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8 CFR Ch. I (1–13 Edition)

§ 204.313 Filing and adjudication of a Form I-800.

(a) *When to file.* Once a Form I-800A has been approved and the Central Authority has proposed placing a child for adoption by the petitioner, the petitioner may file the Form I-800. The petitioner must complete the Form I-800 in accordance with the instructions that accompany the Form I-800, and must sign the Form I-800 personally. In the case of a married petitioner, one spouse cannot sign for the other, even under a power of attorney or similar agency arrangement. The petitioner may then file the Form I-800 with the stateside or overseas USCIS office or the visa issuing post that has jurisdiction under 8 CFR 204.308(b) to adjudicate the Form I-800, together with the evidence specified in this section and the filing fee specified in 8 CFR 103.7(b)(1), if more than one Form I-800 is filed for children who are not siblings.

(b) *What to include on the Form.* (1) The petitioner must specify on the Form I-800 either that:

(i) The child will seek an immigrant visa, if the Form I-800 is approved, because the child will reside in the United States with the petitioner (in the case of a married petitioner, if only one spouse is a United States citizen, with that spouse) after the child's admission to the United States on the basis of the proposed adoption; or

(ii) The child will seek a non-immigrant visa, in order to travel to the United States to obtain naturalization under section 322 of the Act, because the petitioner intends to complete the adoption abroad and the petitioner and the child will continue to reside abroad immediately following the adoption, rather than residing in the United States with the petitioner. This option is not available if the child will be adopted in the United States.

(2) In applying this paragraph (b), if a petitioner is a United States citizen who is domiciled in the United States, but who is posted abroad temporarily under official orders as a member of the Uniformed Services as defined in 5 U.S.C. 2101, or as a civilian officer or employee of the United States Government, the child will be deemed to be coming to the United States to reside

in the United States with that petitioner.

(c) *Filing deadline.* (1) The petitioner must file the Form I-800 before the expiration of the notice of the approval of the Form I-800A and before the child's 16th birthday. Paragraphs (c)(2) and (3) of this section provide special rules for determining that this requirement has been met.

(2) If the appropriate Central Authority places the child with the petitioner for intercountry adoption more than 6 months after the child's 15th birthday but before the child's 16th birthday, the petitioner must still file the Form I-800 before the child's 16th birthday. If the evidence required by paragraph (d)(3) or (4) of this section is not yet available, instead of that evidence, the petitioner may submit a statement from the primary provider, signed under penalty of perjury under United States law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified in the statement. Submission of a Form I-800 with this statement will satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday, but no provisional or final approval of the Form I-800 will be granted until the evidence required by paragraph (d)(3) or (4) of this section has been submitted. When submitted, the evidence required by paragraph (d)(3) and (4) must affirmatively show that the Central Authority did, in fact, make the adoption placement decision before the child's 16th birthday.

(3) If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date of the Form I-800, provided the Form I-800 is filed not more than 180 days after the initial approval of the Form I-800A.

(d) *Required evidence.* Except as specified in paragraph (c)(2) of this section, the petitioner must submit the following evidence with the properly completed Form I-800:

(1) The Form I-800A approval notice and, if applicable, proof that the approval period has been extended under 8 CFR 204.312(e);

(2) A statement from the primary provider, as defined in 22 CFR 96.2, signed under penalty of perjury under United States law, indicating that all of the pre-placement preparation and training provided for in 22 CFR 96.48 has been completed;

(3) The report required under article 16 of the Convention, specifying the child's name and date of birth, the reasons for making the adoption placement, and establishing that the competent authority has, as required under article 4 of the Convention:

(i) Established that the child is eligible for adoption;

(ii) Determined, after having given due consideration to the possibility of placing the child for adoption within the Convention country, that inter-country adoption is in the child's best interests;

(iii) Ensured that the legal custodian, after having been counseled as required, concerning the effect of the child's adoption on the legal custodian's relationship to the child and on the child's legal relationship to his or her family of origin, has freely consented in writing to the child's adoption, in the required legal form;

(iv) Ensured that if any individual or entity other than the legal custodian must consent to the child's adoption, this individual or entity, after having been counseled as required concerning the effect of the child's adoption, has freely consented in writing, in the required legal form, to the child's adoption;

(v) Ensured that the child, after having been counseled as appropriate concerning the effects of the adoption; has freely consented in writing, in the required legal form, to the adoption, if the child is of an age that, under the law of the country of the child's habitual residence, makes the child's consent necessary, and that consideration was given to the child's wishes and opinions; and

(vi) Ensured that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed.

