

b. Suitable Prospective Parent Confirmed by Home Study

Petitioners for an orphan visa must submit to the U.S. Citizenship and Immigration Services (USCIS) a home study satisfying federal criteria with a favorable recommendation, and USCIS must independently determine that the child will receive proper care. 8 U.S.C. §§ 1101(b)(1)(F); 1154(d). The process for obtaining an orphan visa normally occurs in two stages, the first of which focuses on obtaining this determination by USCIS that the petitioners will be suitable parents. Although advanced approval is not required for an orphan visa, most prospective adopters will choose to seek advanced approval by filing Form I-600A (Application for Advanced Processing of an Orphan Petition), in order to avoid delay later when a specific child has been identified and the adopters are eager to bring the child home to the United States.

When they file their Form I-600 A, prospective adopters must supply extensive documentation, including evidence of their U.S. citizenship and the lawful immigration status of an alien spouse residing in the United States, their marriage certificate, any divorce or dissolution decrees for any previous marriages, and, if the child is to be adopted or readopted in state court, proof that any state preadoption requirements have been satisfied. 8 C.F.R. § 204.3(c)(1).

A home study must either be submitted with the application or within a year of filing the I-600 A. 8 C.F.R. § 204.3(c)(2),(h)(5). Following submission, each prospective adoptive parent and any other adult household member must be fingerprinted by the USCIS, which then seeks a criminal background report from the FBI. 8 C.F.R. §§ 204.3(c)(3).

A home study can be no more than six months old at the time of submission. If older, it must be updated, and significant changes after submission, such as a move, a divorce, or additional household members, require an amendment. 8 C.F.R. § 204.3(e)(9).

Pursuant to the UAA, all home studies submitted by petitioners seeking either orphan or Convention visas must be performed or approved by an accredited agency federally certified as an ASP, whose employees are licensed or authorized as required by the law of the jurisdiction in which the home study is conducted. 22 C.F.R. §§ 96.47, 96.37. The UAA also extends the duty of disclosure found in 8 CFR §204.311(d) and 8 CFR §204.309(a) to orphan visa applicants filing a Form I-600A applicant or Form I-600, as well as the petitioner's spouse and any adult member of the household, which extends to completion of the forms and throughout the home study and the entire adoption process until a final decision has been made to admit a child with a visa.¹⁵ USCIS officers are directed to deny Convention applications if they discover a failure to disclose or misrepresentation of an arrest, conviction, or history of substance abuse, sexual abuse, child abuse, criminal history, or family violence regarding any application or adult household member or if any such person failed to cooperate with the child abuse registry check or disclose a prior home study. 8 C.F.R. § 204.3(h)(4). A denial for failure to disclose will bar the applicant from filing a subsequent Application for one year after the decision becomes administratively

¹⁵ Hollinger, *supra* note 10, at § 1104 [2].