provided safeguards (the age restriction, the shared residence requirement) in 101(b)(1)(E) to “distinguish between *bona fide* adoptions, in which a child has been made a part of a family unit, and spurious adoptions, effected in order to circumvent statutory restrictions.” The Court went on to explain that merely satisfying the statutory provisions is not sufficient to determine if an adoption is *bona fide* and that the statutory scheme will “inevitably exclude some valid relationships and include some that are not valid.” *Id.* at 630. The Court specifically stated that “[w]here there is no indication that the biological parents are unable to continue their parental responsibilities, an adoption can actually undermine family unity by legally severing the biological family unit for improper purposes.” *Id.* At 629.

In *Matter of Marquez*, 20 I&N Dec. 160 (BIA 1990), the BIA found that adoptions must be evaluated not only for statutory eligibility, but “in light of the congressional intent to recognize only *bona fide* adoptive relationships.” The Court recognized that “most of the cases which raise the specter of a sham adoption arise in a limited factual context. Generally, the adoption is by a close relative, the natural parent or parents are still alive, ... and no meaningful objective evidence is provided that the relationship between the natural parents and adopted child changed subsequent to the adoption.” *Id.* at 164.

¹ USCIS Interim Policy Memo, PM 602-0095, “Criteria for Determining Habitual Residence in the United States for Children from Hague Convention Countries,” (Dec. 23, 2013), AILA Doc. No. 14010341.

The determination of whether an adoption is bona fide requires USCIS to consider the totality of circumstances. The factors set forth in the “bona fide adoption” section of the Request for Evidence examples you provided are relevant to this determination. No one factor is conclusive, but the elements together paint a picture. The child is not required to meet the definition of an “orphan” to immigrate under 101(b)(1)(E) of the INA, but two living birth parents whose parental rights are terminated by consenting to the adoption, may be relevant to the bona fides of an adoptive relationship, as are circumstances such as whether the birth parents continue to visit or live near or with the child, the child’s age at the time of adoption, a pre-existing relationship between the child and the adopting parent etc.,. If you have questions about this information, please feel free to submit them in advance of our next meeting.

3. The regulations in 8 CFR §204.309(b)(4) indicate that the I-800A and I-800 can be processed for a child in the United States if the child’s country of habitual residence permits this.

- a. Are you aware of any cases being processed under this provision?

Response: We are aware of a few cases that have been processed under this provision.

- b. How would this process be initiated?

Response: Before USCIS can grant final approval of a Form I-800 for a child in the United States, we must receive a Hague Adoption Certificate issued by the Department of State – see 8 CFR 204.313(h)(2). For additional information, please inquire with the Department of State. They can be contacted at adoption@state.gov.

4. INA §§101(b)(1)(E), (F) and (G) provide an exception to the child’s age limit (16) if a younger sibling was or will be adopted before turning 16. Please confirm that this exception is available when one child is adopted under INA §101(b)(1)(E) and the sibling is adopted through either INA §101(b)(1)(F) or (G).

Response: The sibling exception for Form I-130 applies if the beneficiary was adopted while under age 18, is the natural sibling of a child described in 101(b)(1)(E)(i) or (F)(i), and was adopted by the same adoptive parents as this sibling. Note: INA §101(b)(1)(G)(i) is not included in the older sibling exception at INA 101(b)(1)(E)(ii) or (F)(ii).

INA 101(b)(1)(E)(ii)	Sibling exception applies if qualifying natural sibling meets the definition of child at 101(b)(1)(E)(i) or (F)(i)
INA 101(b)(1)(F)(ii)	Sibling exception applies if qualifying natural sibling meets the definition of child at 101(b)(1)(F)(i) or (E)(i)
INA 101(b)(1)(G)(iii)	Sibling exception applies if qualifying natural sibling meets the definition of child at 101(b)(1)(G)(i), (F)(i) or (E)(i)

5. Please confirm that a child who entered the United States on an IR-4 visa but is not readopted will become a U.S. citizen if the requirements under INA §101(b)(1)(E) are met before the child turns 18 and the child otherwise meets the requirements of INA §320.

