

**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-602-0116**

## Policy Memorandum

**SUBJECT:** Guidance on Conducting Form I-604, *Determination on Child for Adoption*, Orphan Determinations

### Purpose

This policy memorandum (PM) provides guidance on conducting Form I-604 orphan determinations associated with each Form I-600, *Petition to Classify Orphan as an Immediate Relative*, adjudication. This PM revises Chapter 21.5(d) of the Adjudicator's Field Manual (AFM); AFM Update AD14-06.

### Scope

Unless specifically exempted, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

### Authorities

- Immigration and Nationality Act (INA) section 101(b)(1)(F)
- 8 CFR Parts 204.3(h) and 204.3(k)

### Background

The Form I-604, *Determination on Child for Adoption*, supports the Form I-600 petition and must be completed as part of every orphan (non-Hague Adoption Convention) adoption case. The Form I-604 serves two main purposes: (1) to ensure that prospective adoptive parents meet all the immigration-related legal requirements to petition for a child to immigrate to the United States;<sup>1</sup> and, (2) to ensure that a child can be classified as an "orphan" under U.S. immigration law. The second purpose can be complex and requires a clear understanding of the legal definition of orphan in the INA and its component elements as described in 8 CFR 204.3.

This PM is intended to assist USCIS officers in completing Form I-604 determinations. USCIS understands that the Department of State ("State") will update the Foreign Affairs Manual in accordance with this guidance.

<sup>1</sup> Many questions on the Form I-604 are self-explanatory and do not require specific guidance to complete. Those questions are not specifically addressed in this PM and AFM update.

## Implementation

Effective immediately, officers will conduct Form I-604 orphan determinations according to this PM and AFM update AD14-06, which revises and supplements existing Form I-604 guidance.

Accordingly, the AFM is revised as follows:

- ☞ 1. Chapter 21.5(d)(3) of the AFM is revised by deleting the language under existing part (3) in full and relabeling existing part (4) “Stepparents” to part (3).

### 21.5 Petition for an Orphan.

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#### (d) Adjudication of Form I-600.

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#### (3) Stepparents.

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- ☞ 2. Chapter 21.5(d)(5) of the AFM is revised by deleting part (5) in full and relabeling existing part (6) “Evidentiary Requirements if No Form I-600A Was Filed Previously (Combination Filing)” to part (4).

#### (4) Evidentiary Requirements if No Form I-600A Was Filed Previously (Combination Filing).

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- ☞ 3. Chapter 21.5(d)(7) of the AFM is revised by deleting existing part (7) in full and replacing it with new part (5) “Documenting That A Child Is an Orphan under **INA 101(b)(1)(F)** and Conducting Form I-604 Determinations” below.

#### (5) Documenting That a Child Is an Orphan under **INA 101(b)(1)(F)** and Conducting Form I-604 Determinations.

##### (A) The Relationship between the Form I-600 and the Form I-604.

(1) *All Forms I-600 require completion of a Form I-604.*

Under U.S. Department of Homeland Security (DHS) regulations, a Form I-604, *Determination on Child for Adoption*, informally referred to as an “orphan determination,” must be completed in every orphan case. **8 CFR 204.3(k)(1)**. The Form I-604 must be completed by either USCIS overseas officers or State consular officers in the child’s country of origin, or the country where the adoption or grant of legal custody is completed. When it is not possible to complete the Form I-604 in the child’s country of origin or the country

where the adoption is completed, then officers designated by USCIS or State with jurisdiction over the specific location should complete the Form I-604. In general, if USCIS has an office in the child's country of origin and has assumed jurisdiction of Form I-604 determinations, USCIS completes the Form I-604 abroad, while State completes the Form I-604 if USCIS does not have an office in the child's country of origin. Regardless of who completes the Form I-604, its primary purpose is to verify that the child (i.e., the beneficiary) qualifies for orphan classification.

*(2) Where the Form I-600 is filed affects the timing of and who is responsible for completing the Form I-604.*

Under DHS regulations and the Form I-600 instructions, the petitioner may generally file a Form I-600 petition domestically or abroad. **8 CFR 204.3(g)**. There are certain countries, however, where USCIS has designated one filing location – either domestic or abroad. The current domestic filing location for the Form I-600 petition is the USCIS Dallas Lockbox, with the USCIS National Benefits Center (NBC) adjudicating the petition.

When a petitioner files a Form I-600 petition domestically, the Form I-604 determination is normally not completed until after USCIS has approved the Form I-600 petition and sent it to a Consular Post ("Post"). If USCIS has "articulable concerns" that can only be resolved through the Form I-604 determination, then the adjudicating NBC officer may request that a Form I-604 determination be completed before the final adjudication of the Form I-600 petition. **8 CFR 204.3(k)(1)**. At present, generally a consular officer in the child's country of origin completes the Form I-604 determination for a domestically approved Form I-600 petition unless USCIS has assumed jurisdiction over the Form I-604 determination.<sup>2</sup>

When a petitioner files a Form I-600 petition abroad, the USCIS or consular officer completes the Form I-604 determination before adjudicating the Form I-600 petition and uses the information gathered during the Form I-604 determination when adjudicating the Form I-600 petition:

1. If the petitioner filed the Form I-600 petition with a USCIS international office in the child's country or where the adoption or grant of legal custody is completed, the USCIS officer will complete both the Form I-604 determination and the Form I-600 adjudication.
2. If the petitioner filed the Form I-600 petition with an embassy or consulate, then the consular officer completes the Form I-604 determination prior to the Form I-600 adjudication and visa screening.

See **Chapter 21.5(d)(5)(H)** "How and When to Complete Form I-604" for a breakdown of Form I-600 filing locations and who will be responsible for completing the Form I-604 determination and at what point in the process.

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<sup>2</sup> USCIS assumed jurisdiction over Form I-604 processing in Haiti on September 16, 2013, and in the Republic of Korea on September 22, 2014.

*(3) The Form I-600 adjudication and the Form I-604 determination are based on DHS authority.*

The adjudication of a Form I-600 and the completion of the Form I-604 determination are the exercise of the DHS Secretary's authority, delegated to USCIS. **INA 103(a) and 204(b)**. DHS further delegated authority to consular officers under certain circumstances to approve orphan petitions and to complete Form I-604 determinations. **8 CFR 204.3(k)(2)**.

Under this delegated authority, a consular officer has the authority to approve, but not deny, a Form I-600 petition. In addition, while consular officers may ask petitioners for additional information, a consular officer is not authorized to issue a Request for Evidence, a Notice of Intent to Deny, or a Notice of Intent to Revoke. If the consular officer believes a Form I-600 petition filed at his or her Post is "not clearly approvable," the consular officer must refer the Form I-600 petition to USCIS. **8 CFR 204.3(k)(2)**. See **Chapter 21.5(d)(5)(I)** "How to Refer Cases to USCIS as "Not Clearly Approvable" for more on this topic.

(B) The Burden and Standard of Proof in Form I-600 Orphan Adjudications.

The burden and standard of proof for Form I-600 petitions differ depending on whether the petition has been previously approved by USCIS domestically or has not yet been adjudicated. Officers must understand the applicable burdens and standards of proof.

*(1) Burden and Standard of Proof to Approve Form I-600*

The burden of proof is on the petitioner to establish eligibility for the benefit sought.<sup>3</sup> This determination may include questions of foreign law. When a petitioner relies on foreign law to establish eligibility for the beneficiary, the application of the foreign law is a question of fact, which must be proved by the petitioner.<sup>4</sup> Therefore, the burden of proof is on the petitioner to establish that the beneficiary is eligible for a Form I-600 approval.

The standard of proof for establishing eligibility is that of a "preponderance of the evidence."<sup>5</sup> The petitioner meets this standard of proof if the evidence of record would permit a reasonable adjudicator to conclude that the claim that the beneficiary is an orphan is probably true.<sup>6</sup> If the petitioner submits relevant, probative, and credible evidence that leads the adjudicator to believe that the claim is "probably true" or "more likely than not" to be true, the petitioner satisfies the standard of proof.<sup>7</sup> Certainty is not required. Approval is appropriate if it is at least more likely than not that the beneficiary qualifies for classification

<sup>3</sup> See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

<sup>4</sup> See *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Fakalata* 18 I&N Dec. 213 (BIA 1982); *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)).

<sup>5</sup> See *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>6</sup> See *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 80 (INS 1989).

<sup>7</sup> See *INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

as an orphan than that the beneficiary does not qualify. By contrast, denial is appropriate if the adjudicator can articulate “a material doubt” based on the evidence of record that leads the adjudicator to believe “that the claim is probably not true.”<sup>8</sup>

In applying the “preponderance of the evidence standard,” an officer must consider all of the evidence and decide, based on a totality of the evidence, whether it is more likely than not that the beneficiary is eligible for orphan classification. The evidence presented in some cases may include inconsistencies, which additional explanation or evidence may or may not overcome. Minor inconsistencies or omissions that are not material to the determination of orphan status and eligibility generally, in and of themselves, do not support a denial or make an otherwise approvable Form I-600 petition not clearly approvable. However, multiple minor inconsistencies or omissions may lead to a denial or a not clearly approvable finding when looking at the evidence as a whole. Officers must determine whether gaps or inconsistencies in the record are material and whether they overcome other evidence in the record indicating the beneficiary meets the definition of an orphan. Officers should carefully weigh the evidence and may assign differing weight to evidence in the record, depending on the reliability of that evidence. See the USCIS AFM Chapter 11.1 for further discussion of the appropriate evidence to be considered in adjudications.

## *(2) Burden and Standard of Proof For Revocation after Form I-600 Approval*

If USCIS finds that there is “good and sufficient cause” for revocation after Form I-600 has been approved, USCIS may issue a Notice of Intent to Revoke (NOIR).<sup>9</sup> If USCIS has properly issued a NOIR, the petitioner still bears the burden of establishing that the beneficiary qualifies for the benefit sought.<sup>10</sup>

If the petitioner fails to overcome the grounds for revocation stated in the NOIR in his or her response to the NOIR or even if the petitioner fails to respond to the NOIR, USCIS may revoke the approval of a Form I-600, only if USCIS establishes “good and sufficient cause” for revocation. “Good and sufficient cause” for revocation must be based upon adverse information known to the petitioner, including errors of fact or law, which would have resulted in a denial had the information been known to USCIS at the time the petition was adjudicated because the petitioner would have failed to meet his or her burden of proof at that time.<sup>11</sup> Generally, such adverse information must be specific and material to the case and based upon detailed evidence. Concerns that are “conclusory, speculative, equivocal, and . . . irrelevant” to eligibility do not warrant revocation.<sup>12</sup> Instead, only factual allegations that are supported by probative evidence in the record and that call the beneficiary’s eligibility into question can support revocation.<sup>13</sup>

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<sup>8</sup> See *Matter of Chawathe*, 25 I&N Dec. at 376.

<sup>9</sup> See INA § 205; 8 CFR 205.2; 8 CFR 204.3(h)(14); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

<sup>10</sup> See *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968).

<sup>11</sup> See *Matter of Estime*, 19 I&N Dec. at 451.

<sup>12</sup> See *Matter of Arias*, 19 I&N Dec. 568, 570-51 (BIA 1988).

<sup>13</sup> See *Matter of Estime*, 19 I&N Dec. at 451.

### (3) *Evidentiary Requirements*

USCIS regulations and policy specify that petitioners should submit **primary evidence** when available. If primary evidence is not available, prospective adoptive parents must follow 8 CFR 103.2(b)(2)(i) to demonstrate its unavailability and should submit secondary evidence. Primary evidence is evidence that, on its face, proves a fact. For example, primary evidence of identity and age is a birth certificate. Likewise, primary evidence of death is a death certificate. However, not all countries have the same kind of documentary practices as the United States.

Generally, delayed birth certificates are not given the same weight as birth certificates issued at the time of birth due to the potential for fraud. See *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032-33 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991); and *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978). However, in certain countries, and possibly just in particular regions within a country, children may not be issued birth certificates until they become involved in an intercountry adoption. An officer must determine the reliability of the facts contained in the delayed certificate in light of the other evidence in the record, and should not reject the delayed certificate's evidentiary value simply because it was not issued contemporaneous with the child's birth. Officers should consult the country-specific reciprocity table (accessible on [www.travel.state.gov](http://www.travel.state.gov)) to determine a document's availability and reliability.

When a birth certificate is not available, a prospective adoptive parent must explain why it is not available, and provide "other proof of identity and age." **8 CFR 204.3(d)(1)(ii)**. This "other proof" is called **secondary evidence**. Secondary evidence of identity and age could include medical records, school records, church records, entry in a family Bible, orphanage intake sheets, or affidavits from individuals with first-hand knowledge of the event(s) to which they are testifying. Secondary evidence of death could include funeral details, obituaries, newspaper articles, church records, affidavits from individuals with first-hand knowledge of the event to which they are testifying. If both primary and secondary evidence are unavailable, the prospective adoptive parents must demonstrate the unavailability of the primary and secondary evidence and submit two or more affidavits that are sworn to or affirmed by persons who are not parties to the petition or application who have direct personal knowledge of the event and circumstances. See **8 CFR 103.2(b)(2)(i)-(ii)**.

**Chapter 21.5(d)(5)(D)** of this AFM explains in detail each of the distinct ways a child may meet the INA definition of an orphan and addresses what documents may constitute primary evidence under these different circumstances. For example, in a separation case (where the parents' rights are involuntarily severed or terminated for good cause), primary evidence is a decree by a court or other competent authority unconditionally divesting the parents of their parental rights. In this example, absent specific material information that the court decree is legally invalid<sup>14</sup> or was obtained by fraud, an officer may generally rely on such authentic

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<sup>14</sup> An order may be legally invalid if the order was issued by an entity without proper authority to issue such orders, or if the court invalidated its order.



decrees as evidence of a determination by a foreign government. **Chapter 21.15(c) and 21.5(d)(5)(E)** below provide further information on assessing adoption decrees and custody orders applicable to all the ways a child may meet the orphan definition.

While giving appropriate weight to a court decree, officers should consider all evidence when adjudicating a case. For instance, in an abandonment case (where the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as control over and possession of the child), officers should consider all evidence regarding the circumstances of the abandonment, not just the court or competent authority's decree unconditionally divesting the parents of their parental rights.<sup>15</sup> Officers should consider secondary evidence, such as police reports or administrative or lower court documents that led to the foreign government's decision to terminate parental rights. If the secondary evidence is materially inconsistent with the court order divesting the birth parents of their parental rights, or indicates possible fraud, officers should request more information to resolve any inconsistencies and give appropriate weight to the decree. See **Chapter 21.5(d)(5)(I)-(J)** for more on not clearly approvable Form I-600 petitions and consular returns of Form I-600 petitions.

In countries where officers have reason to doubt the reliability of court orders due to a lack of due process or appropriate safeguards, USCIS officers may request secondary evidence in support of the adoption decree. In these circumstances, the adoption decree may lack sufficient reliability to prove a fact, such as a fact that may establish abandonment, on its own. Primary evidence that is not reliable may be insufficient to prove a child's orphan status and therefore, secondary evidence may be considered. In addition, when officers repeatedly receive similar pieces of secondary evidence, such as multiple police reports documenting abandonment, with identical fact patterns, such evidence may raise concerns about the reports' reliability. In such an instance, officers should take additional steps to verify the authenticity of the documentation and seek assistance from USCIS headquarters as necessary. **Chapter 21.5(d)(5)(F) and (H)** provide additional guidance on suspicious fact patterns and documenting evidence.

***Note on Discrepancies in the Evidence Presented:*** Minor inconsistencies in police reports or documentation are generally not grounds for denial, but may result in a Request for Evidence (RFE). However, material inconsistencies or a lack of credible information to support the child's orphan status could lead to a finding that the petition should be denied. See **Chapter 11.1** for more on materiality.

#### **(C) Researching Local Adoption Law, Documents, and Procedures.**

When completing a Form I-604 and adjudicating a Form I-600 petition, officers should educate themselves on local adoption law, authorities, documents, and procedures. Country-specific processing information is available on [www.uscis.gov](http://www.uscis.gov). Additionally, the

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<sup>15</sup> This could be an abandonment decree or be incorporated into the adoption decree itself.

Department of State's adoption website at [www.adoption.state.gov](http://www.adoption.state.gov) outlines the adoption process for most countries and its Country-Specific Reciprocity Tables (accessible on [www.travel.state.gov](http://www.travel.state.gov)) may also be useful when researching civil documents in certain countries.

In order to learn more about a country's adoption process, an officer should:

- Learn which government or judicial entity in the child's country of origin has authority over adoption processing. There may be multiple entities that control the process.
  - Explore whether there are any known tensions or inconsistencies among the relevant government or judicial entities.
  - Research the foreign legal process and foreign law to determine how a child becomes eligible for intercountry adoption, how the prospective adoptive parent(s) are matched with an eligible child, what fees are charged for services rendered and by whom, and the procedures to complete an adoption or custody order sufficient for intercountry adoption.
- Obtain examples of local adoption documents and signatures, as well as a list of names of government officials and judges authorized to sign adoption-related documents.
- If working in a USCIS international office, meet with adoption counterparts and consular section colleagues at regular intervals to discuss intercountry adoption trends and determine whether adoption laws and regulations have changed. Keep consular officer colleagues informed of any adoption-related issues at Post.
- If local law permits, work with consular officers to establish contact with adoption service providers (ASPs) in-country, and learn what rules and regulations govern their activities. If possible, attend meetings with consular staff, local ASPs, and intercountry adoption working groups.
- Work with consular officers to research screening processes government officials have in place to combat counterfeit/fraudulent documents and wrongdoing in the adoption system in general.
- Understand what fraud concerns exist in the child's country of origin to identify potential weaknesses in the child welfare and adoption systems. Read State Department fraud summaries, engage consular officers, and share information on adoption fraud indicators, trends, and prevailing country conditions. When possible, accompany consular staff on visits to local orphanages and conduct joint field investigations. Alert International Operations Division Headquarters (IO HQ) of any immediate, emergent issues, any potential fraud indicators, and/or suspicious fact patterns.



(D) Applying the Provisions of the Orphan Definition.

As part of the Form I-604 determination, the officer completing the form must consider the various regulatory elements of the orphan definition contained in 8 CFR 204.3 to determine whether the beneficiary qualifies for orphan classification under INA 101(b)(1)(F).

**NOTE:** Although domestic adjudication of the Form I-600 does not include the completion of the Form I-604, the three-pronged legal analysis below applies to both domestic and international Form I-600 adjudications.

Officers must analyze the three following issues:

- *Age of child:* Is the child under the age of sixteen (16) at the time the petition is filed? (Or under the age of eighteen (18) if adopted abroad or coming to the United States to be adopted by the same adoptive parent(s) of the birth sibling<sup>16</sup> who qualifies/qualified as an orphan or adopted child under [INA 101\(b\)\(1\)\(E\)](#) or [\(F\)](#) while under the age of 16? Or does the other exception noted under the “Age of Child” section below apply?)
- *Identity of child:* Have the prospective adoptive parent(s) presented primary evidence of the child’s age and identity or, if none is available, an explanation together with secondary proof of age and identity?
- *Orphanhood:* Do any of the terms in the orphan definition apply such that the child would qualify as an orphan as defined in INA 101(b)(1)(F) and 8 CFR 204.3? The petitioner only needs to establish that **one** of the circumstances of the orphan definition applies in order for the child beneficiary to qualify as an orphan.
  - i. **Age of Child** – The child identified on the [Form I-600](#) must be under the age of 16 at the time the petition is filed, unless one of the following exceptions applies:
    - Sibling exception: The child identified on the [Form I-600](#) must be under the age of 18 at the time of filing of the Form I-600 if that child’s *birth sibling*:
      - Is or was previously classified as an orphan while under the age of 16 and is coming to the United States to be adopted by the same adoptive parent(s); or
      - Met the definition of adopted child under [INA 101\(b\)\(1\)\(E\)](#) and was under the age of 16 at the time of adoption by the same adoptive parent(s).
    - Form I-600A, Application for Advance Processing of an Orphan Petition, filed when a child is 15 years of age: The DHS regulations at [8 CFR 204.3](#) do not directly address the relationship between the separate filing of a [Form I-600A](#) and

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<sup>16</sup> Although the INA uses the terms “natural” siblings and “natural” parent, USCIS uses the terms “birth” sibling and “birth” parent where possible in response to concerns raised by the adoption community. In this guidance, USCIS uses “birth” and “natural” synonymously.

the statutory requirement to file the “petition” while the child is under the age of 16 (or, as permitted in section [101\(b\)\(1\)\(F\)\(ii\)](#), under the age of 18). Consistent with the regulations for Hague Adoption Convention cases, the Form I-600A filing date will be deemed to be the Form I-600 filing date if **both** of these requirements are met:

- o The Form I-600A was filed after the child’s 15th birthday, but before the child’s 16th birthday (or, if applicable, after the child’s 17th birthday but before the child’s 18th birthday); and
- o The [Form I-600](#) is filed not more than 180 days after initial approval of [Form I-600A](#).

**Age Out Note:** Even if the prospective adoptive parent has not yet completed the adoption or obtained all of the required supporting documentation, he or she **MUST** file Form I-600 before the child turns 16 (or 18 if the sibling exception applies) or, if Form I-600A is filed when a child is 15 years of age, no more than 180 days after the *initial* approval of Form I-600A so that the child does not age out.

If the child is under age 16 at the time the petitioner filed the Form I-600, meets the sibling exception, or satisfies the other exception above, the USCIS or consular officer completing the Form I-604 should check “yes” in Block 6. If the officer checks “no,” he or she must explain in Block 15 why the Form I-600 petition cannot be approved and/or immigrant visa issued.

- ii. **Identity** – As explained in [Chapter 21.5\(d\)\(5\)\(B\)](#) under “*Evidentiary Requirements*,” USCIS regulations and policy specify what primary evidence petitioners should submit when available. If primary evidence is not available, petitioners must demonstrate the unavailability according to 8 CFR 103.2(b)(2)(i), and submit secondary evidence. Primary evidence of age and identity is a birth certificate. According to 8 CFR 204.3(d)(1)(ii), the prospective adoptive parent(s) must submit a copy of the child’s birth certificate as supporting documentation with a Form I-600 petition, or if a birth certificate is unavailable, an explanation together with secondary proof of identity and age.

Officers should ensure that the child’s age and identity have been properly documented through primary or secondary evidence. If age and identity have been properly documented, the officer completing the Form I-604 should check the “Proof of age” and “Proof of identity” boxes in Block 10. If the officer cannot check each box in Block 10, he or she must explain in Block 15 why the Form I-600 petition cannot be approved and/or immigrant visa issued.

- iii. **Orphanhood** – The officer must determine if the beneficiary would qualify as an orphan under any of the terms defined in INA 101(b)(1)(F) and 8 CFR 204.3. Foreign official documents and local law may use different terms from those used in INA 101(b)(1)(F) and 8 CFR 204.3, or use the same terms but with different meanings. An officer must examine the actual circumstances in each case to

determine whether the child can meet the orphan definition by any of the terms defined by U.S. immigration law.

There are two general categories of orphans:

- A child who has **no legal parents** because of the death or disappearance of, abandonment or desertion by, or separation or loss from both parents; or
- A child whose **sole or surviving parent** is incapable of providing proper care consistent with the local standards of the foreign-sending country and has, in writing, irrevocably released the child for emigration and adoption.

The officer must first determine whether the child falls into one of the two categories listed above.

If a child has no legal parents, the child is not required to have lost each parent in the same way. For example, one parent may have been separated from the child, while the other parent may have abandoned the child to an orphanage. Also, if a sole or surviving parent relinquished the child to an orphanage, this may qualify as abandonment – which does not require evidence that the sole or surviving parent is incapable of providing proper care and does not require the legitimation analysis that is required in the sole parent context as explained below. Usually, officers only need to conduct a sole or surviving parent analysis when there is: 1) a release for adoption to specific prospective adoptive parents; or, 2) when the third party providing custodial care to the child in anticipation of, or preparation for, adoption is not authorized under the laws of the foreign country to act in such a capacity, as such a release or custodial care is excluded from the abandonment definition.

Officers must also remember that a child may have more than two parents. Under INA 101(b)(2), the term "parent" includes any person who is related to a child in any of the ways specified in INA 101(b)(1). For example, a stepparent may qualify as a "parent" under the INA if the marriage creating the status of stepchild occurred before the child's 18th birthday.

In determining whether a child is an orphan, a sole or surviving parent who has married will still be considered the child's sole or surviving parent if the petitioner establishes that the sole or surviving parent's new spouse has no legal parent-child relationship to the child under the law of the foreign-sending country.<sup>17</sup>

To establish a legal parent-child relationship to a stepparent:

- The stepparent must have adopted the child;

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<sup>17</sup> This means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States. See 8 CFR 204.3(b).

- The stepparent must have obtained legal custody of the child; or
- Under the law of the foreign-sending country, the marriage between the parent and stepparent must have created a parent-child relationship between the stepparent and the child.

Under the law of some U.S. states and other countries and locations, a stepparent may adopt his or her spouse's children without terminating the legal parent-child relationship between the children and their other parent. The adoptive stepparent may then qualify as a "parent" through INA 101(b)(1)(E), as well as 101(b)(1)(B). If a child has more than two legal parents, officers must determine whether the child has lost other legal parent(s) in addition to the birth father and birth mother. If the child has stepparents, the officer should consult AFM [Chapter 25.1\(d\)\(3\)](#) ("Stepparents").

The definition of each term used to determine orphan status is described in detail below. The officer completing the Form I-604 should check the relevant box(es) in Block 9 to indicate how the child meets or does not meet the definition of an orphan. If the petitioner has established the child's orphanhood, officers should check the "Proof of orphanhood" box in Block 10. If the officer cannot check this box in Block 10, he or she must explain in Block 15 why the Form I-600 petition cannot be approved and/or immigrant visa issued.

### **Abandonment**

As defined by [8 CFR 204.3](#), abandonment under [INA 101\(b\)\(1\)\(F\)](#) has a specific meaning and is the most generally applicable section of the orphan definition. The term "abandonment" as used in foreign jurisdictions may or may not correspond to the definitions of abandonment, desertion, disappearance, loss, or separation in U.S. immigration law. Officers should explore how the term "abandonment" is used in the relevant foreign jurisdiction when trying to determine "orphan status."

***"Abandonment" under U.S. immigration law means*** that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer or without transferring these rights to any specific persons. Abandonment must include both the intention to surrender these rights and the actual act of doing so.

### **Essential Elements**

- Willfully forsaking all parental rights, obligations, claims, control, and possession; and
- Third party authorized to provide custodial care prior to an adoption without transferring these rights to any specific person(s).

Abandonment does not include:

- A relinquishment or release by one or both parents directly to the prospective adoptive parent(s). (See “*Irrevocable Release by Sole or Surviving Parent*” below for a separate explanation regarding direct relinquishment by a sole or surviving parent);
- A relinquishment or release by one or both parents to an authorized third party for a specific adoption;
- A relinquishment or release by one or both parents to a third party for custodial care in anticipation of, or preparation for, adoption where the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is *not authorized under the child welfare laws of the foreign-sending country to act in such a capacity*;
- A child who is placed with a third party that is not authorized under the child welfare laws of the foreign-sending country to accept released or relinquished children in anticipation of or preparation for adoption; or
- A child who is placed temporarily in an orphanage if the parent(s) express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child.

**NOTE:** U.S. immigration law generally considers a child who has been released unconditionally to an orphanage to be abandoned. See [8 CFR 204.3\(b\)](#). However, it is not uncommon for parents in some countries to entrust their children to the care of orphanages temporarily without intending to abandon the child. In such circumstances, the parent may not have “abandoned” his or her child according to [8 CFR 204.3\(b\)](#). The parent may not intend for the child to be adopted and may return to the orphanage with the expectation that his or her child will still be there. In this circumstance, the child may not qualify as “abandoned.”

***Primary evidence of abandonment is:***

- A written release by the parent(s) of a child to an orphanage (or other third party authorized under the child welfare laws of the foreign-sending country to provide custodial care in anticipation of or preparation for adoption) demonstrating that the parent(s) gave up all parental rights to the child and physically gave up control/possession unconditionally to the orphanage or other third party.
  - Only parent(s) can release a child. Subsequent guardians may not do so. The guardians are not legally necessary parties in the orphan context (unlike in Hague Adoption Convention adoptions) and their action does not constitute a “release” for immigration purposes unless the guardian legally adopted the child. Therefore, children whose guardians surrender them to an orphanage may still meet the orphan definition.
  - A child can still meet the abandonment definition even if the parent(s) show an ongoing parental interest in the child or request promises of pictures, ongoing contact, or the child returning to visit at some point in the future. Often ASPs and prospective adoptive parent(s) believe in staying in touch with the birth

family after adoption and make such promises to the birth parents. These promises are not legally enforceable and should not be considered as a condition of the child's release; however, such promises could be an indication that the birth parent(s) did not understand the finality of adoption and could warrant further investigation by the officer.

- A decree from a court or other competent authority that unconditionally divests the parent(s) of all parental rights or divests other individuals or entities of their legal rights over the child. Depending on local law this may be a finding of abandonment that is:
  - Made when the child is in the custody of an orphanage or orphanage-like institution,
  - Made when the child is a ward of the court, and/or
  - Incorporated into the adoption decree itself.

Officers must assess all of the evidence in the record to determine whether the child has been abandoned within the meaning of [8 CFR 204.3\(b\)](#). See also [Chapter 21.5\(d\)\(5\)\(B\)](#) for more information on Evidentiary Requirements.

Officers will likely encounter two different scenarios that can constitute abandonment:

- Where there are known parent(s) who unconditionally surrender or release the child to an orphanage or other authorized third party; or
- Where someone found a child who was left anonymously (i.e., a “foundling” child) and the country of origin's official processes led to a termination of all parental rights.

In the first scenario, there are identifiable parent(s) who can be questioned or interviewed, if necessary, to determine if they willfully forsake all rights to the child. However, in the second scenario, reaching the same conclusion about the parent(s)' intent can be more difficult. When considering evidence of abandonment in foundling cases, officers must evaluate all available evidence and, if there are any inconsistencies in the record, determine whether the inconsistencies are material and/or whether the court or local authority was aware of any potentially derogatory information. Additionally, if there are fraud indicators in the record, the officer may seek to interview individuals who have first-hand knowledge of the discovery of the abandoned child.

**Note:** While not required under the U.S. immigration law abandonment definition, if a country requires that specific steps must take place to locate the foundling child's parents, then officers must look for evidence that these steps were followed or otherwise waived by the appropriate authority. See [Chapter 11.1](#) for more on materiality and below in [Chapter 21.5\(d\)\(5\)\(E\)](#) for more on the validity of court decrees.



Unlike the disappearance definition of [8 CFR 204.3\(b\)](#) that is discussed below in the “*Disappearance*” section, a finding of abandonment does not require that a reasonable effort was made to locate the parents. For example, a child likely meets the abandonment definition in a foundling case where a police report lists the parents as unknown and says that the child was found by a bridge at night and a court decree attests to the same, without any additional information or evidence to call into question the reliability of the documentation presented (see [Chapter 11.1](#) for more on documentary evidence).

However, if an orphanage intake form in the same case documents a known parent that was unknown to the court, this may be a material inconsistency that warrants additional investigation. In such instances, a USCIS officer could choose to issue a RFE, or a USCIS officer abroad (or consular officer, where authority has been delegated) could choose to take additional investigative steps and interview by phone or in person the officials or representatives who wrote the conflicting documents, interview the person who found the child, or interview the parent, etc.

