

of emigration and adoption, the Department of State officer with jurisdiction to adjudicate the child's application for an immigrant or non-immigrant visa has jurisdiction to grant final approval of the Form I-800. The Department of State officer may approve the Form I-800, but may not deny it; the Department of State officer must refer any Form I-800 that is "not clearly approvable" for a decision by a USCIS office having jurisdiction over Form I-800 cases. If the Department of State officer refers the Form I-800 to USCIS because it is "not clearly approvable," then USCIS has jurisdiction to approve or deny the Form I-800. In the case of an alien child who is in the United States and who is eligible both under 8 CFR 204.309(b)(4) for approval of a Form I-800 and under 8 CFR part 245 for adjustment of status, the USCIS office with jurisdiction to adjudicate the child's adjustment of status application also has jurisdiction to grant final approval of the Form I-800.

(d) *Use of electronic filing.* When, and if, USCIS adopts electronic, internet-based or other digital means for filing Convention cases, the terms "filing a Form I-800A" and "filing a Form I-800" will include an additional option. Rather than filing the Form I-800A or Form I-800 and accompanying evidence in a paper format, the submission of the same required information and accompanying evidence may be filed according to the digital filing protocol that USCIS adopts.

§ 204.309 Factors requiring denial of a Form I-800A or Form I-800.

(a) *Form I-800A.* A USCIS officer must deny a Form I-800A if:

(1) The applicant or any additional adult member of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) about the applicant or any additional member of the household 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; the fact that an arrest or conviction or other criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration does not relieve the applicant or addi-

tional adult member of the household of the obligation to disclose the arrest, conviction or other criminal history;

(2) The applicant, or any additional adult member of the household, failed to cooperate in having available child abuse registries checked in accordance with 8 CFR 204.311;

(3) The applicant, or any additional adult member of the household, failed to disclose, as required by 8 CFR 204.311, each and every prior adoption home study, whether completed or not, including those that did not favorably recommend for adoption or custodial care, the person(s) to whom the prior home study related; or

(4) The applicant is barred by 8 CFR 204.307(c) from filing the Form I-800A.

(b) *Form I-800.* A USCIS officer must deny a Form I-800 if:

(1) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-800A to reflect a change in marital status, the petitioner completed the adoption of the child, or acquired legal custody of the child for purposes of emigration and adoption, before the provisional approval of the Form I-800 under 8 CFR 204.313(g). This restriction will not apply if a competent authority in the country of the child's habitual residence voids, vacates, annuls, or terminates the adoption or grant of custody and then, after the provisional approval of the Form I-800, and after receipt of notice under article 5(c) of the Convention that the child is, or will be, authorized to enter and reside permanently in the United States, permits a new grant of adoption or custody. The prior adoption must be voided, vacated, annulled or otherwise terminated before the petitioner files a Form I-800.

(2) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-800A to reflect a change in marital status, the petitioner, or any additional adult member of the household had met with, or had any other form of contact with, the child's parents, legal custodian, or other individual or entity who was responsible for the child's care when the contact occurred, unless the contact was permitted under this paragraph. An authorized adoption service

provider's sharing of general information about a possible adoption placement is not "contact" for purposes of this section. Contact is permitted under this paragraph if:

(i) The first such contact occurred only after USCIS had approved the Form I-800A filed by the petitioner, and after the competent authority of the Convention country had determined that the child is eligible for intercountry adoption and that the required consents to the adoption have been given; or

(ii) The competent authority of the Convention country had permitted earlier contact, either in the particular instance or through laws or rules of general application, and the contact occurred only in compliance with the particular authorization or generally applicable laws or rules. If the petitioner first adopted the child without complying with the Convention, the competent authority's decision to permit the adoption to be vacated, and to allow the petitioner to adopt the child again after complying with the Convention, will also constitute approval of any prior contact; or

(iii) The petitioner was already, before the adoption, the father, mother, son, daughter, brother, sister, uncle, aunt, first cousin (that is, the petitioner, or either spouse, in the case of a married petitioner had at least one grandparent in common with the child's parent), second cousin (that is, the petitioner, or either spouse, in the case of a married petitioner, had at least one great-grandparent in common with the child's parent) nephew, niece, husband, former husband, wife, former wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the child's parent(s).