(4) The report under paragraph (d)(3) of this section must be accompanied by:

(i) A copy of the child's birth certificate, or secondary evidence of the child's age; and

(ii) A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption unless, as permitted under article 16 of the Convention, the law of the country of the child's habitual residence provides that their identities may not be disclosed, so long as the Central Authority of the country of the child's habitual residence certifies in its report that the required documents exist and that they establish the child's age and availability for adoption;

(iii) A statement, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person), certifying that the report is a true, correct, and complete copy of the report obtained from the Central Authority of the Convention country;

(iv) A summary of the information provided to the petitioner under 22 CFR 96.49(d) and (f) concerning the child's medical and social history. This summary, or a separate document, must include:

(A) A statement concerning whether, from any examination as described in 22 CFR 96.49(e) or for any other reason, there is reason to believe that the child has any medical condition that makes the child inadmissible under section 212(a)(1) of the Act; if the medical information that is available at the provisional approval stage is not sufficient to assess whether the child may be inadmissible under section 212(a)(1), the submission of this information may be deferred until the petitioner seeks final approval of the Form I-800;

(B) If both of the child's birth parents were the child's legal custodians and signed the irrevocable consent, the factual basis for determining that they are incapable of providing proper care for the child, as defined in 8 CFR 204.301;

(C) Information about the circumstances of the other birth parent's death, if applicable, supported by a copy of the death certificate, unless paragraph (d)(4)(ii) of this section

makes it unnecessary to provide a copy of the death certificate;

(D) If a sole birth parent was the legal custodian, the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child's life; and

(E) If the legal custodian was the child's prior adoptive parent(s) or any individual or entity other than the child's birth parent(s), the circumstances leading to the custodian's acquisition of custody of the child and the legal basis of that custody.

(v) If the child will be adopted in the United States, the primary provider's written report, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person) detailing the primary adoption service provider's plan for post-placement duties, as specified in 22 CFR 96.50; and

(5) If the child may be inadmissible under any provision of section 212(a) for which a waiver is available, a properly completed waiver application for each such ground; and

(6) Either a Form I-864W, Intending Immigrant's I-864 Exemption, or a Form I-864, Affidavit of Support, as specified in 8 CFR 213a.2.

(e) *Obtaining the home study and supporting evidence.* The materials from the Form I-800A proceeding will be included in the record of the Form I-800 proceeding.

(f) *Investigation.* An investigation concerning the alien child's status as a Convention adoptee will be completed before the Form I-800 is adjudicated in any case in which the officer with jurisdiction to grant provisional or final approval of the Form I-800 determines, on the basis of specific facts, that completing the investigation will aid in the provisional or final adjudication of the Form I-800. Depending on the circumstances surrounding the case, the investigation may include, but is not limited to, document checks, telephone checks, interview(s) with the birth or prior adoptive parent(s), a field investigation, and any other appropriate investigatory actions. In any case in which there are significant differences between the facts presented in the ap-

proved Form I-800A or Form I-800 and the facts uncovered by the investigation, the office conducting the investigation may consult directly with the appropriate USCIS office. In any instance where the investigation reveals negative information sufficient to sustain a denial of the Form I-800 (including a denial of a Form I-800 that had been provisionally approved) or the revocation of the final approval of the Form I-800, the results of the investigation, including any supporting documentation, and the Form I-800 and its supporting documentation will be forwarded to the appropriate USCIS office for action. Although USCIS is not precluded from denying final approval of a Form I-800 based on the results of an investigation under this paragraph, the grant of provisional approval under paragraph (g), and the fact that the Department of State has given the notice contemplated by article 5(c) of the Convention, shall constitute prima facie evidence that the grant of adoption or custody for purposes of adoption will, ordinarily, warrant final approval of the Form I-800. The Form I-800 may still be denied, however, if the Secretary of State declines to issue the certificate provided for under section 204(d)(2) of the Act or if the investigation under this paragraph establishes the existence of facts that clearly warrant denial of the petition.

(g) *Provisional approval.* (1) The officer will consider the evidence described in paragraph (d) of this section and any additional evidence acquired as a result of any investigation completed under paragraph (f) of this section, to determine whether the preponderance of the evidence shows that the child qualifies as a Convention adoptee. Unless 8 CFR 204.309(b) prohibits approval of the Form I-800, the officer will serve the petitioner with a written order provisionally approving the Form I-800 if the officer determines that the child does qualify for classification as a "child" under section 101(b)(1)(G), and that the proposed adoption or grant of custody will meet the Convention requirements.

(i) The provisional approval will expressly state that the child will, upon adoption or acquisition of custody, be

eligible for classification as a Convention adoptee, adjudicate any waiver application and (if any necessary waiver of inadmissibility is granted) direct the petitioner to obtain and present the evidence required under paragraph (h) of this section in order to obtain final approval of the Form I-800.

(ii) The grant of a waiver of inadmissibility in conjunction with the provisional approval of a Form I-800 is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the United States based on the final approval of the same Form I-800. If the Form I-800 is finally denied or the immigrant or nonimmigrant visa application is denied, the waiver is void.

(2) If the petitioner filed the Form I-800 with USCIS and the child will apply for an immigrant or nonimmigrant visa, then, upon provisional approval of the Form I-800, the officer will forward the notice of provisional approval, Form I-800, and all supporting evidence to the Department of State. If the child will apply for adjustment of status, USCIS will retain the record of proceeding.

