

## **Guidance on Whether a Primary Provider is Needed in Every Convention Case** (March 19, 2009)

### **1. Is every family who is adopting a child from a Convention country required to have an accredited or approved primary adoption service provider?**

The Hague Adoption Convention accreditation regulations (22 CFR Part 96) establish the central importance and role of primary providers. Section 96.14 provides that "...in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an approved person will be identified and act as the primary provider." Section 96.2 defines a primary provider as "the accredited agency, temporarily accredited agency, or approved person that is identified pursuant to section 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used."

Furthermore, DHS (USCIS) regulations governing the I-800A application process and the I-800 petition process require participation by an accredited agency, temporarily accredited agency, or approved person that is acting as the a primary provider at important points in the adoption process, as follows:

- A home study must be prepared by an individual or agency authorized under 22 CFR Part 96. As provided in 8 CFR 204.311(t)(2), when the home study is not performed in the first instance by an accredited or temporarily accredited agency, then an accredited agency must review and approve the home study in writing per 22 CFR 96.46(c), before the home study is submitted to USCIS;
- As part of the I-800 petition, prospective adoptive parents must file a statement from the primary provider indicating that all of the pre-placement preparation and training provided for in 22 CFR 96.48 have been completed. See 8 CFR 204.313(d)(2);
- Prospective adoptive parents must also file a statement from the primary provider certifying that the information in the article 16 report on the child is true, correct, and complete. See 8 CFR 204.313(d)(4)(iii);
- Prospective adoptive parents must also file a statement from the primary provider detailing the primary provider's plan for post-placement duties, as specified in 22 CFR 96.50. See 8 CFR 204.313(d)(4)(v);
- Finally, before final approval of the I-800 petition, in incoming cases in which the child is to be adopted in the United States and a plan for monitoring the placement until the final adoption was not submitted as part of the I-800A application, a statement from the primary provider must be submitted summarizing the plan under 22 CFR 96.50 for monitoring of the placement until the adoption is finalized. See 8 CFR 204.313(h)(ii)(B).

In summary, the U.S. Department of Homeland Security, Citizenship and Immigration Services (USCIS) regulations governing the I-800 processes impose duties on a primary provider that may not be accomplished by anyone else. Every family adopting from a Convention country needs a primary provider to perform these duties and functions.

**2. What about U.S. citizen families residing abroad? Do they need to engage a primary provider in their Convention adoption case?**

U.S. citizen families residing abroad are not exempted from this requirement. They must engage an accredited agency, temporarily accredited agency or approved person to act as the primary provider for the Convention adoption case.

**3. If I am an accredited agency or temporarily accredited agency providing only home study services in a Convention case and mine is the only agency providing services in the case, must I accept the role of primary provider?**

If your accreditation or temporary accreditation permits you to act as a primary provider, and you are the sole agency providing adoption services in a Convention case, you are obliged to act as the primary provider in the case. See 22 CFR 96.14(a). This provision applies in cases involving U.S. families residing in the United States and abroad.

**4. When these families ask about how to complete the USCIS Form I-800A, Part 3, Question 2, (bottom of page 6), should we tell them to check off box “a.” since we are only responsible for their home study?**

Unless you are an attorney or accredited representative authorized to appear before USCIS, you may not advise them about how to complete Form I-800 or Form I-800A. 8 CFR 1.1(i), (j) and (k) and 204.302(b). If your role is limited to the preparation of the home study, however, you must, of course, inform them of this fact, which should prompt them to understand that they should check box “a” for this question, and list your agency information in the spaces provided.

**5. My agency provided a home study for a family adopting from a Convention country. No other agency is providing adoption services in the case. When the I-800A is approved, will my agency be responsible for providing the Article 16 report required for submission of the I-800?**

If you are an accredited agency, temporarily accredited agency, or approved person providing the home study, and your accreditation or temporary accreditation permits you to act as a primary provider, and no other accredited or approved adoption service provider is providing adoption services in the case, you are obligated under section 96.14 to be the primary provider. You cannot opt out of this requirement. For future Convention cases, you could decide not to provide home study services unless another accredited agency, temporarily accredited agency, or approved person has already been identified as the primary provider.

If you are not an accredited or temporarily accredited agency or an approved person (or you are, but your accreditation or temporary accreditation does not permit you to act as a primary provider), then you cannot legally act as the primary provider, even though no other accredited or approved adoption service provider is providing adoption services in the case. The prospective adoptive parents will need to secure the services of the accredited or temporarily accredited agency that reviewed and approved the home study, or another accredited or approved adoption service provider, to be the primary provider. You should make this fact clear to prospective adoptive parents before they engage you to conduct the home study.