(3) The USCIS officer finds that the petitioner, or any individual or entity acting on behalf of the petitioner has engaged in any conduct related to the adoption or immigration of the child that is prohibited by 8 CFR 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption;

(4) The child is present in the United States, unless the petitioner, after compliance with the requirements of this subpart, either adopt(s) the child in the Convention country, or else, after having obtained custody of the child under the law of the Convention country for purposes of emigration and adoption, adopt(s) the child in the United States. This subpart does not require the child's actual return to the Convention country; whether to permit the child's adoption without the child's return is a matter to be determined by the Central Authority of the country of the child's habitual residence, but approval of a Form I-800 does not relieve an alien child of his or her ineligibility for adjustment of status under section 245 of the Act, if the child is present in the United States without inspection or is otherwise ineligible for adjustment of status. If the child is in the United States but is not eligible for adjustment of status, the Form I-800 may be provisionally approved only if the child will leave the United States after the provisional approval and apply for a visa abroad before the final approval of the Form I-800.

(5) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-800A to reflect a change in marital status, the petitioner files the Form I-800:

(i) Before the approval of a Form I-800A, or

(ii) After the denial of a Form I-800A; or

(iii) After the expiration of the approval of a Form I-800A;

(6) The petitioner is barred by 8 CFR 204.307(c) from filing the Form I-800.

(c) *Notice of intent to deny.* Before denying a Form I-800A under paragraph (a) or a Form I-800 under paragraph (b) of this section, the USCIS officer will notify the applicant (for a Form I-800A case) or petitioner (for a Form I-800 case) in writing of the intent to deny the Form I-800A or Form I-800 and provide 30 days in which to submit evidence and argument to rebut the claim that this section requires denial of the Form I-800A or Form I-800.

(d) *Rebuttal of intent to deny.* If USCIS notifies the applicant that USCIS intends to deny a Form I-800A under paragraph (a) of this section, because

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the applicant or any additional adult member(s) of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to cooperate in search of child abuse registries, or failed to disclose a prior home study, the applicant may rebut the intent to deny only by establishing, by clear and convincing evidence that:

(1) The applicant or additional adult member of the household did, in fact, disclose the information; or

(2) If it was an additional adult member of the household who failed to cooperate in the search of child abuse registries, or who failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to disclose a prior home study, that that person is no longer a member of the household and that that person's conduct is no longer relevant to the suitability of the applicant as the adoptive parent of a Convention adoptee.

§ 204.310 Filing requirements for Form I-800A.

(a) *Completing and filing the Form.* A United States citizen seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must:

(1) Complete Form I-800A, including a Form I-800A Supplement 1 for each additional adult member of the household, in accordance with the instructions that accompany the Form I-800A.

(2) Sign the Form I-800A personally. One spouse cannot sign for the other, even under a power of attorney or similar agency arrangement.

(3) File the Form I-800A with the USCIS office that has jurisdiction under 8 CFR 204.308(a) to adjudicate the Form I-800A, together with:

(i) The fee specified in 8 CFR 103.7(b)(1) for the filing of Form I-800A;

(ii) The additional biometrics information collection fee required under 8

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CFR 103.7(b)(1) for the applicant and each additional adult member of the household;

(iii) Evidence that the applicant is a United States citizen, as set forth in 8 CFR 204.1(g), or, in the case of a married applicant, evidence either that both spouses are citizens or, if only one spouse is a United States citizen, evidence of that person's citizenship and evidence that the other spouse, if he or she lives in the United States, is either a non-citizen United States national or an alien who holds a lawful status under U.S. immigration law.

(iv) A copy of the current marriage certificate, unless the applicant is not married;

(v) If the applicant has been married previously, a death certificate or divorce or dissolution decree to establish the legal termination of all previous marriages, regardless of current marital status;

(vi) If the applicant is not married, his or her birth certificate, U.S. passport biographical information page, naturalization or citizenship certificate, or other evidence, to establish that he or she is at least 24 years old;

(vii) A written description of the preadoption requirements, if any, of the State of the child's proposed residence in cases where it is known that any child the applicant may adopt will be adopted in the United States, and of the steps that have already been taken or that are planned to comply with these requirements. The written description must include a citation to the State statutes and regulations establishing the requirements. Any preadoption requirements which cannot be met at the time the Form I-800A is filed because of the operation of State law must be noted and explained when the Form I-800A is filed.

(viii) A home study that meets the requirements of 8 CFR 204.311 and that bears the home study preparer's original signature. If the home study is not included with the Form I-800A, the director of the office that has jurisdiction to adjudicate the Form I-800A will make a written request for evidence, directing the applicant to submit the home study. If the applicant fails to