

Notice To Adoptive Parents

The Adam Walsh Act Child Protection and Safety Act (“Adam Walsh Act” or “AWA”) of 2006, Public Law No. 109-248, states that an individual who has been convicted of a sexual or kidnapping criminal offense against a minor may not file a petition for a family-sponsored immigrant visa without a determination by the Secretary of Homeland Security that the petitioner poses no risk to the beneficiary.

Part of the long process of adopting a child involves obtaining a clearance mandated by the AWA. This process of getting the clearance from USCIS (Stateside) is undertaken in the Nairobi Consular Office through their immigrant visa processing system for those adoptions that originate at receiving posts that do not normally process Immigrant Visas. This AWA check can NOT be done until the provisional petition and adoption orders are sent to Nairobi Consular Office by the receiving post. After USCIS (Stateside) clears the AWA check, the petition can be approved and the immigrant visa adjudicated for the adoptive child.

This process often can cause a delay in the processing of the immigrant visa in Nairobi. Adopting parents should make travel arrangements to come to Nairobi only after receiving confirmation from the consular officer at the post where they have filed the petition that the AWA clearance has come through and Nairobi is ready to conduct the visa interview. We also encourage adoptive parents to make onward travel arrangements to the United States with their adopted children only after obtaining their immigrant visas.

Post Processing of Adam Walsh Act Name-Check

U.S. citizens who reside in a post’s consular jurisdiction may submit Form I-130 or I-600 for processing an immigrant visa (IV). U.S. citizens whose principal residence is not in the consular district, and/or who have entered the consular district as a temporary visitor, student, or with limited leave to enter and remain, must file an Immigrant Visa petition with the appropriate USCIS Service Center in the United States.

In emergency or humanitarian cases, as well as those in the national interest, you may use discretion and accept a Form I-130 or I-600 (only if it is accompanied by an approved I-600A), filed by a petitioner who does not reside in the consular district. These cases should be rare. In exercising this discretionary authority in an individual case you may consider circumstances including but not limited to: a serious health issue, beneficiaries who are young children such as in adoption cases, or where a child has unexpectedly lost their caretaker, all of which may meet the “humanitarian” test. National interest cases include U.S. military or U.S. Government

employees facing transfer. The petitioner must, regardless of place of residence, present evidence of relationship to the beneficiary and his or her own status in the United States in support of the petition.

If a post that does not issue IVs receives a Form I-130, post should suggest that the applicant apply at the post issuing immigrant visas for their consular district. If such a requirement places a hardship on the petitioner, post may accept the I-130 for processing. If a non-IV post receives an I-600, they may only adjudicate it if the I-600 is accompanied by an approved I-600A, and the I-600 is clearly approvable. Please note that if no approved I-600A is on file, all I-600s must be forwarded to USCIS for adjudication. After confirming the family relationship, the petition and all documentation received should be forwarded to the post processing Immigrant Visas for that consular district i.e. Nairobi.

NAIROBI IMMIGRANT VISA PROCESSING

Receiving posts will scan a copy of the provisional I-600 or I-130 for adoption and send it to Nairobi Consular. As soon as the scanned copies are received from the post accepting the petition, Nairobi consular staff (per 9 FAM 42.41 PN4.2A) will create a provisional case in IVO (Immigrant Visa Operating System). This is done so that a "unique case identifying" number can be generated. Nairobi will then send the petitioners bio-data to the National Visa Center (NVC) by E-mail. The case remains in provisional status until NVC has returned the results of the Adam Walsh Act check from USCIS (Stateside). After notification from NVC that the Adam Walsh Act check has been completed and cleared, the petition can be sent to Nairobi and administrative procedures for that petition will be completed.

For posts such as those in Rwanda, Burundi, Mauritius and Eritrea, Nairobi Consular staff receives these provisionally approved petitions and processes their immigrant visas. Posts that do not process IVs and do not use IVO, cannot process Adam Walsh Act checks.

Posts do not have access to petitioners' criminal history records, which must be reviewed to establish eligibility under the **Adam Walsh Act** before a family-based petition for immigrant status (Form I-130 or I-600) can be approved. Although receiving posts may accept a petition in certain circumstances, they may not approve a petition until USCIS (Stateside) has conducted the required check and confirmed that the petitioner is eligible to file the I-600 or I-130 under INA 204(a)(1)(A)(viii) (8 U.S.C.1154(a)(1)(A)(viii)) or 204(a)(1)(B)(i). Any petition that had been approved by a consular officer on or after July 27, 2006 without USCIS confirmation of such eligibility to file is not valid unless and until USCIS (Stateside) performs an Adam Walsh Act check and notifies post of the petitioner's' eligibility.

NVC will forward to Nairobi the clearance response from USCIS. Each petitioner must have a response clearly indicating that the case, identified by the post (NRB – Nairobi) case number, has cleared or did not clear the **Adam Walsh Act** process. The approved results memo from NVC for each petition is then scanned into the case and a copy attached to the petition. If the results memo returned from NVC for an individual petitioner reports that the case identified by post case number has "cleared" the USCIS (Stateside) check, post may approve the I-130 petition

or the I-600 petition (accompanied by an approved I-600A) and complete processing of the petition.

If the status returned for an individual petitioner identified by post case number is “not cleared” because of possible prior conviction of one or more of the cited crimes under the **Adam Walsh Act** or due to system limitations, post should invite the petitioner to the consular section for fingerprinting with the ink and card process. Once this is completed, the fingerprint card, the petition, and all relevant documents should be forwarded to the USCIS overseas office having jurisdiction over the post, i.e. USCIS Nairobi. After fingerprinting, if the petitioner ultimately clears the USCIS review under the **Adam Walsh Act**, the petition and documents will be adjudicated by USCIS Nairobi. If the petition is found not to be approvable, the USCIS office will notify post, and post should close the provisional case in IVO.

In summary, if an I-600 petition originates at a post such as Nairobi where USCIS is co-located, the IV petition will be approved through USCIS (Nairobi) and the **Adam Walsh Act** check done as part of the petition approval process by USCIS (Nairobi). If an I-600 petition originates at a post that does not have USCIS presence and does not normally adjudicate IVs, the I-600 petition cannot be adjudicated by the Consular Post unless it is accompanied by an approved I-600A and until the **Adam Walsh Act** check is sent to USCIS (Stateside) by the IV issuing post i.e. Nairobi, and cleared by USCIS (Stateside).

PLEASE NOTE: AWA checks sent from Nairobi to NVC normally take anywhere from 5 days up to 3 weeks to be processed. When working with adoptive parents and adoption agencies, please refer them to the Consular Office at the issuing post for all enquiries regarding their visa.

For Nairobi, refer visa inquiries to consularnairobi@state.gov and for I-600 petition enquiries that have been forwarded to USCIS Nairobi, contact NBO.Adoptions@dhs.gov.