

## § 204.300

children) to work as a broadcaster for the BBG or a grantee of the BBG in the United States. For the purposes of this section, the terms:

*BBG grantee* means Radio Free Asia, Inc (RFA) or Radio Free Europe/Radio Liberty, Inc. (RFE/RL); and

*Broadcaster* means a reporter, writer, translator, editor, producer or announcer for news broadcasts; hosts for news broadcasts, news analysis, editorial and other broadcast features; or a news analysis specialist. The term broadcaster does not include individuals performing purely technical or support services for the BBG or a BBG grantee.

(b) *Is there a yearly limit on the number of visas available for alien broadcasters petitioned by the BBG or a BBG grantee?* (1) Under the provisions of section 203(b)(4) of the Act, a yearly limit of 100 fourth preference special immigrant visas are available to aliens intending to work as broadcasters in the United States for the BBG or a BBG grantee. These 100 visas are available in any fiscal year beginning on or after October 1, 2000.

(2) The alien broadcaster's accompanying spouse and children are not counted towards the 100 special broadcaster visa limit.

(c) *What form should the BBG use to petition for these special alien broadcasters?* The BBG or a BBG grantee shall use Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, to petition for an alien broadcaster. The petition must be submitted with the correct fee noted on the form.

(d) *Will the BBG need to submit supplemental evidence with Form I-360 for alien broadcasters?* (1) All Form I-360 petitions submitted by the BBG or a BBG grantee on behalf of an alien for a broadcaster position with the BBG or BBG grantee must be accompanied by a signed and dated supplemental attestation that contains the following information about the prospective alien broadcaster:

(i) The job title and a full description of the job to be performed; and

(ii) The broadcasting expertise held by the alien, including how long the alien has been performing duties that relate to the prospective position or a statement as to how the alien possesses

## 8 CFR Ch. I (1-1-10 Edition)

the necessary skills that make him or her qualified for the broadcasting-related position within the BBG or BBG grantee.

(2) [Reserved]

[66 FR 51821, Oct. 11, 2001, as amended at 74 FR 26937, June 5, 2009]

### Subpart B [Reserved]

### Subpart C—Intercountry Adoption of a Convention Adoptee

SOURCE: 72 FR 56854, Oct. 4, 2007, unless otherwise noted.

#### § 204.300 Scope of this subpart.

(a) *Convention adoptees.* This subpart governs the adjudication of a Form I-800A or Form I-800 for a Convention adoptee under section 101(b)(1)(G) of the Act. The provisions of this subpart enter into force on the Convention effective date, as defined in 8 CFR 204.301.

(b) *Orphan cases.* On or after the Convention effective date, no Form I-600A or I-600 may be filed under section 101(b)(1)(F) of the Act and 8 CFR 204.3 in relation to the adoption of a child who is habitually resident in a Convention country. If a Form I-600A or Form I-600 was filed before the Convention effective date, the case will continue to be governed by 8 CFR 204.3, as in effect before the Convention effective date.

(c) *Adopted children.* This subpart does not apply to the immigrant visa classification of adopted children, as defined in section 101(b)(1)(E) of the Act. For the procedures that govern classification of adopted children as defined in section 101(b)(1)(E) of the Act, see 8 CFR 204.2.

#### § 204.301 Definitions.

The definitions in 22 CFR 96.2 apply to this subpart C. In addition, as used in this subpart C, the term:

*Abandonment* means:

(1) That a child's parent has willfully forsaken all parental rights, obligations, and claims to the child, as well as all custody of the child without intending to transfer, or without transferring, these rights to any specific individual(s) or entity.

**Department of Homeland Security****§ 204.301**

(2) The child's parent must have actually surrendered such rights, obligations, claims, control, and possession.

(3) That a parent's knowledge that a specific person or persons may adopt a child does not void an abandonment; however, a purported act of abandonment cannot be conditioned on the child's adoption by that specific person or persons.

(4) That if the parent(s) entrusted the child to a third party for custodial care in anticipation of, or preparation for, adoption, the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) must have been authorized under the Convention country's child welfare laws to act in such a capacity.

(5) That, if the parent(s) entrusted the child to an orphanage, the parent(s) did not intend the placement to be merely temporary, with the intention of retaining the parent-child relationship, but that the child is abandoned if the parent(s) entrusted the child permanently and unconditionally to an orphanage.

