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United States Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director, Mailstop 2000
20 Massachusetts Ave, NW
Washington, DC 20529-2000

AILA National Office
Suite 300
1331 G Street, NW
Washington, DC
20005-3142

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

Crystal Williams
Executive Director

Susan D. Quarles
Deputy Executive Director

Via e-mail: opefeedback@uscis.dhs.gov

Re: *The Jurisdiction of Amended Home Studies and the Application of Home Study Age Restrictions for Prospective Adoptive Child(ren) in Inter-country Adoption Cases (PM-602-0071)*

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the interim policy memorandum, "*The Jurisdiction of Amended Home Studies and the Application of Home Study Age Restrictions for Prospective Adoptive Child(ren) in Inter-country Adoption Cases*" (PM-602-0071).¹

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. AILA appreciates the opportunity to comment on this interim policy memorandum and believes that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that will benefit the public and the government.

AILA appreciates the opportunity to comment on PM-602-0071, which clarifies two important issues that frequently arise: filing location and age restriction. AILA believes the clarifications will save U.S. prospective adoptive families time and frustration and will allow children who have been matched with prospective adoptive parents to obtain their immigrant visas in a more timely fashion.

Introduction

Inter-country adoption can be a lengthy and expensive process, and legal procedures in the child's country of origin can further delay an inter-country

¹ *USCIS Interim Memo on Home Study Issues in Inter-country Adoptions*, AILA Doc. No. 12080853, <http://www.aila.org/content/default.aspx?docid=40861>,

<http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/SuitabilityandHomeStudy-july-23-12.pdf>

adoption. During this delay, “significant changes” may occur, which complicate the entire adoption process. For example, the original home-study may have recommended that a family be suitable to adopt a child under the age of five, and the family may have been matched with a child under five. However, by the time the legal process concludes in the child’s country of origin, the child is now five-years old.

Additionally, other “significant changes” may result when the adopting family moves during the process or decides to parent a sibling group instead of only one child. Confusion in how to handle such changes has resulted in additional delay and expense for the families. In some circumstances, intending parents find themselves stranded in the child’s country of origin or are forced to make an additional trip to resolve these issues.

The interim policy memorandum (PM-602-0071) clarifies frequent problematic scenarios, which will hopefully result in quicker placements for children with their prospective adoptive parents.

A. Filing Location of New Suitability Determination and Amended Home-Study When a “Significant Change” Occurs

Currently, the National Benefits Center (NBC) determines the suitability of the prospective adoptive parents when it adjudicates the I-600A. Then, the NBC forwards the file to the USCIS office abroad that has jurisdiction over the case or to the consulate, if no USCIS office exists at that location. The Form I-600, which determines the eligibility of the child, may be filed at the appropriate office abroad. As a result of the child’s adoption process, delays sometimes occur during the I-600 adjudication stage or the visa appointment stage. The regulations permit the I-600A approval to lapse while the I-600 remains pending; however, a “significant change” may occur in the meantime, such as a local move, a birth, or an adult family member moving into the home.

The regulations require notification to USCIS when a “significant change” occurs, along with submission of an amended home-study to request a new suitability determination.² At that point, the NBC no longer possesses the file, and the I-600A may have expired. As a result, confusion arises over which office maintains jurisdiction of the case in order to issue a new suitability determination. Additionally, it has been unclear where the letter and amended home-study should be sent.

AILA appreciates the clarification in this interim policy memorandum which states that the request should be sent to the office that currently possesses the file, which may be the USCIS office abroad, the U.S. consulate or embassy, or the NBC.

B. Application of Home-Study Age Restrictions

AILA appreciates that the interim policy memorandum clarifies that if the child met the age restrictions during the family’s home-study at the time the competent authority or appropriate entity proposed placing the child with the family and if the family accepted the placement, no amended home-study will be required, even if the child is older at the time of adjudication of the Form I-600 or Form I-800. AILA agrees with this interpretation since the family had qualified to parent the child at the time of placement

² 8 CFR 204.3(e)(9)(ii)

and it was only due to delays in the process that the home-study age restriction expired. Expecting families to undergo an amended home-study with additional delay and expense is unnecessary and does not serve the best interests of children. AILA commends USCIS for this clarification.

AILA requests, however, that USCIS clarify whether this applies to Hague adoption processes as well as non-Hague processes. The title seems to indicate that it only applies to non-Hague cases by the use of the Form I-600A and Form I-600. However, the body of the interim policy memorandum specifically mentions the Form I-800 and cites to INA 101(b)(1)(G), which relates to Hague adoption processes, not non-Hague processes. AILA believes the clarification should apply to both processes.

Conclusion

Thank you for the opportunity to comment on this interim memorandum, and AILA looks forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION