

DEPARTMENT OF HOMELAND SECURITY**8 CFR Part 204**

[CIS No. 2288-03]

RIN 1615-AB07

Extension of Validity Period of Approved Form I-600A, Application for Advance Processing of Orphan Petition**AGENCY:** Department of Homeland Security.**ACTION:** Interim rule with request for comments.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations governing the processing of applications and petitions relating to the immigration of alien orphans. The amendment to the rule establishes that the Director of the Bureau of Citizenship and Immigration Services (BCIS) may, at his or her discretion, extend the validity period for a decision approving an Application for Advanced Processing of Orphan Petition (Form I-600A), either in an individual case or for any case within a designated class of cases because of delays in completing the adoption process due to public health concerns relating to the incidence of Severe Acute Respiratory Syndrome (SARS). On May 15, 2003 the China Center for Adoption Affairs (CCAA) of the Peoples Republic of China (PRC) suspended its processing of international adoptions because of the SARS outbreak. While this suspension was in force, the prospective adoptive parents were unable to complete the adoption process in the PRC. The CCAA lifted the suspension on June 24, 2003. This amendment will permit the BCIS to more readily accommodate prospective adoptive parents who have been unable to comply with the requirement to file a Petition to Classify Orphan as an Immediate Relative (Form I-600) within 18 months of the Form I-600A approval date.

DATES: *Effective date:* This interim rule is effective August 7, 2003.*Comment date:* Written comments must be submitted on or before October 6, 2003.**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference CIS No. 2288-03 on your correspondence. The public may also submit comments electronically to the DHS at rfs.regs@dhs.gov. When

submitting comments electronically you must include CIS No. 2288-03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

Stephen Heller, Adjudications Officer, Bureau of Citizenship and Immigration Services, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:**Background**

The first step for many United States citizens who decide to adopt a child from abroad is to file an Application for Advanced Processing of Orphan Petition (Form I-600A) with the Bureau of Citizenship and Immigration Services (BCIS). In support of this Form I-600A, the prospective adoptive parents (applicants) must submit, among other documents, a home study prepared by a party licensed or otherwise authorized under the law of the State of the orphan's proposed residence. The home study is a process for screening and preparing applicants who are interested in adopting an orphan from another country. The applicants, and all adult members of the applicants' household, must also be fingerprinted by BCIS after receipt of a properly filed Form I-600A (8 CFR 204.3(c)(3)). Fingerprint clearances from the Federal Bureau of Investigation (FBI) are considered to be valid for a period of 15 months.

If BCIS is satisfied that the applicants will provide proper care for an orphan, BCIS approves the Form I-600A. The approved Form I-600A is valid for 18 months from its approval date (8 CFR 204.3(h)(3)). During this 18-month validity period, the applicants must identify an orphan that they wish to adopt and file a Petition to Classify Orphan as an Immediate Relative (Form I-600). If the applicants fail to file a Form I-600 during the 18-month validity period, the approved Form I-600A is deemed abandoned (8 CFR 204.3(h)(7)) and any Form I-600 that is then filed shall be denied (8 CFR 204.3(h)(13)).

What This Rule Accomplishes

This rule provides in new 8 CFR 204.3(h)(3)(ii) that the BCIS Director, or a designated officer, may, at his or her discretion, extend the validity period for a Form I-600A approval, either in an individual case or for a group of similarly situated individual cases where prospective adoptive parents have been unable to comply with the requirement to file a Petition to Classify

Orphan as an Immediate Relative (Form I-600) within 18 months of the Form I-600A approval date as a result of delays in the adoption process resulting from the SARS outbreak. This amendment will ensure that the BCIS is able to respond to this unusual or extraordinary situation that may have impeded the ability of prospective adoptive parents to comply with the requirement to file the Form I-600 by the expiration date of the Form I-600A. For example, in May 2003, the Peoples Republic of China (PRC) suspended its own processing of international adoption cases, due to public health concerns related to the outbreak of Severe Acute Respiratory Syndrome. During that suspension period, some prospective adoptive parents' I-600A approvals expired. Under existing regulations, the BCIS was unable to extend the validity of those I-600As so that the prospective adoptive parents could complete the adoption process once the PRC lifted the suspension. New 8 CFR 204.3(h)(3)(ii) provides BCIS the ability to accommodate prospective adoptive parents with expired or soon to expire I-600. In making a decision to extend the validity period for a Form I-600A approval, the BCIS Director, or a designated officer, may set conditions for the extension that may include, but are not limited to: an explanation of the reasons necessitating an extension, the updating of the home study, renewal of fingerprints, and any other factor relevant to initial approval of a Form I-600A.

Good Cause Exception

This interim rule is effective August 7, 2003, though the Department of Homeland Security (DHS) invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the DHS finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b)(B) and (d)(3). First, this rule is a rule of agency practice and procedure, and so may be adopted without prior notice and comment. Additionally, this rule will benefit the parties affected by the rule by permitting the BCIS to accommodate parents who have been unable to meet the Form I-600 filing deadline because of the SARS outbreak.

Accordingly, the DHS finds that it is impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), I have reviewed this rule and, by approving it, certify that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors. This rule applies to individuals and allows individuals to extend the validity period of a Form I-600A during the process of adopting a child. It does not have an effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Homeland Security, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

■ 2. Section 204.3 is amended by:

■ a. Adding an "(i)" immediately after the paragraph (h)(3) heading to designate existing text as paragraph (h)(3)(i);

■ b. Revising the fourth sentence in the newly designated paragraph (h)(3)(i); and

■ c. Adding new paragraph (h)(3)(ii).

■ The revisions and additions read as follows:

§ 204.3 Orphans.

* * * * *

(h) * * *

(3) * * * The approved application shall be valid for 18 months from its approval date, unless the approval period is extended as provided in paragraph (h)(3)(ii) of this section.

* * *

(ii) If the BCIS Director, or an officer designated by the BCIS Director, determines that the ability of a prospective adoptive parent to timely file a Form I-600 has been adversely affected by the outbreak of Severe Acute Respiratory Syndrome (SARS) in a foreign country, such Director or designated officer may extend the validity period of the approval of the Form I-600A, either in an individual case or for a class of cases. An extension of the validity of the Form I-600A may be subject to such conditions as the BCIS Director, or officer designated by the BCIS Director may establish.

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Dated: July 31, 2003.

Tom Ridge,

Secretary of Homeland Security.

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BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 231 and 233

[CBP DEC. 03-14]

RIN 1515-AD36

Suspension of Immediate and Continuous Transit Programs

AGENCY: Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: The Immediate and Continuous Transit program, also known as the Transit Without Visa (TWOV) program and the International-to-International (ITI) program allow an alien to be transported in-transit through the United States to another foreign country without first obtaining a nonimmigrant visa from the Department of State overseas, under section 212(d)(4) of the Immigration and Nationality Act (Act), provided the carrier has entered into an Immediate and Continuous Transit Agreement on Form I-426, pursuant to section 233(c) of the Act. This rule suspends immediate and continuous transit provisions for both the TWOV and ITI programs. The current regulations provide that an alien may be transported through the United States in accordance with the provisions of section 233(c) of the Act. The recent receipt of credible intelligence concerning a threat specific to the TWOV program and additional increased threats of activities against the interests and the security of the United States, has led to the decision to suspend this program.

DATES: This interim rule is effective August 2, 2003; written comments must be submitted on or before September 22, 2003.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection at 799 9th Street, NW., Washington, DC 20229. Comments are available for public inspection at the above address by calling (202) 572-8768 to arrange for an appointment.