§ 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

not engage in any act that constitutes the legal representation, as defined in 8 CFR 1.2, 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.

§ 204.304 Improper inducement prohibited.

(a) Prohibited payments. Neither the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give to any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning:

(1) The placement of a child for adoption;
(2) The consent of a parent, a legal custodian, individual, or agency to the adoption of a child;
(3) The relinquishment of a child to a competent authority, or to an agency or person (as defined in 22 CFR 96.2) for the purpose of adoption; or
(4) The performance by the child’s parent or parents of any act that makes the child a Convention adoptee.

(b) Permissible payments. Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. A payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided. The permissible services are:

(1) The services of an adoption service provider in connection with an adoption;
(2) Expenses incurred in locating a child for adoption;
(3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or illness of the child;
(4) Counseling services for a parent or a child for a reasonable time before and after the child’s placement for adoption;
(5) Expenses, in an amount commensurate with the living standards in the country of the child’s habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child;
(6) Expenses incurred in obtaining the home study;
(7) Expenses incurred in obtaining the reports on the child as described in 8 CFR 204.313(d)(3) and (4);