(h) *Final approval.* (1) To obtain final approval of a provisionally approved Form I-800, the petitioner must submit to the Department of State officer who has jurisdiction of the child's application for an immigrant or nonimmigrant visa, or to the USCIS officer who has jurisdiction of the child's adjustment of status application, a copy of the following document(s):

(i) If the child is adopted in the Convention country, the adoption decree or administrative order from the competent authority in the Convention country showing that the petitioner has adopted the child; in the case of a married petitioner, the decree or order must show that both spouses adopted the child; or

(ii) If the child will be adopted in the United States:

(A) The decree or administrative order from the competent authority in the Convention country giving custody of the child for purposes of emigration and adoption to the petitioner or to an individual or entity acting on behalf of the petitioner. In the case of a married petitioner, an adoption decree that

shows that the child was adopted only by one spouse, but not by both, will be deemed to show that the petitioner has acquired sufficient custody to bring the child to the United States for adoption by the other spouse;

(B) If not already provided before the provisional approval (because, for example, the petitioner thought the child would be adopted abroad, but that plan has changed so that the child will now be adopted in the United States), a statement from the primary provider, signed under penalty of perjury under United States law, summarizing the plan under 22 CFR 96.50 for monitoring of the placement until the adoption is finalized in the United States;

(C) If not already provided before the provisional approval (because, for example, the petitioner thought the child would be adopted abroad, but that plan has changed so that the child will now be adopted in the United States), a written description of the preadoption requirements that apply to adoptions in the State of the child's proposed residence and a description of when and how, after the child's immigration, the petitioner intends to complete the child's adoption. The written description must include a citation to the relevant State statutes or regulations and specify how the petitioner intends to comply with any requirements that can be satisfied only after the child arrives in the United States.

(2) If the Secretary of State, after reviewing the evidence that the petitioner provides under paragraph (h)(1)(i) or (ii) of this section, issues the certificate required under section 204(d)(2) of the Act, the Department of State officer who has jurisdiction over the child's visa application has authority, on behalf of USCIS, to grant final approval of a Form I-800. In the case of an alien who will apply for adjustment of status, the USCIS officer with jurisdiction of the adjustment application has authority to grant this final approval upon receiving the Secretary of State's certificate under section 204(d)(2) of the Act.

(i) *Denial of Form I-800.* (1) A USCIS officer with authority to grant provisional or final approval will deny the Form I-800 if the officer finds that the child does not qualify as a Convention

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adoptee, or that 8 CFR 204.309(b) of this section requires denial of the Form I-800. Before denying a Form I-800, the officer will comply with the requirements of 8 CFR 103.2(b)(16)), if required to do so under that provision, and may issue a request for evidence or a notice of intent to deny under 8 CFR 103.2(b)(8).

(2) The decision will be in writing, specifying the reason(s) for the denial and notifying the petitioner of the right to appeal, if any, as specified in 8 CFR 204.314.

(3) If a Department of State officer finds, either at the provisional approval stage or the final approval stage, that the Form I-800 is "not clearly approvable," or that 8 CFR 204.309(b) warrants denial of the Form I-800, the Department of State officer will forward the Form I-800 and accompanying evidence to the USCIS office with jurisdiction over the place of the child's habitual residence for review and decision.

§ 204.314 Appeal.

(a) *Decisions that may be appealed.* (1) Except as provided in paragraph (b) of this section:

(i) An applicant may appeal the denial of a Form I-800A (including the denial of a request to extend the prior approval of a Form I-800A) and

(ii) A petitioner may appeal the denial of a Form I-800.

(2) The provisions of 8 CFR 103.3, concerning how to file an appeal, and how USCIS adjudicates an appeal, apply to the appeal of a decision under this subpart C.

(b) *Decisions that may not be appealed.* There is no appeal from the denial of:

(1) Form I-800A because the Form I-800A was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I-800A; or

(2) Form I-800A for failure to timely file a home study as required by 8 CFR 204.310(a)(3)(viii); or

(3) Form I-800 that is denied because the Form I-800 was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I-800;

(4) Form I-800 filed either before USCIS approved a Form I-800A or after the expiration of the approval of a Form I-800A.

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PART 205—REVOCATION OF APPROVAL OF PETITIONS

Sec.

205.1 Automatic revocation.

205.2 Revocation on notice.

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

§ 205.1 Automatic revocation.

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:

(1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act on or after October 1, 1994;

(2) If the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable; or

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:

(i) *Immediate relative and family-sponsored petitions, other than Amerasian petitions.* (A) Upon written notice of withdrawal filed by the petitioner or self-petitioner with any officer of the Service who is authorized to grant or deny petitions.

(B) Upon the death of the beneficiary or the self-petitioner.

(C) Upon the death of the petitioner, unless:

(1) The petition is deemed under 8 CFR 204.2(i)(1)(iv) to have been approved as a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant under 8 CFR 204.2(b); or

(2) U.S. Citizenship and Immigration Services (USCIS) determines, as a matter of discretion exercised for humanitarian reasons in light of the facts of a particular case, that it is inappropriate to revoke the approval of the petition.