



Questions and Answers

May 29, 2008

USCIS IMPLEMENTS REQUIRED DNA TESTING FOR VIETNAMESE ADOPTIONS

Q. What is the purpose of requiring a DNA test?

A. USCIS is taking this step in response to concerns regarding the adoption process in Vietnam and to ensure that all abandonment (as defined in 8 CFR 204.3(b)) adoption cases, where a birth parent can be identified, are valid. The DNA matching test will confirm that the prospective adoptive child is matched with the birth parent who has voluntarily consented to the adoption.

USCIS expects that DNA testing will help confirm a child's status as an orphan, and will also significantly streamline the processing of cases in which a birth parent has been identified. A more lengthy investigative time may be required to process adoptions when the birth parent is unknown. USCIS estimates that DNA results will be received from the U.S. lab within five weeks after the child and parent have been seen by the physician for collection of the genetic material for testing.

Q. What cases may require a DNA test?

A. All Vietnamese orphan adoption cases where a birth parent can be identified may require a DNA test. This includes abandonment cases (as defined below) generally, and cases where the child has been relinquished by a sole or surviving parent.

Abandonment means that the birth parent(s) has willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A child who has been given unconditionally to an orphanage is considered to be abandoned under U.S. immigration laws.

Relinquishment is essentially the release of the custody of a child by the birth parent(s) to a third party. A relinquishment can be a type of abandonment. Only certain types of relinquishments constitute abandonment under U.S. immigration laws. See 8 CFR 204.3(b).

Q. Do all abandonment (as defined above) cases require a DNA test, even for a child who has been in an orphanage for a very long time, or who has unique circumstances?

A. No. USCIS retains the discretion, on a case-by-case basis, to make a finding that the birth parent(s) cannot be identified due to the specific circumstances of an abandonment or relinquishment case.

Q. Does this new procedure apply to cases where the child would be an orphan because of the death or disappearance of, or separation or loss from, both parents?

A. No, it does not. In cases where the birth parent cannot be located a DNA test cannot be performed.

Q. Which cases are affected?

A. Cases affected by this are those orphan adoption cases where a birth parent or parents can be identified and located. The DNA requirement will affect new Form I-600 submissions and, in some cases, Forms I-600 already submitted but not yet pre-approved. “Pre-approved” cases, in which the prospective adoptive parent(s) have been notified that the child qualifies as an orphan under U.S. immigration laws, will not require DNA testing.

Q. If the child has two parents is it necessary for both to be DNA tested?

A. If the birth parents are legally married and they have “abandoned” the child, both parents may require a DNA test.

Q. How much will the DNA test cost?

A. The laboratory performing the test and your adoption agency will determine the cost. More information regarding the testing process will be forwarded to you by the USCIS office in Ho Chi Minh City.

Q. How much time will this new requirement add to the process?

A. USCIS expects that DNA testing will significantly streamline the processing of cases where a birth parent has been identified. USCIS estimates that, barring unforeseen delays, the DNA results will be received from the U.S. lab within five weeks after the child and parent have been seen by the physician for collection of the genetic material for testing. Please keep in mind that this is not an additional five weeks but will likely replace any need to conduct the more lengthy investigative time required when the birth parent is unknown.

Q. What happens if the DNA does not match?

A. If the DNA test does not result in a match, USCIS will not be able to approve the Form I-600.

Q. What are the problems in Vietnam that prompted USCIS to implement this policy?

A. The U.S. Government has growing concerns about irregularities in the methods used to identify children for adoption in Vietnam. Additionally, recent investigations have demonstrated that Vietnamese civil documents are unreliable. Moreover, Vietnamese officials, in some provinces, have interfered with the ability of the U.S. Government to conduct independent field inquiries into the status of children identified in Form I-600 petitions.

Q. What is a field inquiry and what purpose does it serve?

A. 8 CFR 204.3(k) requires that an I-604 verification be completed in every orphan case. This requirement cannot be waived. I-604 verification may include document checks, telephonic checks, and interview(s) with the birth parent(s). However, if the facts of a case suggest irregularities or questionable circumstances surrounding the orphanage, province, or institution, USCIS may determine that due diligence requires a field inquiry. When a field inquiry is conducted, staff from the U.S. Embassy in Hanoi or the U.S. Consulate in Ho Chi Minh City interview witnesses, authenticate documents with government officials, and often travel to various locations to confirm the facts and evidence presented, concerning the child’s status as an orphan, in accordance with U.S. law.

Q. If the United States sees problems in the Vietnamese adoption process, why has it continued processing adoption cases?

A. The situation in Vietnam can sometimes make it difficult to verify that a child qualifies as an “orphan” as defined in the U.S. immigration laws. If a child’s status as an orphan can be verified, however, it is appropriate for the case to go forward. USCIS has sought to improve the ability to verify the child’s status. For example, in 2007 USCIS initiated the “Vietnam Initiative” program for prospective adoptive

parents adopting in Vietnam. Under the Vietnam Initiative program, prospective adoptive parents file Form I-600 directly with USCIS in Ho Chi Minh City before traveling to Vietnam. This enables USCIS or U.S. Department of State officers to determine whether a child identified in the petition qualifies as an orphan before the child is transferred to the care of the adopting parents. In addition, USCIS and the Department of State have also engaged in a series of formal discussions to address concerns regarding the integrity of Vietnamese intercountry adoptions. Finally, this new policy for DNA testing of Vietnamese birth parents will also improve the ability of USCIS to verify that a child is an orphan.

Q. What is the Vietnam initiative?

A. Under this initiative USCIS will only accept I-600 filings by mail in Ho Chi Minh City (or if filed with another USCIS field office USCIS will forward the I-600 to Ho Chi Minh City). PLEASE NOTE: no walk-in filing will be accepted in Ho Chi Minh City; and the prospective adoptive parent(s) presence in Vietnam will not result in faster adjudication of their Form I-600.