



U.S. Citizenship  
and Immigration  
Services

## Interoffice Memorandum

To: Field Leadership

From: Lori Scialabba/s/  
Associate Director  
Refugee, Asylum & International Operations Directorate

Donald Neufeld/s/  
Acting Associate Director  
Domestic Operations

Date: July 14, 2008

Re: Acceptance of an I-600A and I-600 after 4/1/2008 for a child habitually resident in a Hague Adoption Convention country – adoptions and grants of custody obtained before April 1, 2008

This memorandum contains further information concerning adoptions completed prior to April 1, 2008 for a child habitually residing in a Convention country. The information following will clarify when Form I-600A/I-600 can still be filed and should be considered along with the previously issued memorandum titled, *Preliminary Guidance for USCIS Field Offices regarding Implementation of the Hague Intercountry Adoption Convention*, issued March 28, 2008.

### **I. Background**

The United States signed the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Adoption Convention) on March 31, 1994. In October 2000, Congress passed the Intercountry Adoption Act (IAA), Pub. L. 106-279. Section 302 of the IAA provided new section 101(b)(1)(G) of the Immigration and Nationality Act (Act). As a result of the Hague Adoption Convention and the IAA, USCIS published an Interim Rule amending relating sections of 8 CFR. *72 Fed. Reg.* 56,832. The Hague Adoption Convention

entered into force for the United States on April 1, 2008. 72 *Fed. Reg.* 71,730. The IAA and the Interim Rule became effective on the same day. *Cf.* 8 CFR 204.300. On March 28, 2008, a memorandum titled *Guidance for USCIS Field Offices regarding Implementation of the Hague Intercountry Adoption Convention* was issued to all field offices describing the process for accepting applications under the Hague Adoption Convention. This guidance did not address instructions on the filing procedures for a prospective adoptive parent who adopted a child prior to April 1, 2008 in what is now a Convention country and whose case was not otherwise “grandfathered” by the filing of an I-600A or I-600 prior to April 1, 2008. This memorandum is to provide clarification to the field on this issue.

A “Convention adoptee” is defined as “a child habitually resident in a Convention country who is eligible to immigrate to the United States on the basis of a Convention adoption.” 8 CFR 204.301. Furthermore, a “Convention adoption” is defined as an “adoption, on or after the Convention effective date, of an alien child habitually resident in a Convention country by a U.S. citizen habitually resident in the United States, when in connection with the adoption the child has moved, or will move, from the Convention country to the United States.” *Id.* The Convention effective date is April 1, 2008. An adoption that was completed before April 1, 2008, is *not* a Convention adoption. The Hague Convention Adoption Rules at 8 CFR 204.300, *et seq.*, therefore, do not apply, in the case of a child adopted before April 1, 2008, even if the adoptive parents did not file a Form I-600A or Form I-600 before April 1, 2008.

## **II. Clarification of prior Guidance**

### *A. Adoptions completed before April 1, 2008*

As described above, a Convention adoption means an adoption that occurred on or after April 1, 2008, the effective date of the U.S. implementation of the Hague Adoption Convention. A prospective adoptive parent who plans to pursue a Convention adoption must follow the Hague Adoption Convention process, including the filing of Form I-800A and Form I-800, in any case in which the child is adopted on or after April 1, 2008, *unless* the adoptive parents filed a Form I-600A or Form I-600 before April 1, 2008.

In most cases, a Form I-600A<sup>1</sup> that indicates that the prospective adoptive parent plans to adopt from a Convention country should be rejected if the adoption occurred or will occur on or after April 1, 2008. The guidance issued on March 28, 2008 states, “Forms I-600A and I-600 may not be filed for a child who habitually resides in a Convention country on or after April 1, 2008.”<sup>2</sup>

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<sup>1</sup> Form I-600A also includes Form I-600 filed concurrently with Form I-600A.

<sup>2</sup> The guidance issued on March 28, 2008 does not preclude the filing of Form I-600 on behalf of a child habitually residing in a Convention country after April 1, 2008 if Form I-600A was filed prior to April 1, 2008.

Additionally, if the prospective adoptive parent files Form I-600A and indicates that he/she will pursue an adoption from a Convention country, field offices have been instructed to reject the application.

However, full and final adoptions that were completed prior to the Convention effective date of April 1, 2008, are not Convention adoptions. Therefore, prospective adoptive parents who adopted a child prior to April 1, 2008, are still eligible to file under the orphan process, even if they did not file an initial Form I-600A or Form I-600 prior to April 1, 2008. For this reason, field offices should continue to accept Form I-600A and Form I-600 on behalf of a child who was adopted prior to April 1, 2008 in a Convention country.

*B. Custody granted before April 1, 2008, but adoption not completed*

Some prospective adoptive parents may have obtained some form of legal custody other than adoption before April 1, 2008, with the actual adoption occurring on or after April 1, 2008. Any adoption completed on or after April 1, 2008, is a Convention adoption. 8 CFR 204.301. The Hague Convention Adoption rules apply to any adoption, on or after April 1, 2008, of a child from a Convention country *unless* a Form I-600A or Form I-600 was filed before April 1, 2008. Thus, Form I-600A/I-600 should not be accepted if the prospective adoptive parent only had legal custody of the child prior to April 1, 2008, but completed the adoption (or intends to adopt) on or after April 1, 2008.

Cases involving a grant of custody before April 1, 2008, with the adoption completed on or after April 1, 2008, present a special concern with respect to 8 CFR 204.309(b)(1). This provision requires denial of a Form I-800 if the prospective adoptive parents adopted the child, or acquired custody for purposes of adoption, before the provisional approval of the Form I-800. This provision, however, was not in force before April 1, 2008. A prospective adoptive parent who obtained custody before this date would not have been under any obligation to defer the acquisition of custody. If a Form I-800 petitioner establishes, therefore, that he or she obtained custody for purposes of adoption *before* April 1, 2008, USCIS will not deny the Form I-800 based solely on the basis of a regulation, 8 CFR 204.309(b)(1), that was not in force at the time of the grant of custody. The child's adoption on or after April 1, 2008, would still, however, be a Convention adoption. For this reason, even if custody was granted before April 1, 2008, the prospective adoptive parents must defer completion of the adoption until after provisional approval of the Form I-800.

Note that "custody for purposes of adoption" is defined in 8 CFR 204.301, and requires a formal grant of custody by the court or administrative entity with authority to make the formal grant. A proposed adoption placement or "match" that did not include a formal grant of custody is not within the scope of the definition. Thus, if there was an informal match, but not a formal grant of

custody before April 1, 2008, then a grant of custody on or after April 1, 2008, would be contrary to 8 CFR 204.309(b)(1), unless USCIS has provisionally approved the Form I-800.

### **III. Implementation**

In order to assist field offices in screening these applications and to address Forms I-600A/I-600 that have been erroneously rejected, the previously issued I-600A rejection notice has been updated to advise parents to resubmit Form I-600A along with a copy of the full and final adoption decree and a copy of the rejection notice.

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Dear Prospective Adoptive Parent,

You filed Form I-600A, *Application for Advance Processing of Orphan Petition* on \_\_\_\_\_.

The *Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption* (Hague Adoption Convention) entered into force with respect to the United States on April 1, 2008. The Hague Adoption Convention's entry into force created significant changes in intercountry adoption cases, which occur between Convention countries. As of this date, the Hague Adoption Convention is in force in 75 countries.

In order to adopt a child from a Convention country, prospective adoptive parents must first file Form I-800A, *Application for Determination of Suitability to Adopt a Child from a Convention Country*, and not Form I-600A. Cases under the Hague Adoption Convention are governed by different regulations than those which govern orphan cases. Thus, USCIS is unable to accept I-600A applications in lieu of I-800A applications for Convention adoptions. Any I-600A application, filed on or after April 1, 2008 on behalf of a prospective adoptive parent seeking to adopt in a Convention country, must be rejected. Similarly, a Form I-600A approval cannot be used to support Form I-800, *Petition to Classify Convention Adoptee as an Immediate Relative*.

- In reviewing your I-600A application, it is noted that you do not intend to adopt a child from a Convention country. If you decide to adopt a child from a Convention country at a later time, you may not use your Form I-600A approval to support Form I-800 and will need to file a Form I-800A with the appropriate fee.
- In reviewing your I-600A application, it is noted that you do not list a specific country from which you intend to adopt. This notice is to inform you that this office will continue to process your I-600A application as if you intend to adopt from a non-Convention country. Please be advised that your Form I-600A fee cannot be transferred to a Form I-800A. If you decide to pursue an adoption from a Convention country, you will be required to file an I-800A with the appropriate fee.
- In reviewing your I-600A application, it is noted that you are planning to adopt from a country where the Hague Adoption Convention is in force. Your application is being rejected. In order to pursue an adoption from this country, you must file a Form I-800A with the appropriate fee.

**If you are filing Form I-600A or Form I-600 for a child from a Convention Country, and believe you are eligible to do so because you completed a full and final adoption of the child before April 1, 2008, please resubmit your application or petition along with a copy of the full and final adoption decree and a copy of this notice. Note that, for this purpose, a grant of custody *other than an adoption* before April 1, 2008, does not permit you to file Form I-600A or Form I-600.**

For more information about the Hague Adoption Convention, including the list of Convention countries, please refer to the following web sites: [www.uscis.gov](http://www.uscis.gov) and [www.travel.state.gov](http://www.travel.state.gov).

Sincerely,

U. S. Citizenship and Immigration Services