(6) That, although a written document from the parent(s) is not necessary to prove abandonment, if any written document signed by the parent(s) is presented to prove abandonment, the document must specify whether the parent(s) who signed the document was (were) able to read and understand the language in which the document is written. If the parent is not able to read or understand the language in which the document is written, then the document is not valid unless the document is accompanied by a declaration, signed by an identified individual, establishing that that identified individual is competent to translate the language in the document into a language that the parent understands and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the document to the parent in a language that the parent understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a

Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

*Adoption* means the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor's legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).

*Adult member of the household* means:

(1) Any individual other than the applicant, who has the same principal residence as the applicant and who had reached his or her 18th birthday on or before the date a Form I-800A is filed; or

(2) Any person who has not yet reached his or her 18th birthday before the date a Form I-800A is filed, or who does not actually live at the same residence, but whose presence in the residence is relevant to the issue of suitability to adopt, if the officer adjudicating the Form I-800A concludes, based on the facts of the case, that it is necessary to obtain an evaluation of how that person's presence in the home affects the determination whether the applicant is suitable as the adoptive parent(s) of a Convention adoptee.

*Applicant* means the U.S. citizen (and his or her spouse, if any) who has filed a Form I-800A under this subpart C. The applicant may be an unmarried U.S. citizen who is at least 24 years old when the Form I-800A is filed, or a married U.S. citizen of any age and his or her spouse of any age. Although the singular term "applicant" is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

*Birth parent* means a "natural parent" as used in section 101(b)(1)(G) of the Act.

*Central Authority* means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State. Except as specified in this Part, "Central Authority" also means,

**§ 204.301****8 CFR Ch. I (1-1-10 Edition)**

solely for purposes of this Part, an individual who or entity that is performing a Central Authority function, having been authorized to do so by the designated Central Authority, in accordance with the Convention and the law of the Central Authority's country.

*Competent authority* means a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

*Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, opened for signature at The Hague on May 29, 1993.

*Convention adoptee* means a child habitually resident in a Convention country who is eligible to immigrate to the United States on the basis of a Convention adoption.

*Convention adoption*, except as specified in 8 CFR 204.300(b), means the adoption, on or after the Convention effective date, of an alien child habitually resident in a Convention country by a U.S. citizen habitually resident in the United States, when in connection with the adoption the child has moved, or will move, from the Convention country to the United States.

*Convention country* means a country that is a party to the Convention and with which the Convention is in force for the United States.

*Convention effective date* means the date on which the Convention enters into force for the United States as announced by the Secretary of State under 22 CFR 96.17.

*Custody for purposes of emigration and adoption exists when:*

(1) The competent authority of the country of a child's habitual residence has, by a judicial or administrative act (which may be either the act granting custody of the child or a separate judicial or administrative act), expressly authorized the petitioner, or an individual or entity acting on the petitioner's behalf, to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States.

(2) If the custody order shows that custody was given to an individual or entity acting on the petitioner's be-

half, the custody order must indicate that the child is to be adopted in the United States by the petitioner.

(3) A foreign judicial or administrative act that is called an adoption but that does not terminate the legal parent-child relationship between the former parent(s) and the adopted child and does not create the permanent legal parent-child relationship between the petitioner and the adopted child will be deemed a grant of custody of the child for purposes of this part, but only if the judicial or administrative act expressly authorizes the custodian to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States by the petitioner.

*Deserted or desertion* means that a child's parent has willfully forsaken the child and has refused to carry out parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the Convention country.

*Disappeared or Disappearance* means that a child's parent has unaccountably or inexplicably passed out of the child's life so that the parent's whereabouts are unknown, there is no reasonable expectation of the parent's reappearance, and there has been a reasonable effort to locate the parent as determined by a competent authority in accordance with the laws of the Convention country. A stepparent who under the definition of "Parent" in this section is deemed to be a child's legal parent, may be found to have disappeared if it is established that the stepparent either never knew of the child's existence, or never knew of their legal relationship to the child.

*Home study preparer* means a person (whether an individual or an agency) authorized under 22 CFR part 96 to conduct home studies for Convention adoption cases, either as a public domestic authority, an accredited agency, a temporarily accredited agency, approved person, supervised provider, or exempted provider and who (if not a public domestic authority) holds any license or

other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted.

*Incapable of providing proper care* means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

*Irrevocable consent* means a document which indicates the place and date the document was signed by a child's legal custodian, and which meets the other requirements specified in this definition, in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. If the irrevocable consent is signed by the child's birth mother or any legal custodian other than the birth father, the irrevocable consent must have been signed after the child's birth; the birth father may sign an irrevocable consent before the child's birth if permitted by the law of the child's habitual residence. This provision does not preclude a birth father from giving consent to the termination of his legal relationship to the child before the child's birth, if the birth father is permitted to do so under the law of the country of the child's habitual residence.

