

§ 204.310

8 CFR Ch. I (1–13 Edition)

in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the child's parent(s).

(3) The USCIS officer finds that the petitioner, or any individual or entity acting on behalf of the petitioner has engaged in any conduct related to the adoption or immigration of the child that is prohibited by 8 CFR 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption;

(4) The child is present in the United States, unless the petitioner, after compliance with the requirements of this subpart, either adopt(s) the child in the Convention country, or else, after having obtained custody of the child under the law of the Convention country for purposes of emigration and adoption, adopt(s) the child in the United States. This subpart does not require the child's actual return to the Convention country; whether to permit the child's adoption without the child's return is a matter to be determined by the Central Authority of the country of the child's habitual residence, but approval of a Form I-800 does not relieve an alien child of his or her ineligibility for adjustment of status under section 245 of the Act, if the child is present in the United States without inspection or is otherwise ineligible for adjustment of status. If the child is in the United States but is not eligible for adjustment of status, the Form I-800 may be provisionally approved only if the child will leave the United States after the provisional approval and apply for a visa abroad before the final approval of the Form I-800.

(5) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-800A to reflect a change in marital status, the petitioner files the Form I-800:

(i) Before the approval of a Form I-800A, or

(ii) After the denial of a Form I-800A; or

(iii) After the expiration of the approval of a Form I-800A;

(6) The petitioner is barred by 8 CFR 204.307(c) from filing the Form I-800.

(c) *Notice of intent to deny.* Before denying a Form I-800A under paragraph (a) or a Form I-800 under paragraph (b) of this section, the USCIS officer will notify the applicant (for a Form I-800A case) or petitioner (for a Form I-800 case) in writing of the intent to deny the Form I-800A or Form I-800 and provide 30 days in which to submit evidence and argument to rebut the claim that this section requires denial of the Form I-800A or Form I-800.

(d) *Rebuttal of intent to deny.* If USCIS notifies the applicant that USCIS intends to deny a Form I-800A under paragraph (a) of this section, because the applicant or any additional adult member(s) of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to cooperate in search of child abuse registries, or failed to disclose a prior home study, the applicant may rebut the intent to deny only by establishing, by clear and convincing evidence that:

(1) The applicant or additional adult member of the household did, in fact, disclose the information; or

(2) If it was an additional adult member of the household who failed to cooperate in the search of child abuse registries, or who failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to disclose a prior home study, that that person is no longer a member of the household and that that person's conduct is no longer relevant to the suitability of the applicant as the adoptive parent of a Convention adoptee.

§ 204.310 Filing requirements for Form I-800A.

(a) *Completing and filing the Form.* A United States citizen seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must:

(1) Complete Form I-800A, including a Form I-800A Supplement 1 for each additional adult member of the household, in accordance with the instructions that accompany the Form I-800A.

(2) Sign the Form I-800A personally. One spouse cannot sign for the other, even under a power of attorney or similar agency arrangement.

(3) File the Form I-800A with the USCIS office that has jurisdiction under 8 CFR 204.308(a) to adjudicate the Form I-800A, together with:

(i) The fee specified in 8 CFR 103.7(b)(1) for the filing of Form I-800A;

(ii) The additional biometrics information collection fee required under 8 CFR 103.7(b)(1) for the applicant and each additional adult member of the household;

(iii) Evidence that the applicant is a United States citizen, as set forth in 8 CFR 204.1(g), or, in the case of a married applicant, evidence either that both spouses are citizens or, if only one spouse is a United States citizen, evidence of that person's citizenship and evidence that the other spouse, if he or she lives in the United States, is either a non-citizen United States national or an alien who holds a lawful status under U.S. immigration law.

(iv) A copy of the current marriage certificate, unless the applicant is not married;

(v) If the applicant has been married previously, a death certificate or divorce or dissolution decree to establish the legal termination of all previous marriages, regardless of current marital status;

(vi) If the applicant is not married, his or her birth certificate, U.S. passport biographical information page, naturalization or citizenship certificate, or other evidence, to establish that he or she is at least 24 years old;

(vii) A written description of the preadoption requirements, if any, of the State of the child's proposed residence in cases where it is known that any child the applicant may adopt will be adopted in the United States, and of the steps that have already been taken or that are planned to comply with these requirements. The written description must include a citation to the State statutes and regulations establishing the requirements. Any

preadoption requirements which cannot be met at the time the Form I-800A is filed because of the operation of State law must be noted and explained when the Form I-800A is filed.

(viii) A home study that meets the requirements of 8 CFR 204.311 and that bears the home study preparer's original signature. If the home study is not included with the Form I-800A, the director of the office that has jurisdiction to adjudicate the Form I-800A will make a written request for evidence, directing the applicant to submit the home study. If the applicant fails to submit the home study within the period specified in the request for evidence, the director of the office that has jurisdiction to adjudicate the Form I-800A will deny the Form I-800A. Denial of a Form I-800A under this paragraph for failure to submit a home study is not subject to appeal, but the applicant may file a new Form I-800A, accompanied by a new filing fee.

(b) *Biometrics.* Upon the proper filing of a Form I-800A, USCIS will arrange for the collection of biometrics from the applicant and each additional adult member of the household, as prescribed in 8 CFR 103.16, but with no upper age limit. It will be necessary to collect the biometrics of each of these persons again, if the initial collection expires before approval of the Form I-800A. USCIS may waive this requirement for any particular individual if USCIS determines that that person is physically unable to comply. However, USCIS will require the submission of affidavits, police clearances, or other evidence relating to whether that person has a criminal history in lieu of collecting the person's biometrics.

(c) *Change in marital status.* If, while a Form I-800A is pending, an unmarried applicant marries, or the marriage of a married applicant ends, an amended Form I-800A and amended home study must be filed to reflect the change in marital status. No additional filing fee is required to file an amended Form I-800A while the original Form I-800A is still pending. See 8 CFR 204.312(e)(2) concerning the need to file a new Form I-800A if the marital status changes after approval of a Form I-800A.

[72 FR 56854, Oct. 4, 2007, as amended at 76 FR 53782, Aug. 29, 2011]