



AMERICAN
IMMIGRATION
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ASSOCIATION

August 12, 2014

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

Submitted via e-mail: opefeedback@uscis.dhs.gov
Interim Policy Memorandum: PM-602-0103

Re: Guidance on the Implementation of the Intercountry Adoption Universal Accreditation Act of 2012 and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced [Guidance on the Implementation of the Intercountry Adoption Universal Accreditation Act of 2012 and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications](#).¹

AILA is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this Interim Policy Memorandum and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that will benefit the public and the government.

This Interim Policy Memorandum provides guidance on the implementation of the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), which applies Title II of the Intercountry Adoption Act (IAA) to non-Hague Adoption Convention cases. It also discusses the change to the orphan definition at INA 101(b)(1)(F) regarding when an adoption is considered "full and final" for immigration purposes that was part of the Consolidated Appropriations Act, 2014 (CCA). As a result, an adoption will be considered "full and final" if only one of the adoptive parents, if married, personally sees and observes the orphan before or during the adoption proceedings. Previously, USCIS required that both parents see and observe the child before or during the adoption.

¹ USCIS Interim Memo on Implementing Statutory Changes on Intercountry Adoptions (30 June 2014), published on AILA InfoNet at Doc. No. 14070360, available at <http://www.aila.org/content/default.aspx?docid=49109>.

The implementation of the UAA and its effect on the adoption and immigration of children from non-Hague Adoption Convention countries has raised many issues and created substantial uncertainty to prospective adopting parents, agencies, and adoption professionals. Providing clear and practical answers to address these concerns in this and future guidance will be crucial to the future of international adoptions from these countries.

AILA recommends the following changes to this Interim Policy Memorandum:

1. Prospective Adoptive Parent(s) acting on their own should not have to engage a Primary Service Provider (PSP), particularly when adopting a relative.

The referenced Interim Policy Memorandum states on page three that Prospective Adoptive Parents (PAPs) acting on their own behalf will need to engage an accredited agency or approved person to act as the Primary Service Provider (PSP) to ensure that all of the required adoption services are provided in accordance with the Hague Adoption Convention and applicable laws.²

We agree that PAPs acting on their own behalf will need to engage an accredited agency, approved person, or supervised or exempted provider to undertake the adoption services involved in providing the home study report regarding the PAPs and any post-placement monitoring or necessary services prior to the finalization of the adoption. However, requiring that PAPs locate an agency to serve as a PSP in countries where they are acting on their own behalf violates the IAA and its regulations and, as such, violates the UAA. The IAA specifically provides that PAPs acting on their own behalf do not have to be accredited or approved as long as it is not prohibited by the law of the State in which the PAP resides.³ The accompanying regulations at 22 CFR 96.13(d) provide that PAPs may act on their own behalf without being accredited, temporarily accredited, or approved, unless such action is prohibited by state law or the law of the [Convention] country from which the parents seek to adopt.

The Interim Policy Memorandum would have a chilling effect on adoptions from many countries. For example, many of the non-Hague countries do not permit U.S. Adoption Service Providers (USASPs) to operate in their countries. In these countries, such as Pakistan, Jamaica, and Ukraine, the in-country adoption services are provided by Central Authorities, competent authorities, and/or public foreign authorities, and the PAPs work in cooperation with these government entities. In some other countries, such as Nigeria, and Sierra Leone, the role of the U.S. agency in providing or supervising in-country adoption services is severely limited. As a result, U.S. agencies have generally not established adoption programs in these countries and are not familiar with the laws and adoption practices of these countries. As the number of adoptions from such countries is generally small, there is very little economic incentive for the agency to

² *Id.*

³ See IAA Section 201(b)(4).

agree to become involved as a PSP in such cases. Even if a PAP is fortunate enough to find a U.S. agency that is willing to act as a PSP, the increased responsibilities that a PSP will have to assume will result in substantial additional fees for the PAP.

A similar problem applies to countries where the U.S. agencies may be accredited to provide adoption services, but the in-country adoption services that the U.S. agency serving as a PSP will be responsible for providing are not necessary or applicable under the circumstances. A prime example would be where the child to be adopted is a relative and already identified.

Finally, as most of these adoptions involve intra-family adoptions, the likelihood of fraud, child-selling, or trafficking is exceptionally low. These types of adoptions are generally pursued due to death or inability of the biological parent(s) to care for the child. Having to find an agency that is willing to act as a PSP for the adoption for under these circumstances will burden the PAPs with unnecessary work and substantial expense. The added burdens will likely lead to a reduction in the number of intra-family adoptions.

As such, we propose that USCIS reconsider and revise its Interim Policy Memorandum. We suggest that the agency exempt PAPs who are acting on their own behalf from having to engage a PSP, as long as their actions are permissible under the law of the country involved and the State where they reside.

2. If a PSP is required in such cases, more specific guidance should be provided regarding how the PSP will carry out its duties and work with PAPs to minimize additional costs and burdens.

If USCIS does require a PSP in such cases, it is particularly important that the agency provides more specific guidance for PSPs. The PSPs should be given detailed instructions on how to carry out their duties in these situations, and they should be encouraged to work with PAPs to minimize additional burdens to all of the parties involved in the adoption. For example, as described in the [Department of State's \(DOS\) Frequently Asked Questions \(FAQs\) regarding the UAA](#), the PSP and PAP could work jointly to identify which foreign public authority or foreign provider will provide each service.⁴

3. The Interim Policy Memorandum should provide information about how the PSP should carry out its duties and the extent of its responsibilities in countries that prohibit or restrict USASP operations.

The Interim Policy Memorandum should include specific guidance regarding countries that prohibit or restrict the role of USASPs. We commend the recent DOS guidance regarding

⁴ *Universal Accreditation Act of 2012*,
http://adoption.state.gov/hague_convention/agency_accreditation/universal_accreditation_act.php.

adoptions involving [Jamaica](#) and [Ukraine](#), where most of the in-country functions are performed by government entities.⁵ This guidance clarifies that in such countries, the supervisory responsibilities for a PSP are limited. Offering country-specific guidance would help encourage agencies to act as PSPs in such countries. We propose that USCIS publish this type of country-specific guidance for all non-Hague countries.

4. Some of the Interim Policy Memorandum’s statements and proposed AFM sections should be revised to clearly indicate that even if a case is not grandfathered, the case will not be subject to the UAA, unless adoption services are provided on or after July 14, 2014.

We propose that some specific changes must be made to the text of the Interim Policy Memorandum. For example, the Memorandum at the top of page 15 (AFM 21.5(e)(4)(C)) and bottom of page 16 (towards end of AFM 21.5(e)(4)(D)) should be changed to clearly indicate its effective date.⁶ Additionally, it would be very helpful if USCIS would prepare and release FAQs or give specific examples. A [good model](#) of this type of guidance can be found on the DOS website.⁷

5. The Interim Policy Memorandum contains an example described as “threatening/dangerous behavior when working with the USCIS,” which should be either expanded or eliminated.

The Interim Policy Memorandum lists some examples of issues that may need to be addressed in the home study by the adjudicator.⁸ One of these is “threatening/dangerous behavior when working with the USCIS.” This section is vague and should either be explained in greater detail or eliminated.

Conclusion

⁵ *Jamaica: UAA Country Specific Guidance, Rev. 7-14-14*, http://adoption.state.gov/content/pdf/JAMAICA_UAA_Country_Specific_Guidance.pdf and *Ukraine: UAA Country Specific Guidance, Rev. 7-14-14*, http://adoption.state.gov/content/pdf/UKRAINE_UAA_Country_Specific_Guidance.pdf.

⁶ *USCIS Interim Memo on Implementing Statutory Changes on Intercountry Adoptions* (30 June 2014), published on AILA InfoNet at Doc. No. 14070360, available at <http://www.aila.org/content/default.aspx?bc=6715|8412|49109>.

⁷ *UAA Transition Guidance, 6-12-14*, http://adoption.state.gov/content/pdf/UAA_Transition_Guidance_and_ExampleCases.pdf.

⁸ See *USCIS Interim Memo on Implementing Statutory Changes on Intercountry Adoptions* (30 June 2014), published on AILA InfoNet at Doc. No. 14070360, available at <http://www.aila.org/content/default.aspx?bc=6715|8412|49109>. (“Issues that may need to be addressed include, but are not limited to: criminal history; one or more disabilities and/or impairments of the applicant; threatening/dangerous behavior when working with USCIS; and financial issues.”)

AILA appreciates the opportunity to comment on this Interim Policy Memorandum, and we look forward to a continuing dialogue with DHS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION