



November 5, 2012

PM-602-0071.1

## Policy Memorandum

**SUBJECT:** The Jurisdiction of Amended Home Studies and the Application of Home Study Age Restrictions for Prospective Adoptive Child(ren) in Intercountry Adoption Cases

### Purpose

This policy memorandum (PM) provides guidance in two distinct areas pertaining to suitability determinations in intercountry adoption cases:

1. Jurisdiction over the suitability determination when an approved Form I-600A, *Application for Advance Processing of Orphan Petition*, expires, but a Form I-600, *Petition to Classify Orphan as an Immediate Relative*, is pending; and
2. Applying the age range of the prospective adoptive child(ren) specified in the home study restrictions to USCIS Form I-600A and Form I-800A, *Application for Determination of Suitability to Adopt a Child from a Convention Country*, approvals and Form I-600 and Form I-800, *Petition to Classify Convention Adoptee as an Immediate Relative*, adjudications.

This PM does not supersede any regulation or law and does not, nor is it intended to, change any state or country specific adoption laws or requirements.

### Scope

Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

### Authorities

- Immigration and Nationality Act (INA) sections 101(b)(1)(F) and (G)
- 8 U.S.C. § 1101
- 8 CFR 204.3 and 204.311
- Adjudicators Field Manual Chapter 21.5

## Background

For immigration purposes, a home study is a document that is prepared by a home study preparer for prospective adoptive parents (PAPs) who are interested in adopting child(ren) from another country. Preparation of a home study requires research and screening of PAPs to determine suitability and prepare them for intercountry adoption. USCIS officers give considerable weight to the home study when determining PAPs' suitability to adopt. However, officers are not bound by the home study preparer's final recommendation(s). Even if the home study is favorable, the applicant must still establish that he or she is suitable as an adoptive parent. For USCIS purposes, a home study does not expire once it is submitted; however, when PAPs submit their home study to USCIS it must be less than six months old. PAPs also must amend their home study if there are any significant changes in their household after the home study is completed, even if such changes occur after USCIS has approved their Form I-600A.<sup>1</sup>

### 1. Jurisdiction over suitability when an approved Form I-600A expires while a Form I-600 petition is pending

#### *Current Process*

Most PAPs use the advance processing route and receive approval of Form I-600A from USCIS before they are matched with a child for adoption and before filing Form I-600. In order to proceed in this manner, PAPs must provide evidence of an approved and valid Form I-600A or an extension of the approval that is still valid when filing Form I-600. Once PAPs file Form I-600, they do not need to maintain the validity of their underlying Form I-600A approval, though they may request to extend their Form I-600A approval if they intend to file additional Form I-600s based on that approved Form I-600A.<sup>2</sup>

PAPs must, however, report any significant changes to USCIS throughout the adjudication of the Form I-600 petition. Typically, when a significant change occurs after Form I-600A approval (other than a change in marital status),<sup>3</sup> the PAPs must submit a letter requesting an amended approval notice together with an amended home study and a copy of their original Form I-600A approval to the USCIS office that approved the original Form I-600A – either the USCIS stateside office<sup>4</sup> or the approving USCIS office abroad. The request letter and the home study must address the significant change(s). See [Significant Changes](#) for more information.

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<sup>1</sup> Significant changes that may require an amended home study include, but are not limited to, a change in residence, criminal history, financial resources, a change in a PAPs medical condition, changes to the characteristics of the child the PAPs are seeking to adopt, and/or the addition of one or more children or other dependents, or additional adult members to the household prior to the child's immigration to the U.S.

<sup>2</sup> Form I-600A approval is valid for 18 months. Valid fingerprint clearances are required for Form I-600A approval, Form I-600A extension approval, Form I-600 petition approval, and for any significant change approvals that require an amended home study. This PM does not address any state specific requirements. PAPs must be aware of any requirements. PAPs may request a one-time no fee extension of their original Form I-600A approval to give them 36 total months of validity in which they must file a Form I-600 petition or start over.

<sup>3</sup> If the significant change is a change in marital status, and it occurs after approval of the Form I-600A or Form I-600, the PAPs cannot submit a request for an amended approval notice. The PAPs must instead submit a new Form I-600A and Form I-600 (if filing concurrently), with a new filing fee, along with the amended home study. If the PAPs are married, the PAP's spouse must also sign the new Form I-600A and Form I-600.

<sup>4</sup> For purposes of this PM, the USCIS National Benefits Center is currently the "USCIS stateside office."

For a significant change case, USCIS reviews the amended home study to determine if the PAPs remain suitable for adoption. If the reviewing adjudicator determines that the PAPs remain suitable in light of the significant change(s), including a change in a child's characteristics or the number of children, the adjudicator issues an amended approval notice. If the adjudicator determines that the PAPs do not remain suitable, the adjudicator either:

- Issues a letter explaining why the request for an amended approval of Form I-600A was denied and indicates that there are no rights to appeal the decision; or
- Issues a Notice of Intent to Revoke Form I-600A (or a Notice of Intent to Deny Form I-600, if the PAP did not file a separate Form I-600A).

### *Issue*

Since intercountry adoptions in certain countries take longer to complete than in others, sometimes the PAPs' Form I-600A approval (or extension of that approval) expires while their child's Form I-600 petition is pending. Once the Form I-600A approval (including any extensions) expires, USCIS can no longer confirm the suitability of the PAPs based on the Form I-600A. Thus, when PAPs in such cases have significant changes to their household or need to amend the number or characteristics of the child(ren) through an amended home study, jurisdiction to review that amended home study and make the new suitability determination shifts to the USCIS office where the Form I-600 petition is pending.

### *Policy*

Effective immediately, the USCIS office with jurisdiction over the Form I-600 will have jurisdiction over the PAPs' suitability and will accept a request to review an amended home study which documents a significant change in the PAPs' household, change in the matched child's characteristics, or change in the number of children, provided that the following criteria are met:

1. The approval (or extension of approval) of Form I-600A was valid at the time the PAPs filed the Form I-600 with Department of State (DOS) or USCIS;
2. The PAPs' Form I-600A approval (or extension) has since expired; and
3. USCIS still has jurisdiction over a pending Form I-600 petition filed by the PAPs.

If all three criteria are met, the USCIS office with jurisdiction over the Form I-600 will review the amended home study to assess whether the PAPs remain suitable in light of the significant change(s), including change(s) in the number of children or their characteristics that have occurred since their Form I-600A approval, extension, or amendment expired. After review of the amended home study:

IF...	THEN...
The adjudicating officer determines that the PAPs remain suitable to adopt,	The adjudicating officer will write “approved” in red ink on the PAPs’ request and incorporate the amended documentation into the record.
The adjudicating officer determines that the PAPs are no longer suitable to adopt,	The adjudicating officer will issue a Request for Evidence (RFE) of suitability to give the PAPs an opportunity to overcome the deficiencies.
In response to the RFE, the PAPs submit no evidence or the evidence submitted is insufficient to meet the suitability requirements,	The adjudicating officer will issue a Notice of Intent to Deny (NOID) or denial for Form I-600 for failure to meet suitability requirements as appropriate.
USCIS receives no response to the NOID, or the evidence submitted by the PAPs is insufficient to meet the suitability requirements,	Then the adjudicating officer will deny Form I-600 and notify the PAPs of the denial.

As noted above, where USCIS does not have a presence and the petitioner files Form I-600 with a U.S. Embassy or Consulate, the PAPs may also file a significant change request letter and amended home study with the appropriate USCIS office overseas. If a Form I-600 petition was filed with DOS, the Form I-600A subsequently expires, and an adjudicator becomes aware of the need for a suitability review, DOS may contact USCIS Headquarters Refugee, Asylum, and International Operations Directorate, International Operations Division through appropriate channels to coordinate with the USCIS overseas office having jurisdiction over the Form I-600 petition.

## **2. Application of home study age restrictions to USCIS Form I-600A and Form I-800A approvals and Form I-600 and Form I-800 adjudications**

### *Home Study Restrictions*

The home study must explicitly state if there are any specific restrictions about characteristics of the child(ren) to be adopted, such as nationality, age range, gender, or health of the child(ren) for both orphan and Hague Adoption Convention<sup>5</sup> cases. This does not mean that a home study preparer must set restrictions concerning nationality, age, gender, or health. A home study can properly state that the PAPs are suitable to adopt a child of any nationality, age, sex, or without any restrictions on the child’s health. The regulation only requires that if the home study preparer believes that any such restrictions are appropriate, then the restrictions must be stated in the home study.

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<sup>5</sup> The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) entered into force in the United States on April 1, 2008. The Hague Adoption Convention process applies to cases filed on or after April 1, 2008, by U.S. citizen PAPs who are habitually resident in the United States, and not otherwise grandfathered under U.S. law, who are seeking to adopt a child who habitually resides in any country outside of the United States that is a party to the Convention (i.e., a “Convention Adoptee”).

*Issue*

While the home study may specifically restrict PAPs to only adopting child(ren) within a certain age range, the regulations do not state at what stage of the adoption process the child(ren) must meet this age restriction.

*Policy*

Effective immediately, if a child initially met specific age restrictions stated in a home study when the competent authority or appropriate entity proposed placing the child with the PAP, and the PAP accepted the proposed match, it is not necessary to request an amended home study if the child is over the specified age at the time of the adjudication on the Form I-600 or Form I-800. The date of the match can generally be inferred from any official records of the placing agency concerning the match or from contemporaneous records of the adoption service provider. If it is shown that none of this primary evidence is available, the date may be established by affidavits or other secondary evidence that are determined to be credible. If the date of match with the parents cannot be determined, the age of the child at the date that the petition is filed shall be used. Therefore, children who meet specific age restrictions stated in home studies at the time the PAPs accept the proposed match or when the petition is filed, will continue to meet the age restrictions in the home study, provided that:

1. The orphan or Convention adoptee meets the definition of a child and all other requirements per INA sections 101(b)(1)(F) or (G); and
2. The PAP meets all other eligibility requirements to petition for the child.

**Implementation**

Implementation of this PM is immediate and includes all future and currently pending adoption cases.

**Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information**

Questions regarding this PM should be addressed through appropriate channels to the International Operations Division, Refugee, Asylum, and International Operations Directorate or the Adoptions and Humanitarian Branch, Field Operations Directorate.