Response: These scenarios are complicated and fact specific. In general, there are several ways an

adopted child may qualify for citizenship under the Child Citizenship Act. Since circumstances surrounding each application are unique, USCIS must review the facts of each individual application to determine whether a child derives citizenship. If a child is eligible for citizenship under more than one section of law, USCIS generally uses the law most favorable to the applicant.

6. As requested, the following is a list of some potential areas of discussion regarding relative adoptions:
 - a. Many problematic relative adoption cases involve countries where there are a limited number of overall international adoptions, for example, Togo, Belize, and Malaysia. U.S. agencies continue to be reluctant to become service providers in connection with these cases.

Response: Thank you for this helpful information. We will also share it with our colleagues at the Department of State (DOS). As you know, DOS does not maintain information about which countries each adoption service provider has a program in. However, the [Council on Accreditation \(COA\)](#) has a function on its website to search accredited and approved providers by country. To access this information:

- Type the name of the country from which you want to adopt in the **“Organization/Program Name”** field and check the box for Hague adoption service provider to search.
- Please note that adoption service providers provide this information to COA on a voluntary basis so it is possible that accredited adoption service providers not listed may still be willing to act as the primary provider.
- In such cases, COA’s web page offers some guidance about [Finding a Primary Provider](#) that may be helpful.

- b. We continue to recommend that Universal Accreditation Act (UAA) country-specific guidance be issued, similar to that which was issued for Jamaica.² At a previous meeting, USCIS indicated that DOS had advised that it was planning to incorporate country-specific guidance for 14 countries.³ Has USCIS received any updates on the status of additional guidance? Are there any updates as to when the final memorandum (Interim PM 601-0103) regarding the implementation of the UAA will be published?⁴

Response: DOS informed us that instead of posting separate country-specific guidance like they did for Jamaica, they are in the process of overhauling and updating many of their country information sheets (CISs) to include UAA-related information.

Unfortunately, due to competing priorities, USCIS has not yet been able to take any further action towards finalizing the Interim Memo. We continue to monitor cases and flag areas for improvement/clarification. We hope to turn to this in FY18. Again, please do not hesitate to send

² *Jamaica: UAA Country Specific Guidance, Rev. 7-14-14.* Country Specific Guidance for Ukraine was previously published but is noted as “currently being revised.”

https://travel.state.gov/content/dam/aa/pdfs/JAMAICA_UAA_Country_Specific_Guidance.pdf;

<https://travel.state.gov/content/adoptionsabroad/en/hague-convention/agency-accreditation/universal-accreditation-act-of-2012.html>

³ *USCIS International Operations Liaison Meeting Q&As (10/22/15), Q13*, AILA Doc. No. 16011208, available at <http://www.aila.org/infonet/uscis-q-and-a-international-operations-10-22-15> The countries were identified as Bahamas, Bangladesh, Ghana, Guyana, Indonesia, Jamaica, Lebanon, Morocco, Nigeria, Pakistan, Rwanda, Sierra Leone, Uganda and Ukraine.

⁴ USCIS Interim Policy Memo, PM 602-0103, regarding Guidance on the Implementation of the and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications (30 June 2014), published on AILA InfoNet at Doc. No. 14070360; https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/PM-602-0103-Implementation_of_UAA.pdf

us any feedback you have on the Interim Memo or your views on the need for additional guidance.

- c. Though some agencies have indicated a willingness to assist families who are adopting a relative, there still is a serious shortage of agencies willing and able to take these cases.⁵ Have there been discussions between DOS and USCIS regarding this problem and have possible solutions been proposed?

Response: We have not had comprehensive discussions with DOS on relative adoptions since the September 2015 ASP Symposium where we worked together with the adoption service provider community to brainstorm solutions for relative adoption cases. DOS informs us that they have placed relative adoptions high on their regulatory agenda for FY18.

⁵For example, some agencies that have indicated to the Council on Accreditation (COA) that they are willing to assist families doing relative adoptions are listed on a document on the COA website at:
https://coa.my.salesforce.com/sfc/p/#300000000aAU/a/500000000Ms8/a5.7wMFAyOjpfk.Foj4HmtINBiMQ6ioyLOTz7SX_w9A