(1) To qualify as an irrevocable consent under this definition, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, then the document does not qualify as an irrevocable consent unless the document is accompanied by a declaration, signed, by an identified individual, establishing that that identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the

legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

(2) If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

*Legal custodian* means the individual who, or entity that, has legal custody of a child, as defined in 22 CFR 96.2.

*Officer* means a USCIS officer with jurisdiction to adjudicate Form I-800A or Form I-800 or a Department of State officer with jurisdiction, by delegation from USCIS, to grant either provisional or final approval of a Form I-800.

*Parent* means any person who is related to a child as described in section 101(b)(1)(A), (B), (C), (D), (E), (F), or (G) and section 101(b)(2) of the Act, except that a stepparent described in section 101(b)(1)(B) of the Act is not considered a child's parent, solely for purposes of classification of the child as a Convention adoptee, if the petitioner establishes that, under the law of the Convention country, there is no legal parent-child relationship between a stepparent and stepchild. This definition includes a stepparent if the stepparent adopted the child, or if the stepparent, under the law of the Convention country, became the child's legal parent by marrying the other legal parent. A stepparent who is a legal parent may consent to the child's adoption, or may be found to have abandoned or deserted the child, or to have disappeared from the child's life, in the same manner as would apply to any other legal parent.

*Petitioner* means the U.S. citizen (and his or her spouse, if any) who has filed

**§ 204.302****8 CFR Ch. I (1-1-10 Edition)**

a Form I-800 under this subpart C. The petitioner may be an unmarried U.S. citizen who is at least 25 years old when the Form I-800 is filed, or a married U.S. citizen of any age and his or her spouse of any age. Although the singular term "petitioner" is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

*Sole parent* means:

(1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life; or

(2) The child's father, when the competent authority has determined that the child's mother has abandoned or deserted the child, or has disappeared from the child's life; except that

(3) A child's parent is not a sole parent if the child has acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

*Suitability as adoptive parent(s)* means that USCIS is satisfied, based on the evidence of record, that it is reasonable to conclude that the applicant is capable of providing, and will provide, proper parental care to an adopted child.

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

**§ 204.302 Role of service providers.**

(a) *Who may provide services in Convention adoption cases.* Subject to the limitations in paragraph (b) or (c) of this section, a U.S. citizen seeking to file a Form I-800A or I-800 may use the services of any individual or entity authorized to provide services in connection with adoption, except that the U.S. citizen must use the services of an accredited agency, temporarily accredited agency, approved person, supervised provider public domestic authority or exempted provider when required to do so under 22 CFR part 96.

(b) *Unauthorized practice of law prohibited.* An adoption agency or facilitator, including an individual or entity authorized under 22 CFR part 96 to provide the six specific adoption services identified in 22 CFR 96.2, may

not engage in any act that constitutes the legal representation, as defined in 8 CFR 1.1(i), (j) and (m), of the applicant (for a Form I-800A case) or petitioner (for a Form I-800 case) unless authorized to do so as provided in 8 CFR part 292. An individual authorized under 8 CFR part 292 to practice before USCIS may provide legal services in connection with a Form I-800A or I-800 case, but may not provide any of the six specific adoption services identified in 22 CFR 96.2, unless the individual is authorized to do so under 22 CFR part 96 (for services provided in the United States) or under the laws of the country of the child's habitual residence (for services performed outside the United States). The provisions of 8 CFR 292.5 concerning sending notices about a case do not apply to an adoption agency or facilitator that is not authorized under 8 CFR part 292 to engage in representation before USCIS.

(c) *Application of the Privacy Act.* Except as permitted by the Privacy Act, 5 U.S.C. 552a and the relevant Privacy Act notice concerning the routine use of information, USCIS may not disclose or give access to any information or record relating to any applicant or petitioner who has filed a Form I-800A or Form I-800 to any individual or entity other than that person, including but not limited to an accredited agency, temporarily accredited agency, approved person, public domestic authority, exempted provider, or supervised provider, unless the applicant who filed the Form I-800A or the petitioner who filed Form I-800 has filed a written consent to disclosure, as provided by the Privacy Act, 5 U.S.C. 552a.

**§ 204.303 Determination of habitual residence.**

(a) *U.S. Citizens.* For purposes of this subpart, a U.S. citizen who is seeking to have an alien classified as the U.S. citizen's child under section 101(b)(1)(G) of the Act is deemed to be habitually resident in the United States if the individual:

(1) Has his or her domicile in the United States, even if he or she is living temporarily abroad; or

(2) Is not domiciled in the United States but establishes by a preponderance of the evidence that: