




U.S. Citizenship
and Immigration
Services

SEP 24 2008

HQ 70/1-P

Memorandum

TO: Field Leadership

FROM: Donald Neufeld 
Acting Associate Director, Domestic Operations

SUBJECT: Transmittal of SOP for Adjudication of Family-Based Petitions under the Adam Walsh Child Protection and Safety Act of 2006

1. Purpose

The purpose of this memorandum is to transmit a Standard Operating Procedure (SOP) module for the adjudication of Forms I-129F and I-130 under the Adam Walsh Child Protection and Safety Act of 2006 ("AWA"). The AWA prohibits U.S. citizens and lawful permanent residents who have been convicted of any "specified offense against a minor" from filing a family based immigrant petition on behalf of any beneficiary. This memorandum also serves to clarify and amend two provisions of the February 8, 2007, Interoffice Memorandum (HQDOMO 70/1-P) titled *Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006*.

2. Clarification

To the extent that the February 7, 2007 memorandum could possibly be construed to suggest that proof of rehabilitation is required above and beyond proof that a petitioner poses no risk to the beneficiary on the petition, this memorandum clarifies that, although rehabilitation is generally paramount to the no risk determination, rehabilitation is just one of various factors to be considered. There are some rare instances where evidence of rehabilitation may not be required or applicable. However, even in those rare instances, the totality of the evidence must still establish that the petitioner poses no risk to the safety and well being of the beneficiary for the approval of a petition to be considered. If any questions whatsoever arise as to the application of rehabilitation as factor in the no risk assessment, adjudicators must consult with local counsel.

3. Change

The prior memorandum states, on page seven, that:

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If the adjudicator finds that the petitioner poses no risk to the beneficiary, the adjudicator must seek the guidance and direction of USCIS Headquarters, Regulations and Product Management Division, before approving the petition. Adjudicators are prohibited from exercising favorable discretion in such instances without the consent of USCIS Headquarters.

Effective immediately, USCIS adjudicators are no longer required to seek guidance from USCIS Headquarters, Regulation and Product Management Division or obtain the consent of USCIS Headquarters to conclude, based on the evidence that the petitioner poses no risk to the safety and well being of the beneficiary. Moreover, this memorandum informs USCIS adjudicators that in the rare instance of an approval recommendation, the adjudicator must obtain and properly document two levels of supervisory concurrence as follows:

- (1) First Level Supervisory review by a field supervisor at the GS-13 level or above

and

- (2) Second Level Supervisory review by a field supervisor at the GS-15 level or above.

The approval recommendation should be documented using the manner described in the SOP module. Again, given the nature and severity of many of the underlying offenses and the intent of the AWA, approval recommendations should be rare.

2. Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to the adjudication of applications. 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 by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

3. Contact Information

Questions regarding the guidance contained in this memorandum should be directed to Heather Evelyn, Service Operations or David P. Johnson, Field Service Operations, through the appropriate supervisory channels.

Distribution List: Regional Directors
 District Directors
 Service Center Directors
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 Associate Director, National Security and Records Verification

Adam Walsh Child Protection and Safety Act of 2006

Introduction	The Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act" or "AWA" or "Walsh Act"), was enacted on July 27, 2006 to: (a) protect children from sexual exploitation and violent crime; (b) prevent child abuse and child pornography; (c) promote Internet safety, and (d) honor the memory of Adam Walsh and other child crime victims.
Statutory Basis	Immigration and Nationality Act (INA), §204; Section 402(a) of the Adam Walsh Act, Pub. L. 109-248.
Regulatory Basis	8 CFR 204.1 (Regulations for family based petitions – note: Adam Walsh Act-specific regulations have not been published as of this writing).
Effective Date	July 27, 2006, the date of enactment.
Resources	<ul style="list-style-type: none"> • Interoffice Memorandum dated February 8, 2007: Guidance for Adjudication of Family-Based Petition and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006, (HQDOMO 70/1-P); • Policy Memorandum No. 110, dated July 11, 2006 (regarding the issuance of NTAs); • Interoffice Memorandum dated May 3, 2006: Disclosure of Certain Information Relating to Criminal Histories Of Petitioners to Potential Visa Beneficiaries (HQOPRD 70/6.1.1) (regarding when and how to disclose the petitioner's prior criminal convictions to the beneficiary); and • IBIS SOP.

<p>THE IMPACT OF AWA IMPLEMENTATION The Adam Walsh Act effects two major changes to immigration laws.</p> <p>Change #1</p> <p>NOTE: The statute states that a petitioner convicted of any specified offense against a minor is prohibited from filing a family-based petition. As a practical matter, however, we need to accept the petition and conduct the necessary analysis to determine whether the AWA provisions apply. Depending on the outcome of that analysis, the petition will be adjudicated accordingly.</p>	<p>Section 402(a) of the AWA amends sections 204(a)(1)(A) and 204(a)(1)(B)(i) of the Act to prohibit U.S. citizens and lawful permanent residents who have been convicted of any “specified offense against a minor” from filing a family-based visa petition for any beneficiary, unless the Secretary of Homeland Security determines in his sole and unreviewable discretion that the petitioner poses no risk to the beneficiary.</p>
<p>Change #2</p>	<p>Section 401 of the AWA amends the INA by adding a new subparagraph (v) to section 237(a)(2)(A) of the Act. Under the new section 237(a)(2)(A)(v) of the Act, an alien who is convicted under 18 USC § 2250 for failure to register as a sex offender is subject to removal as a deportable alien.</p>
<p>Impacted Forms:</p>	<p>The AWA provisions impact the screening and adjudication of the following form types: I-130, I-29F, I-600, I-600A, I-800, and I-800A.</p>

<p>Delegation of the Secretary's Authority</p>	<p>USCIS's delegated authority to apply the Secretary's discretion in these matters is set forth in 8 CFR §103.1(a), entitled Delegation of authority; designation of immigration officers:</p> <p style="text-align: center;">Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by §2.1 of this chapter.</p> <p>Moreover, subsection (b) goes on to specifically designate adjudications officers as one type of DHS employee who, by such designation is authorized to exercise the powers and duties of an immigration officer.</p>
<p>Who is a beneficiary under AWA?</p>	<p>Any beneficiary includes:</p> <ul style="list-style-type: none"> Spouse; Fiancé(e); Parent; Unmarried child; Unmarried son or daughter over 21 years of age; Orphan; Adopted child as defined by the Hague Adoption Convention which is designed to protect children and their families against the risks of unregulated adoptions abroad and ensures that inter-country adoptions are made in the best interests of children; Married son or daughter; Brother or sister; Any derivative beneficiary permitted to apply for an immigrant visa or K nonimmigrant visa on the basis of his or her relationship to the principal beneficiary of a family-based petition
<p>Who is a minor under AWA?</p>	<p>A minor is defined as an individual who has <u>not</u> attained the age of 18 years. (Note that this definition for AWA purposes has no effect on the definition of child contained in section 101(b) of the INA.)</p>
<p>What is a "specified offense against a minor"?</p>	<p>The "specified offenses against a minor" listed in the legislation at §111 (7) are as follows:</p> <ul style="list-style-type: none"> (A) An offense involving kidnapping (unless committed by a parent or guardian); (B) An offense involving false imprisonment (unless committed by a parent or guardian); (C) Solicitation to engage in sexual conduct; (D) Use in a sexual performance; (E) Solicitation to practice prostitution;

	<p>(F) Video voyeurism as described in §1801 of title 18, United States Code;</p> <p>(G) Possession, production, or distribution of child pornography;</p> <p>(H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or</p> <p>(I) Any conduct that by its nature is a sex offense against a minor.</p>
<p>What Triggers an AWA Analysis?</p>	<p>The results of initial IBIS checks and/or subsequent alias checks, non-IBIS derogatory information, as well as any derogatory information derived from fingerprint checks, can trigger an AWA analysis if the crime appears to involve “a specified offense against a minor.” As a result, the vetting is a two-phase process – BCU/FDNS vetting and Adjudications vetting.</p>
<p>Phase I – BCU/FDNS Vetting</p> <p>IBIS checks are run on all petitions filed with USCIS. Per the IBIS SOP, primary name checks on the petitioner and beneficiary are run in IBIS within 15 days of receipt. If derogatory (IBIS or non-IBIS) info is found or if there is self-disclosed derogatory info, the vetting steps to the right are followed.</p> <p>IF there a preliminary finding that there is no specified offense against a minor</p>	<p>BCU/FDNS* VETTING STEPS (See Adam Walsh/BCU Flow Chart, Exhibit 1)</p> <ol style="list-style-type: none"> 1. The case is forwarded to the BCU/FDNS unit. 2. The BCU/FDNS unit completes the Adam Walsh Worksheet. 3. The security checks are run and the printout is placed in the file. 4. If the security/system checks reveal a possible AW offense, schedule the petitioner for fingerprinting. <ol style="list-style-type: none"> a. If the petitioner fails to appear for the fingerprinting appointment, check the AR-11 system for an address update and re-SNAP if a new address is on file. b. If an updated address cannot be found in the systems, send the case to Adjudications for an abandonment denial. If the petitioner is an LPR, the case must also be evaluated for possible NTA issuance. 5. The incoming fingerprint results will generate the RAP sheet review. 6. Sort the RAP sheets for egregious public safety (EPS). EPS or non-EPS (refer to PM 110 for guidance on determining EPS). <p>THEN go to the next phase - adjudications vetting</p>

* The FDNS role will occur at the local field office.

<p>IF the petitioner is a USC</p> <p>IF the petitioner is an LPR</p> <p>NOTE: For guidance on foreign convictions, refer to the February 8, 2007, Interoffice Memorandum, Page 3, Section C. Refer any questions about the conviction confirmation to local counsel, including questions about the sufficiency of foreign convictions.</p> <p>Sex Offenders Convicted Under 18 USC § 2250 for Failure to Register</p>	<p>7. If the rap sheet review indicates the offense is EPS, do a further sort for USC/LPR.</p> <p>If the petitioner is a USC, send the file to Adjudications after the IBIS resolution and/or conviction confirmation has been made.</p> <p>THEN use the petitioner's Social Security Number as the identifier</p> <p>THEN use the petitioner's A-Number as the identifier</p> <p>If the petitioner is an LPR, suspend adjudications and refer to ICE.</p> <ol style="list-style-type: none"> i. If ICE accepts the EPS referral, process the cases as noted in PM 110, see pages 4-6. ii. If there is no response to the RTI or if ICE does not accept the referral, treat the case as non-EPS. iii. BCU makes conviction confirmation. iv. BCU completes the system updates and the resolution memo. <p>An LPR petitioner who has been <u>convicted</u> under 18 USC § 2250 for failure to register as a sex offender, may be deemed to be an EPS threat pursuant to PM 110. See the EPS referral process described above.</p>
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<p>Phase 2 - Adjudications Vetting</p> <p>IF the BCU has the disposition documents and has determined that the Adam Walsh provisions do not apply,</p> <p>IF the BCU does not have the disposition documents, or has reason to believe that AW applies,</p> <p>IF the NOID/RFE response is received timely,</p> <p>IF the NOID/RFE responses not received</p>	<p>THEN the case is received in Adjudications. Normal case processing may begin. (If necessary, the BCU will have already consulted with counsel to get their concurrence.)</p> <p>THEN the case is forwarded to Adjudications for issuance of a RFE/NOID, with an 87-day response time.</p> <p>THEN case processing resumes to account for all eligibility standards, including AWA.</p> <p>THEN process for an abandonment or a substantive denial, as appropriate and possible NTA issuance, if the petitioner is an LPR.</p>
<p>The Purpose of the "Poses No Risk" to Beneficiary (ies) Determination.</p>	<p>The critical purpose of section 402 of the Adam Walsh Act is to ensure that the intended alien beneficiary is not placed at risk of harm from the petitioner.</p>

<p>Presumption of Risk Where the Intended Beneficiary is a Child</p>	<p>Given the critical purpose of the AWA, the adjudicator must automatically presume that risk exists in any case where the intended beneficiary is a child, irrespective of the nature and severity of the petitioner's specified offense and other past criminal acts and irrespective of whether the petitioner and beneficiary will be residing either in the same household or within close proximity to one another. The burden is on the petitioner to rebut and overcome the presumption of risk by providing evidence that he or she poses no risk to the intended child beneficiary.</p>
<p>No Risk Determinations Where None of the Beneficiaries are Children</p>	<p>In cases where none of the intended beneficiaries are children, you must closely examine the petitioner's specified offense and other past criminal acts to determine whether the petitioner poses any risk to the safety or well-being of the adult beneficiary. For example, past acts of spousal abuse or other acts of violence must be considered. The fact that a petitioner's past criminal acts may have been perpetrated only against children or that the petitioner and beneficiary will not be residing either in the same household or within close proximity to one another may not, in and of themselves, be sufficient to convince USCIS that the petitioner poses no risk to the adult beneficiary.</p>
<p>Interpretation of "Poses No Risk"</p>	<ul style="list-style-type: none"> • USCIS interprets the "poses no risk to the beneficiary" provision to mean that the petitioner must pose no risk to the safety or well-being of the beneficiary, including the principal beneficiary and any alien derivative beneficiary. • A petitioner who has been convicted of a specified offense against a minor must submit evidence that clearly demonstrates, beyond any reasonable doubt, that he or she poses no risk to the safety and well-being of his or her intended beneficiary(ies). Generally, rehabilitation is paramount to the "poses no risk" determination.
<p>IF the adjudicator believes that rehabilitation is not applicable</p>	<p>THEN the adjudicator should consult with USCIS local counsel. These instances should be rare.</p>

<p>Documents the Petitioner may Submit to Establish that he or she does not Pose a Risk to the Beneficiary</p>	<p>The RFE/NOID lists examples of the types of evidence the petitioner must submit to establish that he or she poses <u>no</u> risk to the beneficiary. See sample of the RFE/NOID template. Where appropriate, the types of documentation the petitioner must submit include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Certified records indicating successful completion of counseling or rehabilitation programs; • Certified evaluations conducted by licensed professionals, such as psychiatrists, clinical psychologists, or clinical social workers, that attest to the degree of a petitioner's rehabilitation or behavior modification; • Evidence demonstrating intervening good and exemplary service to the community or in the uniformed services; • Certified copies of police reports and court records relating to the offense (the court records must include the original indictment or other charging document, any superseding charging document, any pre-sentencing report, and the conviction judgment); and • News accounts and trial transcripts describing the nature and circumstances surrounding the petitioner's specified offense(s) against a minor and any other criminal, violent, or abusive behavior incidents, arrests, and convictions.
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<p>Factors Considered in Determining Risk/No Risk</p>	<p>In determining whether a petitioner poses any risk to his or her intended beneficiary, the adjudicator must consider all known factors that are relevant to determining whether the petitioner poses any risk to the safety and well-being of the beneficiary. Factors that should be considered include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • The nature and severity of the petitioner's specified offense(s) against a minor, including all facts and circumstances underlying the offense(s); • The petitioner's criminal history; • The nature, severity, and mitigating circumstances of any arrest(s), conviction(s), or history of alcohol or substance abuse, sexual or child abuse, domestic violence, or other violent or criminal behavior that may pose a risk to the safety or well-being of the principal beneficiary or any derivative beneficiary; • The relationship of the petitioner to the principal beneficiary and any derivative beneficiary; • The age and, if relevant, the gender of the beneficiary; • Whether the petitioner and beneficiary will be residing either
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	<p>in the same household or within close proximity to one another; and</p> <ul style="list-style-type: none"> • The degree of rehabilitation or behavior modification that may alleviate any risk posed by the petitioner to the beneficiary, evidenced by the successful completion of appropriate counseling or rehabilitation programs and the significant passage of time between incidence of violent, criminal, or abusive behavior and the submission of the petition.
<p>Case Processing Steps if a Determination is made the Petitioner Poses a Risk to the Beneficiary</p> <p>IF the adjudicator is uncertain as to whether the petitioner poses no risk to the beneficiary</p> <p style="text-align: center;">OR</p> <p>IF the adjudicator is finding it difficult to articulate the factual basis for the denial</p>	<p>Unless the adjudicator can conclude, based on the evidence, that the petitioner poses no risk to the beneficiary, the adjudicator must deny the petition and clearly articulate the factual basis for the determination.</p> <p>THEN the adjudicator should consult with his or her supervisor and/or USCIS counsel.</p>
<p>Case Processing Steps if the Case is Ultimately Approved</p>	<p>If the petition is approved, the adverse information should be disclosed to the beneficiary. According to the Interoffice Memorandum dated May 3, 2006: Disclosure of Certain Information Relating to Criminal Histories Of Petitioners To Potential Visa Beneficiaries (HDQPRD 70/6.1.1), information in USCIS records, that pertains to a visa petitioner's criminal history that involves violence or sexual offenses in general, and directly relates to health and safety of the visa beneficiary may be disclosed to the potential beneficiary and his or her legal guardian. This disclosure would have to be made to the beneficiary in person during the interview, which, would occur at the field office, if the beneficiary is adjusting, or at the consular post, if the beneficiary is visa processing. Adjudicators at the NBC and the Service Centers will not be providing any written disclosure to the beneficiary. If the petition is approved, the information needed to make the disclosure to the beneficiary pursuant to this May 3, 2006 disclosure memorandum should be placed on top of the approved petition. Additionally, place the annotation "Disclosure Required" in the Remarks section of the approved petition.</p>

<p>Case Processing Steps if a Determination is Made that the Petitioner Does <u>Not</u> Pose a Risk to the Beneficiary</p> <p>IF the adjudicator finds that the petitioner poses <u>no</u> risk to the beneficiary</p>	<p>THEN the adjudicator must seek supervisory concurrence as set forth in the AWA Worksheet depending on the whether the adjudicating office is a service center, field office or overseas office.</p> <p>NOTE: The AWA Worksheet should be placed on the non-record side of the case file.</p>
<p>Appeals</p> <p>IF the denied petition is an I-130</p> <p>NOTE: <u>K-3 petitions</u> are <u>NOT</u> appealable to the <u>AAO</u>. The denied K-3 petition should be included with the denied I-130 that is transmitted to the BIA</p> <p>IF the denied petition is an I-129F for K-1 classification</p>	<p>THEN inform the petitioner that the denial may be appealed to the BIA and provide that petitioner with the EOIR-29 and the standard appeal instructions for the BIA.</p> <p>THEN inform the petitioner that the denial may be appealed to the AAO and provide the petitioner with the Form I-290B and the standard appeal instruction for the AAO.</p>

**INSERT APPROPRIATE # HERE:A#/File #/Receipt#
INSERT PETITIONER'S NAME HERE (LAST, First, MI)**

Template for Combination Adam Walsh Act RFE/NOID

[This combination NOID/RFE Template contains instructions to the adjudicator which are **WRITTEN IN ALL CAPS & BOLD** these instructions are for guidance only and should NOT appear in the final version of the NOID/RFE. All information that adjudicators are to insert into the document is noted using yellow highlighting.

Date:

Petitioner's Name
Petitioner's Street Address
Additional Street Address
City, State Zip Code

Re: Form Type (Form I-130, Petition for Alien Relative or Form I-129F,
"Petition for Alien Fiancé(e)"- *on behalf of* (insert name of Beneficiary)

Request for Evidence and Notice of Intent to Deny

Dear Mr./Ms. (insert Petitioner's surname(s)):

United States Citizenship and Immigration Services (USCIS) intends to deny the above referenced petition that you have filed on behalf of (insert name of Beneficiary). Before this decision becomes final, you are hereby provided an opportunity to submit documentary evidence that you feel may overcome the deficiencies forming the grounds for the intended denial discussed below.

I. [TYPE OF PETITION]

On (insert date) you filed a (Form I-130, "*Petition for Alien Relative*" or Form I-129F, "*Petition for Alien Fiancé(e)*") on behalf of (insert name(s) of beneficiary). The visa petition sought to classify, the beneficiary, as the (insert as appropriate spouse, child, son, daughter, parent, sibling or fiancé(e) of a United States citizen or lawful permanent resident) and (if applicable his or her derivative child(ren)) in accordance with (insert appropriate section -- §201(b) or §203(a) or INA 214(d)) of the Immigration and Nationality Act, as amended (the "INA"). During the course of

INSERT APPROPRIATE # HERE:A#/File #/Receipt#
INSERT PETITIONER'S NAME HERE (LAST, First, MI)

examining your eligibility to submit a petition on behalf of (insert name of beneficiary), USCIS discovered that you committed what appears to be an offense that would render you ineligible to act as a petitioner for the family-based visa referred to above.

II. [ADD THIS SECTION IF THERE ARE OTHER ELIGIBILITY ISSUES BESIDES AWA]

Every petitioner has the burden of establishing by a preponderance of the evidence that he or she is eligible to file the particular petition that he or she submits for USCIS consideration and adjudication. Matter of Soo Ho, 11 I&N Dec. 151,152 (BIA 1965). Accordingly, the petitioner must provide documentary evidence in support of his or her position that he or she and his or her beneficiary are eligible to seek, and qualified to be considered for, the visa classification sought in the underlying petition. Supporting documentation includes evidence that:

- The claimed relationship exists and qualifies for the benefit sought; and
- The beneficiary is not legally barred from receiving the benefit sought.

This includes, but is not limited to, birth records, marriage records, dissolution of marriage documents and any other statutorily required proofs related to the nature of the petition. If the petitioner fails to provide such documentary evidence in conjunction with the petition, the petition may be denied.

III. [AWA OVERVIEW]

On July 27, 2006, the President signed the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. 109-248, to protect children from sexual exploitation and violent crimes, to prevent child abuse and child pornography, to promote Internet safety and to honor the memory of Adam Walsh and other child crime victims.

Sections 402(a) and (b) of the Adam Walsh Act amend sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the INA to prohibit U.S. Citizens and Lawful Permanent Residents who have been convicted of any "specified offense against a minor" from filing a family-based visa petition on behalf of any beneficiary, unless the Secretary of the Department of Homeland Security (Secretary) determines in his or her sole and unreviewable discretion that the petitioner poses no risk to the beneficiary of the visa petition. Pursuant to 8 CFR part 103.1, the Secretary has delegated that authority to USCIS.

**INSERT APPROPRIATE # HERE:A#/File #/Receipt#
INSERT PETITIONER’S NAME HERE (LAST, First, MI)**

IV. [SPECIFIED OFFENSES AS ENUMERATED IN THE AWA & DEFINITION OF A MINOR. THIS SECTION PERTAINS TO THE DISQUALIFYING AWA OFFENSES]

Section 111(7) of the Adam Walsh Act defines “specified offense against a minor:”

The term ‘specified offense against a minor’ means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

The statutory list of criminal activity in the Adam Walsh Act that may be considered a specified offense against a minor is stated in relatively broad terms and takes into account that these offenses may be named differently in a wide variety of Federal, State and foreign criminal statutes. With one exception, the statutory list is not composed of specific statutory violations. As defined in the relevant criminal statute, for a conviction to be deemed a specified offense against a minor, the essential elements of the crime for which the petitioner was convicted must be substantially similar to an offense defined as such in the Adam Walsh Act. (See §111(5))(B) of the Adam Walsh Act, which establishes guidelines regarding the validity of foreign convictions.) According to section 111(14) of the Adam Walsh Act, the term “minor” is defined as an individual who has not attained the age of 18 years.

USCIS interprets the “poses no risk to the beneficiary” provision to mean that a petitioner must pose no risk to the safety or well-being of the beneficiary, which includes the principal beneficiary and any alien derivative beneficiary.

INSERT APPROPRIATE # HERE: A#/File #/Receipt#
INSERT PETITIONER'S NAME HERE (LAST, First, MI)

**V. [REQUEST FOR EVIDENCE – RESPONSE EVIDENCE AND OR
CONVICTION DOCS AND EVIDENCE TO DEMONSTRATE NO RISK]**

**1. ADJUDICATOR WRITES SUMMARY REGARDING THE RECORD
OF THE CRIME ---HERE---**

The record associated with this petition indicates that you were convicted of an offense which may render you ineligible to act as petitioner on a family-based visa petition. On DATE, you were convicted of a violation of (insert the specific statute/law – by number **and** title if known or available -- for example: N.J.S.A. 2C:24-(4)(b)(4) – Endangering the Welfare of a Child (Pornography)) and (**IF APPROPRIATE**) that you were sentenced to serve XX (insert either the number of days/months/years indicated on the Rap Sheet or Database information) for that conviction.

**a. ADJUDICATOR SETS FORTH THE NEXUS BETWEEN THE
CRIME AND ADJUDICATOR'S CONTENTION THAT IT IS A
SPECIFIED AWA OFFENSE ---HERE---**

The offense for which you were convicted is a specified offense against a minor **[OR WHERE THE OFFENSE IS NOT A SPECIFICALLY ENUMERATED IN THE AWA, INSERT THE FOLLOWING:** is of the type which shares the essential elements of and is substantially similar to a “specified offense against a minor” as defined in the Adam Walsh Act]. Accordingly, USCIS has determined that approval of the family-based visa petition submitted by you on behalf of the beneficiary is prohibited, as a matter of law, on account of your conviction of a “specified offense against a minor.” Thus, the beneficiary is not eligible for consideration for the visa classification under §101(a)(15)(K), 201(b) or §203(a) - select whichever is being sought by the petitioner).

If you believe this determination was made in error, you must clearly establish that either: (a) you did not commit a “specified offense against a minor” within the meaning of section 402 of the Adam Walsh Act; or (b) the criminal offense(s) that you committed is not a “specified offense against a minor” as set forth in section 111(7) of the Adam Walsh Act.

**b. ADJUDICATOR SETS FORTH THE NEED FOR AND THE
STANDARD FOR THE POSES NO THREAT ASSESSMENT.**

Because you have been convicted of a specified offense, USCIS has determined that you are ineligible to file the [IDENTIFY PETITION TYPE]. Your petition must be denied unless you submit evidence that clearly demonstrates, beyond any reasonable doubt, that you pose no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary.

**INSERT APPROPRIATE # HERE:A#/File #/Receipt#
INSERT PETITIONER'S NAME HERE (LAST, First, MI)**

**2. ADJUDICATOR SETS FORTH USCIS'S RFE AND PROVIDES
PETITIONER NOTICE THAT HE/SHE IS ALLOWED A ONE-TIME
RESPONSE --- HERE ----**

If you contend that:

- (a) you were not convicted pursuant to (insert the specific statute/law - by number **and** title if known or available - for example: N.J.S.A. 2C:24-4(b)(4) Endangering the Welfare of a Child (Pornography)); or
- (b) the particular crime for which you were convicted is neither a specified offense as set forth in the Adam Walsh Act, nor the type of offense which shares the essential elements of and is substantially similar to a "specified offense against a minor" as defined by the Adam Walsh Act

Submit evidence to demonstrate that you were not convicted of the offense or that the offense is not a "specified offense against a minor." Such evidence can include:

1. Certified copies of police reports and court records relating to the offense (the court records must include the original indictment or other charging documents, any superseding charging document, any pre-sentencing report, and the conviction (judgment));
2. News accounts and trial transcripts describing the nature and circumstances surrounding your specified offense(s) against a minor and any other criminal, violent or abusive behavior, incidents, arrests, and convictions; or
3. The terms and conditions of your sentence, release, parole, probation and any other related requirements set forth by the jurisdiction where you have resided since the conviction(s).

If you contend that you pose no risk to the beneficiary of your petition, you should submit evidence in support of your contention. Where appropriate, such evidence may include:

1. Certified records indicating successful completion of counseling or rehabilitation programs;
2. Certified evaluations by psychiatrists, clinical psychologists, or clinical social workers that attest to the degree of your rehabilitation or behavior modification; or
3. Evidence demonstrating intervening good and exemplary service to the community or in the uniformed services;

You have eighty-seven (87) days from the date of this notice to submit your response and any additional information and or evidence to support your positions.

**INSERT APPROPRIATE # HERE:A#/File #/Receipt#
INSERT PETITIONER'S NAME HERE (LAST, First, MI)**

VI. [ADJUDICATOR SETS FORTH THE PETITIONER'S BURDEN OF PROOF ---HERE---]

Every petitioner has the burden of establishing by a preponderance of the evidence that he or she is eligible to file the particular petition that he or she submits for USCIS consideration and adjudication. Matter of Soo Ho, 11 I&N Dec. 151,152 (BIA 1965). If, however, you have been convicted of a "specified offense," you must establish beyond any reasonable doubt that you pose no risk to the beneficiary.

Your response and any evidence that you submit must indicate: The A#/File# or Receipt # associated with the petition, and your name. For evidence relating to criminal offenses, USCIS will accept only official or certified documents prepared by officers of the courts, police, and parole or probation offices that have proper jurisdiction over the arrests, convictions, detentions, sentences or other court orders in question. If applicable, this also includes any medical, therapeutic, counseling or treatment records from the appropriate professionals who provided treatment. All other documents may be in the form of photocopies. If necessary, USCIS may request original documents at a later date.

This is your only opportunity to rebut the findings set forth in this Request for Evidence and Notice of Intent to Deny. No extension of time beyond the stated eighty-seven (87) day period will be permitted. Failure to respond to this notice within the specified time frame will result in the denial of this petition.

Please direct your response to this Request for Evidence and Notice of Intent to Deny to the address listed above. Please make sure that you clearly mark the envelope, the enclosed evidence packet and response (if any) with the A#, File # or Receipt #, and your last name.

Sincerely,

[Insert name of Service Center Director]
Director

cc: Attorney or Representative

INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)

Adam Walsh Act Denial Template

[This AWA Denial Template contains instructions to the adjudicator that are **WRITTEN IN ALL CAPS & BOLD** these instructions are for guidance only and should NOT appear in the final version of the denial. All information that adjudicators are to insert into the document is noted using yellow highlighting.

Date:

Petitioner's Name
Petitioner's Street Address
Additional Street Address
City, State Zip Code

Re: Form Type (Form I-130, Petition for Alien Relative or Form I-129F, "Petition for Alien Fiancé(e) - on *behalf of* (insert name of beneficiary(ies))

NOTICE OF DENIAL

Dear Mr./Ms. (insert Petitioner's surname(s)):

Your Petition for [Alien Relative (Form I-130) or Alien Fiancé(e) (Form I-129F) on behalf of **[INSERT NAME OF BENEFICIARY]**, pursuant to section **[INSERT APPROPRIATE SECTION: {201(b), 203(a) or 214(d)}**] of the Immigration and Nationality Act (the "INA"), as amended, is denied for the reasons stated in the decision below.

DECISION

On (insert filing date), you filed a (Form I-130, Petition for Alien Relative or Form I-129F, Petition for Alien Fiancé(e)) **WHICHEVER IS MORE APPROPRIATE**, in behalf of (insert beneficiary's name) seeking to classify the beneficiary as the (insert relationship) of a (insert United States citizen or lawful permanent resident) under Section (insert 201(b) or 203(a) 214(d)) of the INA.

On (insert date), the USCIS issued a "Request for Evidence and Notice of Intent to Deny (RFE/NOID)" relative to the visa petition. The basis for USCIS's intent to deny was (insert the statute/law and provide a brief summary of the issue(s)). USCIS granted you 87 days to submit any evidence you thought would support your response to USCIS's position and or overcome the ground(s) for the denial.

[NO RESPONSE]

You failed to submit any response to the RFE/NOID within the allowed timeframe, accordingly the underlying visa petition is denied;

[UNTIMELY RESPONSE]

Page 1 of 7

INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)

In response to the RFE/NOID, on *(insert date)*, you submitted the following evidence: *(insert what was submitted with the date - Ex: evaluations conducted by licensed professionals, clinical psychologists, evidence demonstrating intervening good and exemplary service to the community)*. Your response was submitted beyond the 87-day period set forth in the RFE/NOID. Therefore, your response to the RFE/NOID was untimely and as a consequence, the underlying visa petition is denied;

[RESPONSE DOES NOT SATISFY USCIS]

In response to the RFE/NOID, on *(insert date)*, you submitted the following evidence: *(insert list of all the documentary evidence submitted by the petitioner)*.

In its relevant part, Title 8, Code of Federal Regulations (CFR) states the following: "[a]n applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition." 8 CFR §103.2(b)(1). Moreover, in visa proceedings, the burden of proof to establish eligibility for the benefit sought rests with the petitioner. Matter of Brantigan, 11 I&N Dec.493, 495 (BIA 1966). The standard of proof which the petitioner is required to meet in these cases is that of a preponderance of the evidence. Matter of Soo Ho, 11 I&N Dec. 151,152 (BIA 1965).

On July 27, 2006, the President signed the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. 109-248, to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety and to honor the memory of Adam Walsh and other child crime victims.

Sections 402(a) and (b) of the Adam Walsh Act amended sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the INA to prohibit U.S. Citizens and Lawful Permanent Residents who have been convicted of any "specified offense against a minor" from filing a family-based visa petition on behalf of any beneficiary unless the Secretary of the Department of Homeland Security (Secretary) determines in his sole and unreviewable discretion that the petitioner poses no risk to the beneficiary of the visa petitions. The Secretary has delegated that authority to the Director of USCIS and his designated Immigration Officers pursuant to 8 CFR §103.1. USCIS interprets the "poses no risk to the beneficiary" provision to mean that a petitioner must pose no risk to the safety or well-being of the beneficiary, which includes the principal beneficiary and any alien derivative beneficiary.

According to section 111(7) of the Adam Walsh Act, a specified offense against a minor" is defined as follows:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping;
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment;
- (C) Solicitation to engage in sexual conduct;
- (D) Use in a sexual performance;

INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)

- (E) Solicitation to practice prostitution;
- (F) Video voyeurism as described in section 1801 of title 18, United States Code;
- (G) Possession, production or distribution of child pornography;
- (H) Criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct; or
- (I) Any conduct that by its nature is a sex offense against a minor.

The statutory list of criminal activity in the Adam Walsh Act that may be considered a specified offense against a minor is stated in relatively broad terms and takes into account that these offenses may be named differently in a wide variety of Federal, State and foreign criminal statutes. With one exception, the statutory list is not composed of specific statutory violations. As defined in the relevant criminal statute, for a conviction to be deemed a specified offense against a minor, the essential elements of the crime for which the petitioner was convicted must be substantially similar to an offense defined as such in the Adam Walsh Act (See §111(5)(B) of the Adam Walsh Act, which establishes guidelines regarding the validity of foreign convictions). According to section 111(14) of the Adam Walsh Act, the term "minor" is defined as an individual who has not attained the age of 18 years.

To avoid the denial of a family-based visa petition, a petitioner who has been convicted of a specified offense against a minor must submit evidence that clearly demonstrates, beyond a reasonable doubt that he or she poses no threat to the beneficiary. In determining whether a petitioner has met this burden of proof, USCIS will consider all known factors that are relevant to determining whether a petitioner poses any risk to the safety and well-being of the beneficiary, including but not limited to:

- Certified records indicating successful completion of counseling or rehabilitation programs.
- Certified evaluations conducted by licensed professionals such as psychiatrists, clinical psychologists, or clinical social workers, which attest to the degree of the petitioner's rehabilitation or behavior modification.
- Evidence demonstrating intervening good and exemplary service to the community or in the uniformed services.
- Certified copies of police reports and court records relating to the offense (the court records must include the original indictment or other charging documents, any superseding charging document, any pre-sentencing report, and the conviction judgment).
- News accounts and trial transcripts describing the nature and circumstances surrounding the petitioner's specified offense(s) against a minor and any other criminal, violent or abusive behavior, incidents, arrests, and convictions.
- The terms and conditions of the sentence, release, parole, probation and any other related requirements set forth by the jurisdictions in which the petitioner has resided since the conviction(s).

**INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)**

The record establishes that you have been convicted of the following specified offense(s) against a minor:

[HERE: ADJUDICATIONS OFFICER RECITES THE SPECIFIC STATUTE/LAW FORMING THE BASIS OF THE DENIAL]

Accordingly, you are ineligible to file a visa petition under §204 of the INA and the beneficiary of your underlying petition is ineligible for the benefits sought under that petition, unless USCIS determines in its sole and unreviewable exercise of discretion, that you pose no risk to the safety and well-being of your intended beneficiary or beneficiaries.

[INSERT THE FOLLOWING IF PETITIONER RESPONDED THAT HE/SHE WAS NOT CONVICTED OF THE ACTUAL OFFENSE CITED BY USCIS IN THE RFE/NOID]

You contend that you were not convicted pursuant to (insert the specific statute/law - by number **and** title if known or available - for example: N.J.S.A. 2C:24-(4)(b)(4) Endangering the Welfare of a Child (Pornography));

AND/OR

[INSERT THE FOLLOWING IF PETITIONER RESPONDED THAT HE/SHE WAS NOT CONVICTED OF AN AWA DEFINED SPECIFIED OFFENSE OR AN OFFENSE WITH SIMILAR ELEMENTS AS AN AWA DEFINED SPECIFIED OFFENSE]

You contend that the particular crime for which you were convicted is neither a specified offense as set forth in the Adam Walsh Act, nor the type of offense which shares the essential elements of and is substantially similar to a "specified offense against a minor" as defined by the Adam Walsh Act; or

---[SELECT WHICHEVER OR ALL THAT ARE APPROPRIATE]---

--- you were not convicted pursuant to [insert statute/law here], the record demonstrates that you committed an offense in the State of (insert the state -- for example: New Jersey) on (insert the date as set forth in the charging or conviction document which formed the basis of the intent to deny --- for example January 1, 1999) in violation of (insert the specific statute/law - by number **and** title if known or available -- for example: N.J.S.A. 2C:24-(4)(b)(4) - Endangering the Welfare of a Child (Pornography)) and **(IF APPROPRIATE)** that you were sentenced to serve XX (insert either the number of days/months/years indicated in the charging or conviction document which formed the basis of the intent to deny) for that conviction. ---

--- the particular crime for which you were convicted is neither a specified offense as set forth in the Adam Walsh Act, nor the type of offense which shares the essential elements of and is substantially similar to a "specified offense against a minor" as defined by the Adam Walsh Act, the record demonstrates that that you committed an offense in the State of (insert the state -- for example: New Jersey) on (insert the date as set forth in the charging or conviction document which formed the basis of the intent to deny --- for

**INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)**

example January 1, 1999) in violation of (insert the specific statute/law – by number **and** title if known or available -- for example: N.J.S.A. 2C:24-(4)(b)(4) – Endangering the Welfare of a Child (Pornography)), which is a specified offense against a minor as defined by the Adam Walsh Act. Moreover, you were convicted of the offense and you were sentenced to serve XX (insert either the number of days/months/years as set forth in the charging or conviction document which formed the basis of the intent to deny) for that conviction. ---

MAKE CONCLUSION AS TO WHETHER THE OFFENSE IS A SPECIFIED OFFENSE.

If applicable

[INSERT THE FOLLOWING IF PETITIONER RESPONDED GENERALLY THAT HE/SHE DOES NOT POSE A RISK TO THE BENEFICIARY]

You contend that you pose no risk to the beneficiary for whom you filed the underlying petition. In support of this contention, you have submitted the following evidence:

[HERE: ADJUDICATIONS OFFICER LISTS THE EVIDENCE SUBMITTED BY THE PETITIONER IN SUPPORT OF HIS OR CONTENTION THAT S/HE DOES NOT POSE ANY RISK TO THE BENEFICIARY]

Upon review of your response and supporting evidence, USCIS finds that your evidence does not demonstrate, beyond a reasonable doubt, that you pose no risk to the safety and well-being of your beneficiary or beneficiaries. Moreover you have failed to overcome the finding that you are ineligible to file a family-based visa petition on account of your conviction for a specified offense against a minor as defined within the Adam Walsh Act.

Thus, USCIS in its exercise of sole and unreviewable discretion has determined that you have not established that you pose no risk to the beneficiary.

CONCLUSION

[IF THE PETITIONER DID NOT SUBMIT A RESPONSE AND /OR EVIDENCE AT ALL OR IN A TIMELY FASHION - USE THE PARAGRAPH BELOW]:

You failed to submit any response to the RFE/NOID within the allowed timeframe. For the foregoing reason, your petition has been denied. Accordingly, there is no appeal of this decision.

[IF THE PETITIONER SUBMITTED ANY OF THE FOLLOWING: (1) A RESPONSE WITH EVIDENCE INDICATING THAT HE OR SHE WAS NOT CONVICTED PURSUANT TO THE SPECIFIC STATUTE/LAWS SET FORTH ON THE RAP SHEET OR DATABASE INFORMATION; (2) EVIDENCE INDICATING THAT THE PARTICULAR CRIME(S) FOR WHICH HE OR SHE WAS/WERE CONVICTED IS NEITHER A SPECIFIED OFFENSE AS SET FORTH IN THE ADAM WALSH ACT, NOR THE TYPE OF OFFENSE WHICH SHARES THE ESSENTIAL ELEMENTS OF AND IS SUBSTANTIALLY SIMILAR TO A "SPECIFIED OFFENSE AGAINST A MINOR" AS DEFINED BY THE ADAM WALSH ACT; OR (3) EVIDENCE INDICATING THAT HE OR

INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)

SHE POSES NO RISK TO THE BENEFICIARY -- USE THE PARAGRAPH BELOW THEN DEPENDING ON THE TYPE OF PETITION, GO TO THE APPROPRIATE APPEAL RIGHTS PARAGRAPH]:

For the foregoing reason(s) and pursuant to its exercise of discretion, USCIS has determined that you do pose a risk to the safety and well-being of your intended beneficiary. Consequently, USCIS has determined that you are ineligible to file a visa petition under Section 204 of the INA, pursuant to the Adam Walsh Act, as a matter of law. Accordingly, USCIS has determined that the beneficiary on whose behalf you petitioned has/have been deemed unqualified for the benefits sought under the petition and the petition is hereby denied, as a matter of law.

[APPEALS - USE PARAGRAPH BELOW]

[If the petitioner filed an I-130 or his/her I-129F for a K-3 classification (w/I-130 pending) has been denied]:

If you disagree with this decision, or if you have additional evidence that you believe would overcome the reasons for denial, you may appeal this decision by filing a completed Form EOIR-29 with *(insert office title)* within 30 days from the date of this notice. A copy of Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals (BIA), is enclosed for your use. You may also include a brief or other written statement in support of your appeal. If an appeal is not filed within the allowable timeframe, this decision is final. If an attorney or another represents you in this case, the BIA requires that your representative complete and file a Form EOIR-27 along with the Form EOIR-29. Note that while your appeal will be decided by the BIA, it must be sent to *(insert office title)* with a filing fee of \$110.00 to the following address: *(insert office address)*.

[If the petitioner filed an I-129F for a K-1 classification]:

If you disagree with this decision, or if you have additional evidence that you believe would overcome the reasons for denial, you may appeal this decision by filing a completed I-290B, Notice of Appeal with the *[insert office title]* within 30 calendar days from the date of this notice (or within 33 calendar days, if your decision was mailed). You may also include a brief or other written statement in support of your appeal. If an appeal is not filed within the allowable timeframe, this decision is final. If an attorney or another individual represents you in this case, the AAO requires that your representative complete and file a Form G-28. Note that while your appeal will be decided by the AAO, it must be sent to *[insert office title]* with the filing fee of \$585.00 to the following address: *(insert office address)*

For more information about the filing requirements for appeals to the BIA or AAO, please see 8 CFR §1003.3(a)(2) and 8 CFR §§ 103.3, 1103.3, visit the EOIR website at <http://www.usdoj.gov/eoir/formslist.htm>, or contact the automated Form Request Line by calling 1-800-870-3676.

Sincerely,

INSERT APPROPRIATE # HERE: A#/File#/Receipt#
INSERT PETITIONER'S NAME HERE: (LAST, First, MI)

[Insert name of Service Center Director]
Director

cc: Attorney or Representative

AWA WORK SHEET

Synopsis

Petitioner: _____
(LAST NAME, First, MI.)

Beneficiary: _____
(LAST NAME, First, MI.)

A#: A

Receipt #: _____

RFE/NOID: Issued on _____

Recommending Office: _____ Service Center, District Office, Sub Office
Overseas Office (Circle the Appropriate Type)

Basis of the RFE/NOID: _____
(State allegations)

Charges: _____
(State Basis of Criminal Charges)

Date(s) of Conviction: _____

Place of Conviction: _____
(Insert State, Municipality or County Where Charges Made)

Sentence: _____
(Nature and Duration of Sentence)

Evidence submitted by Petitioner for consideration of no-risk:

Approval recommended based on the following factors establishing petitioner poses no-risk to the beneficiary(ies)::

Recommending Officer's Signature: _____ Date: _____

First Level Supervisor (GS-13 or GS-14) Review and Concurrence:

USCIS Service Centers must obtain Assistant Center Director's concurrence

Concur: Yes _____ Non-concur: No _____ (Check appropriate)

First Level Supervisor's Comments:

First Level Supervisor's Signature: _____ Date: _____

Second Level of Supervisor Review & Concurrence (GS-15 or above) Review and Concurrence:

Concur: Yes _____ Non-concur: No _____ (Check appropriate)

USCIS Service Centers must obtain Deputy Director's or Director's concurrence

Second Level Supervisor's Comments:

Second Level Supervisor's Signature: _____ Date: _____





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Interoffice Memorandum

To: REGIONAL DIRECTORS
DISTRICT DIRECTORS
DIRECTOR, NATIONAL BENEFITS CENTER
SERVICE CENTER DIRECTORS
CHIEF, SERVICE CENTER OPERATIONS
CHIEF, FIELD OPERATIONS

From: Michael Aytes/s/
Associate Director, Domestic Operations

Date: July 28, 2006

SUBJECT: Adam Walsh Child Protection and Safety Act of 2006

This memorandum provides guidance for the initial implementation of the recently enacted Immigration Law Reforms to Prevent Sex Offenders from Abusing Children (Title IV of the Adam Walsh Child Protection and Safety Act of 2006).

On July 27, 2006, President Bush signed into law H.R. 4772, the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), an Act to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims.

Section 402 of the Adam Walsh Act amends section 204 of the Immigration and Nationality Act (INA) to prohibit U.S. citizens and lawful permanent resident aliens who have been convicted of any "specified offense against a minor" from filing a family-based immigrant petition (including the Form I-130 and the Petition to Classify Orphan, Form I-600A or I-600) on behalf of any beneficiary, unless the Secretary of Homeland Security determines in his sole and unreviewable discretion that the petitioner poses no risk to the beneficiary. Section 402 of the Adam Walsh Act also amends section 101(a)(15) of the INA to remove spouses or fiancés of U.S. citizens convicted of these offenses from eligibility for "K" nonimmigrant status (Form I-129F). The operative definition of "specified offense against a minor" is contained in section 111(7) of the Adam Walsh Act:

"The term 'specified offense against a minor' means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.

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Adam Walsh Child Protection and Safety Act of 2006

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- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.”

A minor is defined as an individual who has not attained the age of 18 years.

The Adam Walsh Act is effective on the date of enactment. It applies to all petitions pending on or after that date.

Headquarters is currently reviewing this recently enacted legislation and will provide detailed guidance for implementation.

In the interim, the following procedures are implemented effective this date:

If the petitioner’s IBIS check reveals a hit for any sexual or kidnapping offense that is, or potentially may be a “specified offense against a minor” as defined above, the following actions will be taken:

1. A Request for Evidence will be issued for all police arrest records and court disposition documents.
2. The petitioner will be scheduled for fingerprinting in accordance with Center or Field Office procedures. These fingerprints will be processed without fee.

Adjudication of these cases will be suspended pending further guidance, however these petitions may be denied on grounds not related to the above.