If these additional investigative steps do not reasonably explain the inconsistency/omission or no plausible explanation exists for the inconsistency/omission, then the adjudicating USCIS officer should issue an additional RFE or a Notice of Intent to Deny (NOID), as appropriate. If a consular officer is responsible for adjudicating the Form I-600, the consular officer should refer the case as not clearly approvable (NCA) to the USCIS international office with jurisdiction. See [Chapter 21.5\(d\)\(5\)\(I\)](#) for more on NCA cases. If the Form I-600 petition was approved domestically prior to the Form I-604 determination and the inconsistency/omission is material to the child's classification as an orphan, the USCIS or consular officer who completed the Form I-604 should return the case to the USCIS office that approved the petition with a memorandum recommending revocation of the Form I-600. See [Chapter 21.5\(d\)\(5\)\(J\)](#) for more information about consular returns.

### *In Summary*

*Abandonment includes instances where the parent(s):*

- Unconditionally relinquish or release the child to an orphanage or other authorized third party; or
- Anonymously abandoned the child and the country of origin's official processes led to a termination of all parental rights.

*Abandonment does NOT include:*

- Relinquishment or release by one or both parents directly to the prospective adoptive parent(s) for a specific adoption;
- Relinquishment or release by one or both parents to a third party for custodial care in anticipation, or preparation, for adoption where the third party is not authorized under the child welfare laws of the foreign-sending country to act in such a capacity; or
- Conditional surrender to an orphanage for temporary care or temporary periods of time.

### **Death**

A child whose parents are deceased and who has not acquired another parent (such as a stepparent or legal adoptive parent) as defined by the INA is considered an orphan for immigration purposes. For example, a child whose parents were killed in an accident is an orphan. That child would continue to qualify as an orphan even after a court named her grandmother as her guardian, as long as the child was not legally adopted.

***“Death” under U.S. immigration law means*** that one or both parents are legally deceased.

***Primary evidence of death*** is a death certificate in the name of the deceased parent.

- In some cases and in some countries where there is no standard death registration or where it is not customary to report deaths to a local civil registry, a death certificate may be unavailable. In such cases, officers should consider the explanation of why such a certificate is unavailable, along with secondary evidence provided by the petitioner such as funeral details, obituaries, newspaper articles, church records, or affidavits from individuals with first-hand knowledge.
- It may also be appropriate to consider the length of time since the child's parent(s) are reported to have died, and during which time, the parent has not been seen or heard from, and it may be appropriate to consider if relatives have cared for the child since the parent(s) died. See [\*\*Chapter 21.5\(d\)\(5\)\(B\)\*\*](#) above for more on evidentiary requirements.

### **Disappearance**

***“Disappearance” under U.S. immigration law means*** that the parent(s) have unaccountably or inexplicably passed out of the child's life; the parent(s)' whereabouts are unknown; there is no reasonable hope of reappearance; and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

### **Essential Elements**

- Parent(s) unaccountably or inexplicably passed out of child's life;
- Whereabouts unknown;
- No reasonable hope of reappearance; and
- Reasonable efforts to locate parent(s) as determined by competent authority (such as a court or governmental agency) in accordance with the laws of the foreign-sending country.

**Primary evidence of disappearance** is a decree from a court or other competent authority: 1) making the child a ward of the state because of such disappearance; and 2) unconditionally divesting the parent(s) of all parental rights over the child.

When considering whether the child's parent(s) have disappeared, officers should consider the laws of the child's country of origin and what actions competent authorities must take when a child's parent(s) have disappeared. Often, the parents are documented as unknown or as "disappeared." Just because a parent is listed as having "disappeared" does not mean that officers must apply the disappearance definition and require a showing of reasonable efforts to locate the parent(s). As previously noted, the meaning of a term in the foreign-sending country may differ from what it means under U.S. immigration law and, therefore, it is important to look at the actual facts and circumstances of the case to determine if a child meets the orphan definition.

Officers must examine the actual circumstances in each case to determine whether the particular conditions are met to find that a child is an orphan under any **one** of the ways the child can meet the definition of an orphan under the INA. It is important to remember the requirement that reasonable efforts to locate a missing parent only applies to the disappearance definition – not to the abandonment definition in the context of foundling children. Officers may find that the child meets the definition of an orphan due to abandonment but not disappearance.

### **Separation**

**"Separation" under U.S. immigration law means** the involuntary severance of the child from his or her parent(s) by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. This is often called "termination of parental rights" and often occurs because of child abuse, neglect, or incompetence when a competent authority deems the parent to be "unfit." The parent(s) must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional. See [8 CFR 204.3\(b\)](#).

### **Essential Elements**

- Involuntary severance of the child from his or her parent(s) by competent authority for good cause and in accordance with the laws of the country;
- With proper notification and opportunity to contest; and
- Termination of parental rights must be permanent and unconditional.

**Primary evidence of separation** is a decree from a court or other competent authority unconditionally divesting the parent(s) of all parental rights over the child because of such separation.

In applying the separation definition, officers should consider the laws of the child's country of origin to determine what actions competent authorities must take to legally separate a child from his/her parents. A valid court order terminating parental rights over the objections of one or both parents is sufficient if parents received notice and an opportunity to contest such action.

### **Loss**

**"Loss" under U.S. immigration law means** the involuntary severance or detachment of the child from his or her parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous events beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country. See [8 CFR 204.3\(b\)](#).

### **Essential Elements**

- Involuntary severance or detachment of the child from the parent(s);
- Permanent;
- Caused by:
  - Natural disaster;
  - Civil unrest; or
  - Other calamitous event beyond parents control; and
- Verified by a competent authority.

**Primary evidence of loss** is a decree from a court or other competent authority unconditionally divesting the parent(s) of all parental rights over the child because of such loss.

Officers will very rarely encounter a "loss" situation in the field. This provision may also apply to children outside of their own country of origin, but it is unusual for a competent authority in another country to exercise jurisdiction over a child who has no legal parents due to loss if that child is outside his or her native country. Thus, beneficiaries are rarely determined to be orphans under this provision.

### **Desertion**

***“Desertion” under U.S. immigration law means*** that the parents have willfully forsaken the child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country. See [\*\*8 CFR 204.3\(b\)\*\*](#).

### **Essential Elements**

- Parent(s) willfully forsaken the child;
- Refused to carry out parental rights and obligations; and
- As a result, the child has become a ward of a competent authority.

Desertion does not mean that the parents have disappeared, but rather that they refuse to carry out their parental rights and obligations towards the child. Desertion differs from abandonment in that the parents have not taken steps to divest themselves of parental duties, but the parents’ inaction has caused a local authority to step in to assume custody of the child.

***Primary evidence of desertion*** is a decree from a court or other competent authority making the child a ward of the state and unconditionally divesting the parent(s) of all parental rights over the child because of such desertion.

In applying this provision, officers should consider the laws of the foreign-sending country the child is being adopted from regarding what actions competent authorities must take to legally declare a child a ward deserted by his or her parents.

### **Irrevocable Release by Sole or Surviving Parent**

Officers must apply the sole or surviving parent definitions when there has been a direct relinquishment to the prospective adoptive parent(s) or when the third party providing custodial care to the child is not authorized to do so under the child welfare laws of the foreign-sending country. Otherwise, officers should evaluate whether the child has no legal parents in the various ways outlined above.

***Primary evidence of a sole parent or a surviving parent’s release*** must be:

- In writing in a language the parent is capable of reading and signing or marking (if the parent is illiterate, an interview can establish that he or she had full knowledge of the contents of the document and understood its irrevocable nature);
- Irrevocable; and
- Without stipulations or conditions.

The release may identify the person to whom the parent is releasing the child, even if that person is a prospective adoptive parent.

**“Sole parent” under U.S. immigration law means** the mother when it is established that the child is born out of wedlock and has not acquired a parent within the meaning of section [101\(b\)\(2\)](#) of the Act. For a mother to qualify as a sole parent, the father of the child must be unknown, have disappeared or abandoned or deserted the child, or have, in writing, irrevocably released the child for emigration and adoption.

**Essential Elements**

- Unmarried mother at the time of child’s birth;
- Child has not been legitimated under the law of child’s residence or domicile or the law of the father’s residence or domicile while in the legal custody of the legitimating parent(s);
- Birth father is:
  - Unknown;
  - Known and has disappeared, abandoned, or deserted the child; or
  - Known and has, in writing, irrevocably released the child for emigration and adoption, in accordance with the laws of the foreign-sending country;
- Child has not acquired a stepparent, or the prospective adoptive parent establishes that the stepparent has no legal parent-child relationship – see [Chapter 21.5\(d\)\(3\)](#);
- Mother is incapable of providing proper care; and
- Mother, in writing, irrevocably releases child for emigration and adoption, in accordance with the laws of the foreign-sending country

Officers do not need to determine whether a child born out of wedlock is regarded as legitimate or illegitimate unless the birth father ever had sole or joint legal custody of the child<sup>18</sup> (i.e., if the child was legitimated while in the legal custody of the birth father).

Applying the sole parent definition can be complex, and officers generally do not need to analyze the sole parent definition unless they encounter a situation where:

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<sup>18</sup> See Immigration and Naturalization Service (INS) Cable HQ 204.21-P, 204.22-P, reprinted in Interpreter Releases, January 2, 1996. This INS guidance remains in effect for USCIS.



- There is a direct relinquishment to the prospective adoptive parent(s) (such that the mother cannot satisfy the abandonment definition);
- The third party providing care to the child is not authorized to do so under the law of the foreign-sending country (thus the mother cannot satisfy the abandonment definition); or
- The mother can satisfy the abandonment definition, but the father cannot meet any of the definitions and thus must, in writing, irrevocably release the child for emigration and adoption.

**“Surviving parent” under U.S. immigration law means** a child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of [INA 101\(b\)\(2\)](#). See also [Chapter 21.5\(d\)\(3\)](#).

#### Essential Elements

- One living parent;
- One deceased parent;
- Child has not acquired a stepparent or the prospective adoptive parent establishes that the stepparent has no legal parent-child relationship – see [Chapter 21.5\(d\)\(3\)](#);
- Living parent is incapable of providing proper care; and
- Living parent has, in writing, irrevocably released child for emigration and adoption in accordance with the laws of the foreign-sending country.

**Primary evidence** that one parent is deceased is a death certificate in the name of the deceased parent. See [Chapter 21.5\(d\)\(5\)\(D\)\(iii\)](#) (“death”) for situations in which a death certificate may be unavailable and for discussion on secondary evidence of death.

**“Incapable of providing proper care”** means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country. This determination is not limited to economic or financial concerns. A parent could be unable to provide proper care due to a number of reasons, including, but not limited to: extreme poverty; medical, psychological or emotional difficulties; or long-term incarceration.

Evidence can include:

- Proof of the sole or surviving parent's wages in comparison to the local area's average wages for a family of the same size.
- Medical records of the child's or sole or surviving parents' psychological or physical difficulties.
- Court records or other proof that the sole or surviving parent is incarcerated and the duration of the sentence.
- A social welfare report submitted to the adoption authority in support of an adoption that discusses the background and living situation, etc. of the child. See *Matter of Rodriguez*, 18 I&N Dec. 9, 11 (Reg. Comm'r 1980) (citing social welfare agency study as evidence of a sole parent's inability to provide proper care).
- Any other documentation which goes to the ability of the parent to provide proper care for the child.

#### (E) Adoption versus legal custody

Once an officer makes a finding of proper age, identity, and orphanhood, he or she must then determine how the child will emigrate to the United States – through a full and final adoption granted by the foreign-sending country under [Chapter 21.15](#), or through the prospective adoptive parent's legal custody of the child granted by the foreign-sending country for emigration and adoption in the United States. **Note:** Some countries will not allow a child to emigrate without a final adoption decree. Officers should consult the Department of State website at [www.adoption.state.gov](http://www.adoption.state.gov) to determine the specific laws of the foreign-sending country.

**Full and Final Adoption Abroad** – See [Chapter 21.15](#) of this AFM for more information on what qualifies as an “adoption” for immigration purposes.

If the petitioner adopted the child abroad, the petitioner must submit a legible, certified copy of the final adoption decree showing that he or she adopted the child and evidence that the petitioner (or spouse, if married) personally saw and observed the child before or during the adoption proceedings. If the petitioner is married, only one spouse needs to have seen and observed the child before or during the adoption proceedings. If this is the case, the child may qualify for an IR-3 visa on the basis of a valid, full and final adoption in accordance with the laws of the foreign-sending country.

#### Essential Elements

- Valid, full and final adoption that satisfies the three-prong test in [Chapter 21.15](#):
  - Valid under the law of the foreign-sending country;
  - Creates a legal permanent parent-child relationship; and
  - Terminates the prior legal parent-child relationship;
- Petitioner (and spouse, if married) adopted the child; and

- Petitioner (or spouse, if married) personally saw and observed the child before or during the adoption proceedings abroad.

If the petitioner is married and neither the petitioner nor the spouse actually saw and observed the child before or during the adoption proceedings, or only one parent adopted the child, the child will not be eligible to immigrate under [INA 101\(b\)\(1\)\(F\)](#) unless the parents will be able to adopt the child (or validate the foreign adoption) in the United States (although the “adoption” may be considered to have established legal custody for emigration and adoption) and have met the pre-adoption requirements of the state of the child’s proposed residence. In such a case, the child may qualify for an IR-4 visa.

If the laws of the foreign-sending country allow proxy adoptions, U.S. citizen petitioners may complete an adoption abroad without ever traveling to a foreign-sending country or meeting the child prior to the child’s entry into the United States. This type of adoption may be fully valid in the United States as a matter of domestic relations law, but will not make the child eligible to immigrate under [INA 101\(b\)\(1\)\(F\)](#) unless the parents will be able to adopt the child (or validate the foreign adoption) in the United States. In such a case, the child may qualify for an IR-4 visa.

As noted also in [Chapter 21.15](#), guardianships, “simple adoptions,” or Kafala orders in countries that follow traditional Islamic law may not qualify as full and final adoptions abroad. But because an “orphan” can be brought to the United States for adoption instead of being adopted abroad, a guardianship, Kafala order, or other custody order may be sufficient to establish that the prospective adoptive parents “have...secured custody of the child,” as specified in 8 CFR 204.3(d)(1)(iv)(B)(1). If the legal custody is for emigration and adoption, in accordance with the laws of the foreign-sending country, and all other requirements are met, the evidence could support approval of the Form I-600, and the child may qualify for an IR-4 visa.

**Legal Custody for Emigration and Adoption** – As [Chapter 21.15](#) explains, not all countries recognize adoption or grant what can be considered full and final adoptions abroad for immigration purposes. However, legal custody decrees or guardianship orders may provide sufficient evidence that the prospective adoptive parent(s) have secured legal custody of the child for emigration and adoption. If this is the case, or if neither the petitioner nor his or her spouse (if married) personally saw and observed the child before or during the adoption proceedings, then the officer must review the evidence to determine if the petitioner (or a person or entity working on his or her behalf) secured legal custody that is sufficient for the purposes of emigration and adoption.

The petitioner must secure legal custody in accordance with the laws of the foreign-sending country. The person, organization, or competent authority that has legal custody or control over the child must irrevocably release the child for emigration and adoption. (For example, this may be evidenced by a court order or release by the previous legal custodian of the child giving the child for adoption to the named prospective adoptive parent(s) with their U.S. residence clearly incorporated into the order.) The petitioner must show evidence of compliance with all state pre-adoption requirements, if any. If state law prevents petitioners

from complying with any pre-adoption requirements before the child's arrival in the United States, they must note the missing requirements and provide an explanation. In addition, if there was an adoption abroad that was not full and final for U.S. immigration purposes, and/or if the petitioner (or spouse, if married) did not personally see and observe the child before or during the adoption proceedings, then the officer should ensure that the orphan's proposed state of residence allows re-adoption or provides for judicial recognition of the adoption abroad. Children meeting these criteria may qualify for an IR-4 visa on the basis of legal custody for the purpose of emigration and adoption.

### Essential Elements

- Adoptive parents obtain custody in accordance with the laws of the foreign-sending country;
- Child has been irrevocably released from proper person, organization, or competent authority;
- For emigration and adoption;
- Compliance with state pre-adoption requirements, if any; and
- If child adopted abroad and/or if the petitioner (or spouse, if married) did not personally see and observe the child before or during the adoption proceedings, then:
  - Evidence proposed state of residence allows re-adoption; or
  - Provides for judicial recognition of the adoption abroad.

**Additional considerations** – As [Chapter 21.15\(c\)](#) explains, officers should generally accept the adoption decree or custody order on its face as primary evidence of a determination by a foreign court. However, officers may properly question the validity of the decree or order for various reasons, such as:

- Lack of jurisdiction by the foreign court or authority;
  - Lack of parental consent to the adoption;
  - No or improper notice of termination of parental rights;
  - Evidence of corruption, fraud, or material misrepresentation; or
  - Other credible and probative evidence to question the reliability of the documentation.
- If there is reason to doubt the validity of the decree or order, then secondary evidence may be needed. See [Chapter 21.5\(d\)\(5\)\(B\)](#) above for additional information, including when there is a material inconsistency between adoption decree and other evidence in the record. See [Chapter 11.1](#) for more on materiality.

### (F) Handling Evidence of Fraud, Child-Buying, and/or Other Non-Bona Fide Intent.

The officer must determine whether there are allegations or indications of fraud, child-buying, and/or other misrepresentation or non-bona fide intent (i.e., the petitioner does not intend to form a parent-child relationship) that would prevent the specific beneficiary child from being able to immigrate under INA 101(b)(1)(F) and 8 CFR 204.3.

**Fraud** – For USCIS purposes, fraud is a willful misrepresentation or concealment of a material fact to obtain some benefit (for example, an adoption decree). To meet the requirement of materiality, evidence of fraud must be documented and generally relate to the beneficiary's eligibility as an orphan.

Documents can also be described in the context of fraud. With respect to fraud, there are generally three kinds of documents:

1. Genuine documents;
2. Counterfeit (completely fabricated) documents; and
3. Genuine documents that have been obtained through fraudulent means, falsified, or altered with fraudulent information.

As [Chapter 21.5\(d\)\(5\)\(C\)](#) explains, one way to identify fraud indicators in the adoption system is to obtain examples of genuine documents and a list of officials responsible for various aspects of the adoption process. If an officer sees a document that appears suspicious or is signed by an official he or she does not recognize, the officer may be able to compare it to an example and/or confirm its authenticity or inauthenticity with the issuing body. If the officer has confirmed that a suspicious document is counterfeit, or was obtained through fraudulent means, falsified, or altered with fraudulent information, the officer must clearly document the findings.

Typically, identified fraud must be case-specific. However, patterns of fraudulent behavior can call into question the credibility of evidence submitted in an individual case. The officer must specifically articulate findings of fraud and how the findings relate to the beneficiary's eligibility as an orphan. See [Chapter 21.5\(d\)\(5\)\(B\)](#) above for more detail on credibility and reliability.

**Essential Elements:** Willful **misrepresentation** or **concealment** of a material fact to obtain an immigration benefit.

**Documenting the Evidence** – If fraud is identified, an officer should:

- Check "Yes" in Block 12 of the Form I-604.
- Provide evidence gathered as testimony during field investigations or during interviews preferably in Q&A format or sworn statements (in the witness's own language with translation, if possible), with as much verbatim language as reasonably possible and include a detailed explanation of the fraud.
- Provide copies of any submitted documents that are determined to be fraudulent and an explanation as to why the document is deemed fraudulent. For example, indicate whether the document is counterfeit, or a genuine document that has been obtained through fraudulent means, falsified, or altered with fraudulent information. If possible, include an example of a genuine document if the document has been falsified or altered.



- Provide photographs if relevant. For example, if civil register records have been checked and they are inconsistent with the document provided by the petitioner, it is helpful to take a photograph of the civil register record, if permitted.
- In Block 15, clearly state why the evidence gathered is inconsistent with the documents provided in support of the petition. Conclude why the child is ineligible for classification as an orphan under INA 101(b)(1)(F) or 8 CFR 204.3 – specifically indicate why the above orphan definitions do not apply in light of the information documented, if applicable.

**Child-Buying** – Officers must deny a Form I-600 petition if the prospective adoptive parent(s), adoptive parent(s), or a person or entity working on their behalf gave or will give money or other consideration, either directly or indirectly, to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. 8 CFR 204.3(i). Child-buying is also a mandatory ground for revoking an approved petition. Officers must carefully review any allegations of child-buying or other evidence that indicates child-buying took place in the case and carefully weigh the evidence available to determine whether it substantiates the charge. Child-buying does not include reasonable payment for necessary activities such as administrative, court, legal, translation, or medical services related to the adoption proceedings.

Foreign adoption services are sometimes expensive and their costs may often seem disproportionately high in comparison with other social services. Further, in many countries there may be a network of legitimate adoption facilitators, each playing a transparent role in processing an individual case and reasonably expecting to be paid for their services. Posts work closely with foreign governments to identify all costs related to intercountry adoption in particular countries. General information about adoption-related costs is posted on [www.adoption.state.gov](http://www.adoption.state.gov) under the country-specific information.

Child-buying can be difficult to prove since payments are often explained as being related to the adoption proceedings. Unless the payments are clearly excessive and unexplainable, it can be very difficult to deny or revoke a petition on the grounds of child-buying.

In most intercountry adoption cases, the expenses incurred can be explained in terms of "reasonable payments." Even cash given directly to a birth mother may be justifiable if it relates directly to expenses such as pre-natal or neo-natal care, transportation, lodging or living expenses. Investigations of child-buying should, therefore, focus on evidence documenting the purpose and amount of payment or consideration, or an admission of conduct that qualifies as child-buying, and examine the following:

#### Essential Elements

- Prospective adoptive parent(s), adoptive parent(s), or someone working on their behalf gave or will give money or other consideration directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity; and
- As payment for the child or as an inducement to release the child.



Does NOT include

- Reasonable payment for necessary activities, such as administrative, court, legal, translation, or medical services related to the adoption proceedings.
- Payments that are not intended to induce the relinquishment or release of the child.

Documenting the Evidence – If an officer has discovered evidence of child-buying, the officer should:

- Check “Yes” in Block 12 and provide a detailed description in Block 15.
- Provide evidence gathered as testimony during field investigations or during interviews preferably in Q&A format, with as much verbatim language as reasonably possible and an explanation as to how the child-buying transpired.
- Document any evidence that a relinquishing parent, a local official, or any other representative received improper payments; documentation of witness testimony should be in Q&A format. When Q&A format is not possible, an affidavit format, voluntarily signed by the affiant is acceptable.
- Include evidence of payments made or interview records that discuss who made the payment, who was paid, and for what the payment was intended.
- Explain conclusions and why the evidence makes the child ineligible for classification of an orphan under INA 101(b)(1)(F) or 8 CFR 204.3.

(G) Ensuring the Child Matches the Characteristics that the Prospective Adoptive Parent(s) have been Approved to Adopt.

During the [Form I-600A](#) process (or [Form I-600](#) process, if there was no prior Form I-600A), an officer determines whether the petitioner is a suitable adoptive parent for a child with special needs. The Form I-604 determination process should identify whether the child has any significant physical or mental impairment or disability relevant to the Form I-600A approval, or any significant condition undisclosed during adjudication of the petition. Generally, officers would find this information in supporting documentation submitted with the case or information discovered during the Form I-604 determination. The officers should review the evidence to:

- Ensure that any significant or serious medical condition of the child is not excluded by special conditions established in the [Form I-600A](#) approval (i.e., Form I-600A approval states that prospective adoptive parents are only approved to adopt a healthy child); and
- Verify that any significant medical condition is known and accepted by the prospective adoptive parents (or adoptive parents if the adoption has taken place).

If officers discover that the child has a significant medical condition that the prospective adoptive parent(s) are not aware of during the Form I-604 determination, including a condition that is not grounds for exclusion under [INA 212\(a\)\(1\)](#), they must:

- Furnish the prospective and adoptive parents with all pertinent details concerning the affliction or disability. This is especially important in cases where the prospective and adoptive parents have not personally observed the child.
- Halt adjudication of the case until the petitioner submits a notarized statement indicating awareness of the child's impaired health or disability and a willingness to proceed with orphan processing. The petitioner must also submit an amended home study addressing the child's medical condition and the petitioner's preparation, willingness, and ability to provide proper care for the child to the USCIS office with jurisdiction over the petitioner's suitability determination.

A **Form I-600A** approval may also indicate specific restrictions on an adoption such as the child's nationality, age range or gender and if the petitioner has been approved for a special needs adoption.

**Note on Age:** The child must meet the age range listed on the Form I-600A approval at the time the referral or match was accepted by the prospective adoptive parents, or if the accepted referral or match date cannot be established, the filing date of the Form I-600 petition.<sup>19</sup>

If a Form I-600A states that the petitioner is approved to adopt a child aged 0-4 years old, then a child who is four years old but not yet 5 would meet this age range.

If the Form I-604 determination reveals that the child does not match the characteristics that the prospective adoptive parent(s) have been approved to adopt (i.e., unknown serious medical condition, or an age or gender discrepancy), then:

- The officer should document this on the Form I-604 in Block 5 and provide a detailed description in Block 15; and
- USCIS should issue an RFE for an amended home study and any related documents.

Typically, the USCIS office that approved the Form I-600A should issue the RFE. However, if the Form I-600A approval has expired, then the USCIS office with jurisdiction over the petitioner's suitability should issue the RFE.<sup>20</sup>

**Note:** Officers are encouraged to communicate with the USCIS office with jurisdiction over the prospective adoptive parent(s)' suitability before physically transferring the case to the appropriate USCIS office.

(H) How and When to Complete Form I-604.

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<sup>19</sup> See USCIS PM-602-0071.1, *The Jurisdiction of Amended Home Studies and the Application of Home Study Age Restrictions for Prospective Adoptive Child(ren) in Intercountry Adoption Cases*, November 5, 2012.

<sup>20</sup> Id.

A Form I-604 must be completed in every orphan case to verify that the child meets the eligibility criteria to be classified as an “orphan” under INA 101(b)(1)(F) and 8 CFR 204.3.

In addition to completing the three-prong legal analysis of age, identity, and orphanhood, as explained above, officers must also determine that:

- There has been a full and final adoption abroad, or legal custody for emigration and adoption;
- There is no evidence of fraud, child-buying, or other misrepresentation or non-bona fide intent;
- The child matches the characteristics that the prospective adoptive parent(s) have been approved to adopt; and
- The petitioner has identified a primary adoption service provider.

**Jurisdiction** – The Form I-604 determination is completed under the DHS regulations and is tied to the exercise of the DHS Secretary’s authority to adjudicate immigrant visa petitions. If the petition is filed with a USCIS international office in the child’s country (or the country where the adoption is completed), the adjudicating USCIS officer will complete the Form I-604 determination as part of the adjudication of the Form I-600 petition.

At present, a consular officer in the child’s country of origin (or the country where the adoption is completed) completes the Form I-604 determination for a domestically filed Form I-600 petition, unless USCIS has assumed jurisdiction over the Form I-604 workload in that country. Therefore, consular officers complete Form I-604 determinations in two general scenarios:

- (1) When adjudicating a Form I-600 that a petitioner has filed abroad in a location where USCIS does not have an office; or
- (2) When a petitioner files Form I-600 with the NBC domestically. Typically, the consular officer will conduct the determination after the domestic USCIS office has already approved the Form I-600. However, if domestic USCIS officers have “articulable concerns,” they can request that the Form I-604 determination occur prior to Form I-600 adjudication. 8 CFR 204.3(k)(1).

In certain locations, USCIS and State have implemented Pre-Adoption Immigration Review (PAIR) programs, which require the Form I-604 determination to be completed prior to the final adoption or grant of custody in the child’s country of origin. See [Chapter 21.5\(d\)\(6\)-\(8\)](#) for more information on the PAIR process, when the Form I-604 determination occurs in the PAIR process, and who conducts the Form I-604 determination, as it is country-specific and outside the scope of this section.

See the charts below for an overview of who completes a Form I-604 determination and when it occurs in the context of the entire orphan process, depending on the Form I-600 filing location with and without Form I-600A approval:

	Form I-600 Filing Location	Who completes Form I-604?
PAPs residing <b>domestically</b> with an <b>approved Form I-600A</b>	May file Form I-600 with the: <ul style="list-style-type: none"> <li>• USCIS National Benefits Center (NBC);</li> <li>• U.S. Embassy or Consulate in the child's country* if USCIS is not present; or</li> </ul>	Consular officer <u>unless</u> USCIS has an office in the child's country and has assumed jurisdiction over the Form I-604 workload for Form I-600 petitions filed at the NBC.**
	<ul style="list-style-type: none"> <li>• USCIS international office in the child's country, if any.*</li> </ul>	USCIS overseas officer in the child's country.
PAPs residing <b>domestically</b> <b>without</b> an <b>approved Form I-600A</b>	May make a concurrent (i.e., combo) filing of Form I-600, along with Form I-600A supporting documentation only, with the NBC.	Consular officer <u>unless</u> USCIS has an office in the child's country and has assumed jurisdiction over the Form I-604 workload for Form I-600 petitions filed at the NBC.**
PAPs residing <b>abroad</b> with an <b>approved Form I-600A</b>	May file Form I-600 with the: <ul style="list-style-type: none"> <li>• NBC;</li> <li>• U.S. Embassy or Consulate in the child's country* if USCIS is not present;</li> </ul>	Consular officer <u>unless</u> USCIS has an office in the child's country and has assumed jurisdiction over the Form I-604 workload for Form I-600 petitions filed at the NBC.**
	<ul style="list-style-type: none"> <li>• USCIS international office in the child's country,* if any; or</li> <li>• USCIS international office with jurisdiction over the PAP's residence.</li> </ul>	USCIS overseas officer or consular officer in the child's country.
PAPs residing <b>abroad</b> <b>without</b> an <b>approved Form I-600A</b>	May make a concurrent (i.e., combo) filing of Form I-600, along with Form I-600 supporting documentation and all required Form I-600A supporting documentation (no Form I-600A), with the: <ul style="list-style-type: none"> <li>• NBC; or</li> </ul>	Consular officer <u>unless</u> USCIS has an office in the child's country and has assumed jurisdiction over the Form I-604 workload for Form I-600 petitions filed at the NBC.**
	<ul style="list-style-type: none"> <li>• USCIS international office with jurisdiction over the PAP's residence.</li> </ul>	USCIS overseas officer or consular officer in the child's country.
	<p>* Requires physical presence at some point during the adoption or immigrant visa process, within the jurisdiction of the USCIS international office or the U.S. Embassy or Consulate designated to act on the petition.</p> <p>** USCIS assumed jurisdiction over Form I-604 processing in Haiti on September 16, 2013, and in the Republic of Korea on September 22, 2014.</p>	

### **When is the Form I-604 Completed?**

IF...	Then...
Form I-600 is adjudicated abroad,	The Form I-604 must be completed before the petition is approved.
Form I-600 is adjudicated in the United States,	<p>The Form I-604 must be completed after the petition is approved, but before visa issuance unless:</p> <ul style="list-style-type: none"> <li>• The domestic USCIS office requests the investigation before the adjudication of the Form I-600 due to “articulable concerns” 8 CFR 204.3(k)(1); or</li> <li>• The Pre-Adoption Immigration Review (PAIR) program has been established in the child’s country.</li> </ul>

**Guidance for Officers Completing the Form I-604** – Form I-604 determinations are important to address any concerns regarding the child’s orphanhood, the authenticity and validity of foreign government documents, or concerns about potential fraud. The in-country review of the documentation is intended to provide integrity in the orphan adjudication and to ensure that foreign documents submitted to support the Form I-600 petition are legally sufficient. In addition, officers on the ground in a country may be aware of systemic issues that could affect the validity of foreign documentation. All items on the Form I-604 must be completed according to the form instructions. Since most of the questions are self-explanatory, this guidance focuses on those items on the Form I-604 that address whether the child’s situation meets the orphan definition under U.S. law.

Depending on the circumstances of the case, Form I-604 determinations should include, but are not necessarily limited to: document checks, telephonic checks, interviews with the parent(s), and/or field investigation of material facts presented in the case. 8 CFR 204.3(k)(1). What each Form I-604 determination should encompass will depend upon the circumstances of the particular Form I-600 beneficiary and upon other relevant factors, such as country conditions and the presence or absence of any potential fraud indicators or other concerns.

While it is possible to complete many Form I-604 determinations through telephone interviews and verifications of documentation at the USCIS international office or U.S. Embassy, situations do arise when a field investigation is necessary to validate the bona fides of the case. When conducting a field investigation, officers should talk with local government officials, orphanage directors, and neighbors in a language in which they are easily conversant and comfortable using. This may require the use of locally employed staff to provide the necessary interpretation.

In a country where documentary evidence is typically considered to be reliable and no other concerns are present, a review of the documentary evidence on its face may be sufficient. If the officer is satisfied that the record is consistent, complete, and that the child qualifies to be classified as an “orphan” under U.S. immigration law, the officer should complete the Form I-604 by signing and dating the form, and checking the appropriate box to indicate the facts have been affirmed and orphan classification is appropriate.



However, if the record is materially *incomplete*, *inconsistent*, or if *adverse/negative* information is found, officers should fully document and explain the reasoning for their findings/determination on Form I-604, Block 15, Comments Section, or in separate attachments, if necessary, and enclose all relevant evidence. For negative Form I-604 determinations, the officer should include a memorandum providing an explanation of the determination, the identity or identities the investigator along with his or her qualifications, and a narrative summary of the findings of fact, specifically:

### **1) Documenting Incomplete/Inconsistent Records**

- If the record is incomplete or inconsistent, provide an explanation of what is missing or inconsistent, why it is material to the adjudication, and its effect on the case.
- The officer may also recommend what additional evidence could overcome the deficiency or inconsistency.

### **2) Documenting Adoptions That Do Not Comply with Foreign Law**

- If officers believe the adoption is not valid under the law of the country of adoption, include a copy of the country's applicable law in the case file (with an English translation, if possible) and provide an explanation of why the adoption is not valid.
- Generally, officers should accept an adoption decree as valid unless there is evidence that the court order was obtained fraudulently or was based on a misrepresentation. See **Chapter 21.5(d)(5)(B)** for more on Evidentiary Requirements.

### **3) Documenting When a Child Does Not Meet the Definition of an Orphan**

- If the child does not meet the "orphan" definition under U.S. law, provide an explanation of which provision(s) of the orphan definition were considered, why the provision(s) were not met, and what case-specific evidence is lacking or insufficient to establish the child's orphanhood.
- Always explain conclusions, support them with factual findings, and describe the supporting evidence, explaining why the evidence makes the child ineligible for classification as an orphan under INA 101(b)(1)(F) and 8 CFR 204.3. Keep in mind that a child only needs to meet one provision of the orphan definition to be found eligible for the benefit (i.e., abandonment, death, disappearance, desertion, separation, or loss, or has a sole or surviving parent incapable of providing care).

### **4) Documenting Child-Buying**

- If child-buying is suspected, provide evidence of payments made or interview records that discuss such payments, including: who made the payment, to whom, and for what reason (both stated and/or supported by the facts on the record).
- Explain the basis for the conclusion that these payments should be construed as child-buying and not as reasonable expenses for adoption-related activities.

### **5) Documenting Fraud**



- If there is evidence of fraud, provide documentation and an explanation of the type of fraud, and how the evidence supports a finding of fraud. Include any and all evidence gathered during a field investigation or interviews that supports the fraud conclusion.
- Also explain why the documented fraud makes the child ineligible for orphan classification under INA 101(b)(1)(F) and 8 CFR 204.3.
- Verify all civil documents. If officers discover a counterfeit document or a genuine document that has been obtained through fraudulent means, falsified, or altered with fraudulent information, include copies and explain how they were identified as fraudulent, and include official confirmation by the issuing authority when possible.
- Also, if possible, provide an example of a genuine document for comparison. Indicate whether the falsified document is a genuine document containing false information, or if it is a counterfeit or forged document. In either case, investigate the underlying facts and explain why the falsified document makes the child ineligible for orphan classification.

## **6) Documenting Civil Registry Records**

- If civil register records have been checked and they are inconsistent with the document provided by the petitioner, it is helpful to take a photograph of the civil register record, if permitted.

## **7) Documenting Interviews**

- When conducting interviews, provide documentation of the date, time, location, and identity of any interviewers, interviewees, witnesses and/or translators and any other salient factors surrounding the circumstances of the interview.
- Whenever reasonable, record interviews in question and answer (Q&A) format, providing a verbatim report of the material issues.
- If an interview reveals material evidence that the child does not meet the orphan definition, consider the feasibility of obtaining a sworn statement from the interviewee.
- Include copies of Q&As and any sworn statements, and summarize the interview, identifying the relevant information and its effect on the case. Carefully document investigative interviews and statements made by interviewees in a format that may be shared with the petitioner as an exhibit to an RFE, NOID, or Denial.
- Document any refusal to sign a sworn statement.
- Be sure to explain any cultural anomalies in an interviewee's demeanor or responses that may not be readily apparent to a reader who does not have firsthand knowledge of the country.
- If an investigation reveals inconsistencies, the officer must give the interviewee an opportunity to explain the inconsistencies on the record. Confront the interviewee about the specific inconsistency in a non-adversarial manner.
- Fully explain when and where the inconsistent statements were provided and quote or accurately paraphrase the statement the affiant previously provided. Also consider

including verbatim quotes from the interviewee to fully capture salient facts derived from the interview.

- If an interpreter is used, confirm while questioning the interviewee that he or she understood the interpreter and was able to communicate effectively with the interviewer. USCIS requires credible evidence documented in a format that can be shared with the petitioner, and support(s) the issuance of a RFE, NOID, NOIR, or Denial Notice (often as an exhibit).
- Talk with the birth child's parents, if known and located, and document what they believe is happening to their child. Ask whether they are aware their child is being placed for intercountry adoption and whether they understand the permanent nature of adoption. Use plain language and consider the parents' level of education when explaining the intercountry adoption process.
- Talk to the adoptive child, if appropriate. If the adoptive child appears old enough to speak for him or herself, ask the child if he or she is willing to talk with a USCIS or consular officer or local staff with no parents or ASP officials present. Ask the child what happened to the birth family and document the interview carefully, noting reactions to follow-up questions. Ask the child if he or she knows that an adoption is taking place and that he or she will be moving to the United States permanently.
- Interviews of parents, witnesses, and others should, to the extent possible, be conducted outside of the presence of local government officials or ASP representatives so the interviewees are able to speak freely.

Only check Form I-604, Block 12, in cases where there is documented evidence of fraud, child-buying, misrepresentation or non-bona fide intent to adopt the beneficiary. General suspicions of improper activity not specific to the case are not sufficient.

When completing Form I-604, Block 9, officers should review the 8 CFR 204.3 definitions of abandonment, desertion, loss, separation, disappearance, sole parent, surviving parent, and "incapable of providing proper care." Keep in mind that a child may meet the definition of an orphan under INA 101(b)(1)(F) and 8 CFR 204.3 in any one of these ways. See **Chapter 21.5(d)(5)(D)**. The facts may indicate that a child could fall into more than one orphan category. The officer should consider all of the categories that make up the definition of orphan and indicate which applies based upon the facts presented in the case.

#### (I) "Not Clearly Approval" (NCA) Cases vs. "Consular Returns"

In both NCA cases and consular return cases, officers have determined, based on the Form I-604 determination, that the child beneficiary does not appear to meet the U.S. immigration definition of an orphan. Both types of cases require case-specific, factual evidence. It is important that officers understand the difference between NCA cases, which involve petitions that cannot be readily approved because of insufficient evidence or identified fraud or malfeasance, and consular returns, which are based on probative evidence that the officer has determined would have supported a denial had it been known at the time of petition approval.

1. Consular Officer Referral of Cases to USCIS as “Not Clearly Approvable” after the Completion of the Form I-604 (before final adjudication of the Form I-600).

Only consular officers refer cases as “not clearly approvable” to USCIS international offices. If a USCIS officer adjudicating a case after completing a Form I-604 determined that the petitioner did not meet his or her burden of proof then the officer would issue an RFE or NOID before making a final decision. Consular officers may not issue RFEs or NOIDs, and must therefore refer cases that are “not clearly approvable” to USCIS for further processing. A finding that a case is not clearly approvable does not necessarily mean that it should be denied. It simply means that the record, as presented, is insufficient to make a positive determination on the case.

**Jurisdiction** – Under 8 CFR 204.3(k)(2), consular officers are only authorized to approve a Form I-600 petition if:

1. USCIS has made a favorable determination on the related Form I-600A (and it remains valid at time of Form I-600 filing);
2. The petitioner traveled to the child’s country and fell under the jurisdiction of the U.S. Embassy or consulate during the adoption process; and
3. A consular officer finds the petition is “clearly approvable.”

Consular officers must refer any Form I-600 petition that is “not clearly approvable” to the USCIS office abroad having jurisdiction over its adjudication, along with the supporting documents, the completed Form I-604, and any other relevant documentation per 8 CFR 204.3(h)(11).

**Not Clearly Approvable** – DHS regulations do not define the terms “approvable” and “not clearly approvable.” However, since the petitioner must establish eligibility for the benefit sought by a “preponderance of the evidence,” it follows that a Form I-600 is clearly approvable when the petitioner *has* met his or her burden of proving by a preponderance of the evidence that the beneficiary is eligible for classification as an orphan. Likewise, a Form I-600 is not clearly approvable when the petitioner *has not* met his or her burden of proving by a preponderance of the evidence that the beneficiary is eligible for classification as an orphan, or it is unclear whether the petitioner has met this burden. If the Form I-604 determination is favorable, but there is evidence that the child may not be eligible for an IR-3 or IR-4 visa (i.e., there is a potential INA 212(a) inadmissibility issue), then the consular officer may be required to contact State’s Visa Office for coordination with USCIS headquarters.

Reasons for finding that the petitioner has not met his or her burden, thus making the Form I-600 “not clearly approvable” include, but are not limited to:

- A significant change within the petitioner’s household or a change in the number of children or characteristics of the child the petitioner was approved to adopt that necessitates an RFE for an amended or updated home study (e.g., if an officer

discovers during the Form I-604 determination that the child has a significant medical condition for which the family has not been approved);

- Any state pre-adoption requirements have not been met for IR-4 cases;
- There is not enough information in the record to make a favorable determination;
- There is materially inconsistent or conflicting information in the record that must be reconciled; or
- There is adverse information in the record, such as evidence of fraud, child-buying, and/or fraudulent documentation, uncovered as a result of the Form I-604 determination.

Whenever a consular officer determines that the petitioner has not established by a preponderance of evidence that the beneficiary child is an orphan under U.S. immigration law, the officer should refer the case to USCIS as “not clearly approvable.”

**Note:** Consular officers may contact the USCIS office that approved a family’s Form I-600A through appropriate channels to discuss either of the first two bullets above before referring a case as “not clearly approvable.” This may be especially important in circumstances where there is a compelling medical or humanitarian need necessitating a more expedited process.

**Process** – When referring a Form I-600 petition to USCIS as “not clearly approvable,” consular officers must:

- Complete the Form I-604 determination in accordance with the guidance in the **Completing Form I-604** section above;
- Complete Blocks 3 through 13 and 15 of Form I-604 and sign and date the form in the Officer Performing Inquiry Section on Page 4;
- Draft a NCA Memo in accordance with relevant State policy;
- Send the Form I-600 petition, all supporting documents, the completed Form I-604, the NCA memo, and any other related documentation to the international USCIS office having jurisdiction over the case; and
- Notify the prospective adoptive parent(s) that their case has been referred to USCIS as NCA and inform USCIS by phone or email that the case is en route.

**Note:** While 8 CFR 204.3(h)(11) does not specify exactly how consular officers must notify the prospective adoptive parent(s), it is best practice to provide such notice in writing, explaining generally why the case has been identified as NCA.

Consular officers are encouraged to contact the appropriate USCIS office abroad with any questions as to whether a petition is NCA before approving or referring a case. At any point, USCIS and consular officers may reach out and coordinate with each other to consult about a case or seek additional information. Such open lines of communication are not only encouraged, but can also save time and prevent miscommunications/

misunderstandings. Consular officers may be required to notify State's Visa Office of any discussions about specific cases.

Once USCIS receives an NCA case, a USCIS officer will review the case carefully and will interact with Post and State's Visa Office as necessary to make sure the USCIS officer fully understands the consular officer's concerns before proceeding. The USCIS office is responsible for first determining whether the available evidence is sufficient to approve the Form I-600. If the available evidence is sufficient, the officer will approve the petition and return the petition to Post for visa screening. If the evidence is insufficient, the officer may:

- Issue a RFE to the petitioner, which allows the petitioner 84 days (plus additional time for mailing, if appropriate) to gather additional evidence and provide it to USCIS;
- Issue a NOID if all required evidence is submitted but the evidence submitted does not establish eligibility or the decision will be adverse to the petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware. Petitioner has 30 days (plus time for mailing, if appropriate) to submit evidence sufficient to overcome the grounds for a denial; or
- Issue a Denial, in rare cases where the officer determines that there is no possibility that the petitioner can rebut the reason for denial (i.e., the child was older than 16 when the Form I-600 was filed and is no longer eligible for consideration).

Any time USCIS sends an RFE or NOID, the petitioner has the opportunity to respond with additional information. The officer must then assess the totality of the evidence in the record to determine if the petitioner has met his or her burden of proving that the beneficiary child is entitled to orphan status.

If an officer has suspicions or doubts about the bona fides of a child's eligibility as an orphan, the officer must identify specific factual evidence to support any decision to deny. When the record contains factual evidence proving that it is more likely than not that the child is eligible for the benefit, an officer's suspicions alone are insufficient for a denial of the case. However, where there is specific factual evidence that raises doubts about any aspect of the petitioner's proof, an officer may reevaluate the reliability and sufficiency of the remaining evidence offered in support of the visa petition. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As previously noted, referring a case as NCA may or may not result in a denial. An NCA case may be approved without additional evidence if USCIS determines that the petitioner has established that the child is an orphan by a preponderance of the evidence, or if a petitioner provided additional evidence that resulted in a favorable determination. Similar to cases filed with USCIS where USCIS approved the petition after issuance of an RFE, USCIS may ultimately approve NCA petitions after the petitioners provide additional information. If additional evidence is provided, the USCIS officer may consult with the Post that referred the case to verify documents or consult on country norms.

If USCIS approves a petition but the consular officer adjudicating the visa application believes that the applicant is not eligible for a visa, or discovers new evidence that the consular officer believes would support revoking the approval, according to the Department of State's Foreign Affairs Manual, Post should send an Advisory Opinion to CA/VO/L/A requesting further guidance per 9 FAM 42.43 N4.1 and N4.2. CA/VO will advise Post on next steps.

## 2. How to Return Already Approved Forms I-600 for Possible Revocation (Consular Returns).

Officers abroad completing a Form I-604 determination may return the approved Form I-600 petition to the USCIS adjudicating office that previously approved the Form I-600 petition with a recommendation for revocation. In the most common scenario, the consular officer receives a Form I-600 petition that has already been approved, either domestically by the USCIS National Benefits Center or by a USCIS international field office. For the Form I-600 petitions approved domestically by USCIS, the adverse information that leads to a consular return recommending that USCIS revoke approval of the petition is generally uncovered during the Form I-604 determination, which occurs after approval but before immigrant visa processing.

A Form I-600 petition must be revoked in accordance with 8 CFR 205.2 when information is discovered that would have resulted in denial had it been known at the time of adjudication. See **Chapter 21.5(d)(5)(B)** and 8 CFR 204.3(h)(14). USCIS can properly issue a Notice of Intent to Revoke (NOIR) a petition where there is "good and sufficient cause." A NOIR is properly issued when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant denial of the petition based upon the petitioner's failure to meet his burden of proof. See *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

Doubts that do not call the beneficiary's eligibility into question, or that are not supported by probative evidence, are not sufficient. See *Matter of Arias*, 19 I&N Dec. at 570-71. Probative evidence is evidence which proves or helps prove a fact or issue.

**Jurisdiction** – Only USCIS officers have authority to revoke approval of Form I-600 petitions and, before doing so, must provide the petitioner with a NOIR. 8 CFR 205.2(b).

**Note:** A NOIR is not required when the petitioner or beneficiary dies or when some other automatic ground for revocation under 8 CFR 205.1 applies. See 8 CFR 205.2(b).

**Recommendation of Revocation** – If, after receiving an approved Form I-600 from USCIS, a consular officer identifies probative evidence – either from the Form I-604 determination or that come to light prior to or during the visa process – that would have led USCIS to deny the petition had it been known at the time of adjudication, the consular officer should return the petition to the USCIS adjudicating office for possible revocation.

**Process** – When returning a Form I-600 petition to USCIS for revocation, consular officers must:



- Draft a memo recommending revocation (often referred to as a Consular Return or, Revocation Memo) in accordance with State policy.
- Explain in the Revocation Memo whether the recommendation is based on the Form I-604 determination results (which must be documented and completed in accordance with the **Completing Form I-604** section above) or other probative evidence discovered prior to or during visa interview/screening which may establish good and sufficient cause to proceed with a NOIR.
- Clearly articulate in the Revocation Memo the factual basis for revocation, explaining why the information is probative and why approval would not have been proper had the information been known at the time of adjudication. Attach as enclosures all new and relevant, case-specific evidence, including copies of any sworn statements, Q&As, or other relevant evidence such as identified patterns or trends in a particular country or region in accordance with the general principals in the **Completing Form I-604** guidance above.
- Return the Form I-600 petition, completed Form I-604 and results, all supporting documentation and evidence, and the Revocation Memo to the USCIS NBC via the National Visa Center if the case was approved domestically or directly to the USCIS international office if the case was approved abroad.
- Consular officers are encouraged to notify the petitioner that the case has been returned to USCIS, and also inform USCIS by email or phone that the case is en route.

At any point, USCIS and consular officers may reach out and coordinate with each other to consult about the case or to seek additional information. Such open lines of communication are not only encouraged, but can also save time and prevent miscommunications/misunderstandings. Consular officers may be required to notify State's Visa Office of any discussions about specific cases.

Once USCIS receives a consular return case, a USCIS officer will carefully review the case and interact with Post as necessary to make sure the USCIS officer fully understands the consular officer's concerns. USCIS may then:

- Issue a NOIR, which will generally give the petitioner 30 days (plus time for mailing, if appropriate) to submit evidence sufficient to overcome the intended revocation; or
- Reaffirm the Form I-600 approval and send the case back to the appropriate Consular Section, via the National Visa Center, for visa screening.

If USCIS reaffirms a petition but the consular officer adjudicating the visa application believes that the applicant is not eligible for a visa or discovers new evidence that the consular officer believes would result in a revocation request, Post should send an Advisory Opinion to CA/VO/L/A requesting further guidance per 9 FAM 42.43 N4.1 and N4.2. State's Visa Office will advise Post on next steps.

(J) How to Proceed when USCIS Completes the Form I-604

Since USCIS has reassumed responsibility for Form I-604 determinations for domestically filed petitions in some locations, USCIS international offices in those locations may also return an approved Form I-600 petition to the NBC recommending revocation. The same process outlined in section (I)(2) above applies to these returns, which are not technically “consular” returns but rather USCIS international office returns.

- ☞ 4. Chapter 21.5(d)(8) of the AFM is revised by relabeling existing part (8) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . .Nepal” to part (6).

(6) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . . Nepal

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- ☞ 5. Chapter 21.5(d)(9) of the AFM is revised by relabeling existing part (9) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . .Taiwan” to part (7).

(7) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . . Taiwan”

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- ☞ 6. Chapter 21.5(d)(10) of the AFM is revised by relabeling existing part (10) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . . Ethiopia” to part (8).

(8) Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from. . . Ethiopia”

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- ☞ 7. Chapter 21.5(e)(4) of the AFM is revised by replacing the existing language with the below.

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(d) Requirements under the Intercountry Adoption Universal Accreditation Act (UAA).

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(4) Adjudication of Form I-600 when the UAA Applies. Except as provided in Chapter 21.5(d)(6), (7) and (8), proper adjudication of the **Form I-600** will include a thorough review of each answer on the petition, inspection of all evidence submitted with the petition, and reference to the pertinent law, regulations, precedent decisions, and current policy. All processing steps in the Form I-600 SOP must be followed.

(A) See and follow the guidance at Chapter 21.5(d)(1)-(8) regarding:

1. “Jurisdiction and Proper Filing”;
2. “Adjudicative Issues”;
3. “Stepparents”;

4. “Evidentiary Requirements if No Form I-600A Was Filed Previously (Combination Filing)”;
5. “Documenting That A Child is an Orphan under **INA 101(b)(1)(F)** and Conducting Form I-604 Determinations”;
6. “Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries in Nepal”;
7. “Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from, and physically located in Taiwan”; and
8. “Special Instructions for Forms I-600 Filed on Behalf of Beneficiaries from, and physically located in Ethiopia,” respectively.

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8. The AFM **Transmittal Memorandum** button is revised by adding a new entry, in numerical order, to read:

AD14-06 [DATE]	Chapter 21.5(d) Chapter 21.5(e)(4)	To provide guidance on Form I-604, Determination on Child for Adoption, or Orphan Determinations, related to Form I-600 adjudications
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### 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 regarding the guidance contained in this PM should be forwarded through proper channels to the Refugee, Asylum, and International Operations Directorate (International Operations Division Headquarters) and the Field Operations Directorate (USCIS National Benefits Center).