INTERIM MEMO FOR COMMENT

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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

PM-602-0069

July 9, 2012

Policy Memorandum

SUBJECT: Addressing Upcoming Expiration of Status for Certain Chinese and Guatemalan "Grandfathered" Orphan Adoption Cases

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Purpose

This Policy Memorandum (PM) updates U.S. Citizenship and Immigration Services (USCIS) policy with respect to certain "grandfathered" adoption cases from China or Guatemala initiated before April 1, 2008. The term "grandfathered" is commonly applied to an intercountry adoption case that can continue to completion as an "orphan" case under section 101(b)(1)(F) of the Immigration and Nationality Act (INA). "Grandfathering" is available only if the case was already pending when the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("Hague Adoption Convention") entered into effect for the United States on April 1, 2008.

Scope

Unless specifically exempted herein, this PM applies to all USCIS employees.

Authority

The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, (signed at The Hague May 29, 1993); the Intercountry Adoption Act of 2000 (IAA § 505(b); 8 C.F.R. § 204.3(a).

Background

On April 1, 2008, the Hague Adoption Convention became effective in the United States, creating two separate tracks for U.S. intercountry adoptions: Hague processing for children from Hague Adoption Convention countries and orphan processing for children from countries not party to the Hague Adoption Convention. After the Hague Adoption Convention became effective in the United States, children from Hague countries could no longer immigrate to the United States through the orphan process. However, the "transition" provisions in section 505(b)(1) of the *Intercountry Adoption Act of 2000*, allowed cases that were pending when the Hague Adoption Convention entered into effect to be completed as orphan cases.

AILA InfoNet Doc. No. 12071942. (Posted 07/19/12)

The two Hague Adoption Convention countries with significant numbers of orphan cases pending as of April 1, 2008 were Guatemala and China. While many of these cases have been processed to conclusion, there are valid reasons why certain cases remain unresolved three years later. In China, the average wait time to adopt can be 4 to 5 years. In Guatemala, government officials and adoption authorities are currently processing remaining cases very slowly in an effort to ensure the integrity of the intercountry adoption process.

"Grandfathering" is rooted in section 505(b)(1) of the Intercountry Adoption Act (IAA), Pub. L. 106-279. Under IAA section 505(b)(1), a prospective adoptive parent can continue to use the orphan process, after April 1, 2008, if the prospective adoptive parent filed either a Form I-600A, *Application for Advance Processing of Orphan Petition*, or a Form I-600, *Petition to Classify Orphan as an Immediate Relative*, before April 1, 2008. Cases grandfathered by virtue of a Form I-600 filed before April 1, 2008, have been able to proceed to conclusion without concern about expiration of the validity of the petition because Form I-600 petitions preserve the viability of a case indefinitely pending adjudication. Those whose cases were grandfathered by virtue of a filed Form I-600A, *Application for Advance Processing of Orphan Petition*, have needed to maintain a valid Form I-600A approval or to file a Form I-600 petition before a Form I-600A approval expired, to preserve their grandfathered status.

USCIS has now, as a matter of policy, developed separate processes for the cases from China and Guatemala as described below.

Policy

<u>China</u>

Since Hague processing is available and functioning in China, effective immediately prospective adoptive parents who had a "grandfathered" Form I-600A, but who did not file a Form I-600 before the Form I-600A approval expired will need to file Forms I-800A/I-800 with the fee. Families that re-file under the Hague Adoption Convention should not experience any increased delays due to the switch. Other than the change in form type, families should see minimal changes in the process, since country-specific requirements for China are already Hague-compliant. The Chinese Central Authority has assured the U.S. Department of State that any parents converting their orphan cases to Hague cases will keep their "place in line" for a match with a child and will retain their eligibility to adopt from China even if they do not meet the newer eligibility requirements that have been put in place since these families initiated their cases.

<u>Guatemala</u>

Adoption and immigration under the Hague Adoption Convention are not yet available for a child habitually resident in Guatemala because the U.S. Department of State has determined that Guatemala's adoption system does not meet the obligations under the Hague Adoption Convention. The orphan process is also unavailable in Guatemala, unless the case has been

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grandfathered because the Form I-600 was filed before April 1, 2008, or was filed before the expiration of the approval of a grandfathered Form I-600A. USCIS will allow prospective adoptive parents with only an approved I-600A in support of their grandfathered status to file their Form I-600 petition before their Form I-600A approval expires and without the normally required Guatemala-specific supporting documents. Because the Form I-600 is valid indefinitely, this process will allow families to obtain more time to complete the intercountry adoption process. However, USCIS will not be able to *adjudicate* the Form I-600 until all required supporting documents from Guatemalan authorities are submitted.

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 or suggestions regarding this PM should be addressed through appropriate channels to Field Operations Directorate.

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