

## § 204.308

## 8 CFR Ch. I (1–1–23 Edition)

support a finding that the applicant is suitable as the adoptive parents of a Convention adoptee.

(b) *Eligibility to file a Form I-800.* Except as provided in paragraph (c) of this section, the following persons may file a Form I-800:

(1) An unmarried United States citizen who is at least 25 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States as determined under 8 CFR 204.303(a), and whose spouse will also adopt the child the citizen seeks to adopt. The spouse must be either a United States citizen or a non-citizen U.S. national or an alien who, if living in the United States, holds a lawful status under U.S. immigration law; and

(3) The person has an approved and unexpired Form I-800A.

(c) *Exceptions.* (1) No applicant may file a Form I-800A, and no petitioner may file a Form I-800, if:

(i) The applicant filed a prior Form I-800A that USCIS denied under 8 CFR 204.309(a); or

(ii) The applicant filed a prior Form I-600A under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(h)(4); or

(iii) The petitioner filed a prior Form I-800 that USCIS denied under 8 CFR 204.309(b)(3); or

(iv) The petitioner filed a prior Form I-600 under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(i).

(2) This bar against filing a subsequent Form I-800A or Form I-800 expires one year after the date on which the decision denying the prior Form I-800A, I-600A, I-800 or I-600 became administratively final. If the applicant (for a Form I-800A or I-600A case) or the petitioner (for a Form I-800 or I-600 case) does not appeal the prior decision, the one-year period ends one year after the date of the original decision denying the prior Form I-800A, I-600A, I-800 or I-600. Any Form I-800A, or Form I-800 filed during this one-year period will be denied. If the applicant (for a Form I-800A or Form I-600A case) or petitioner (for a Form I-800 or I-600 case) appeals the prior decision, the bar to filing a new Form I-800A or I-800 applies while the appeal is pending and

ends one year after the date of an Administrative Appeals Office decision affirming the denial.

(3) Any facts underlying a prior denial of a Form I-800A, I-800, I-600A, or I-600 are relevant to the adjudication of any subsequently filed Form I-800A or Form I-800 that is filed after the expiration of this one year bar.

### § 204.308 Where to file Form I-800A or Form I-800.

(a) *Form I-800A.* An applicant must file a Form I-800A with the USCIS office identified in the instructions that accompany Form I-800A.

(b) *Form I-800.* After a Form I-800A has been approved, a petitioner may file a Form I-800 on behalf of a Convention adoptee with the stateside or overseas USCIS office identified in the instructions that accompany Form I-800. The petitioner may also file the Form I-800 with a visa-issuing post that would have jurisdiction to adjudicate a visa application filed by or on behalf of the Convention adoptee, when filing with the visa-issuing post is permitted by the instructions that accompany Form I-800.

(c) *Final approval of Form I-800.* Once a Form I-800 has been provisionally approved under 8 CFR 204.313(g) and the petitioner has either adopted or obtained custody of the child for purposes of emigration and adoption, the Department of State officer with jurisdiction to adjudicate the child's application for an immigrant or non-immigrant visa has jurisdiction to grant final approval of the Form I-800. The Department of State officer may approve the Form I-800, but may not deny it; the Department of State officer must refer any Form I-800 that is "not clearly approvable" for a decision by a USCIS office having jurisdiction over Form I-800 cases. If the Department of State officer refers the Form I-800 to USCIS because it is "not clearly approvable," then USCIS has jurisdiction to approve or deny the Form I-800. In the case of an alien child who is in the United States and who is eligible both under 8 CFR 204.309(b)(4) for approval of a Form I-800 and under 8 CFR part 245 for adjustment of status, the USCIS office with jurisdiction to adjudicate the child's adjustment of status

application also has jurisdiction to grant final approval of the Form I-800.

(d) *Use of electronic filing.* When, and if, USCIS adopts electronic, internet-based or other digital means for filing Convention cases, the terms “filing a Form I-800A” and “filing a Form I-800” will include an additional option. Rather than filing the Form I-800A or Form I-800 and accompanying evidence in a paper format, the submission of the same required information and accompanying evidence may be filed according to the digital filing protocol that USCIS adopts.

**§ 204.309 Factors requiring denial of a Form I-800A or Form I-800.**

(a) *Form I-800A.* A USCIS officer must deny a Form I-800A if:

(1) The applicant or any additional adult member of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) about the applicant or any additional member of the household concerning the arrest, conviction, or history of substance abuse, sexual abuse, child abuse, and/or family violence, or any other criminal history as an offender; the fact that an arrest or conviction or other criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration does not relieve the applicant or additional adult member of the household of the obligation to disclose the arrest, conviction or other criminal history;

(2) The applicant, or any additional adult member of the household, failed to cooperate in having available child abuse registries checked in accordance with 8 CFR 204.311;

(3) The applicant, or any additional adult member of the household, failed to disclose, as required by 8 CFR 204.311, each and every prior adoption home study, whether completed or not, including those that did not favorably recommend for adoption or custodial care, the person(s) to whom the prior home study related; or

(4) The applicant is barred by 8 CFR 204.307(c) from filing the Form I-800A.

(b) *Form I-800.* A USCIS officer must deny a Form I-800 if:

(1) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-

800A to reflect a change in marital status, the petitioner completed the adoption of the child, or acquired legal custody of the child for purposes of emigration and adoption, before the provisional approval of the Form I-800 under 8 CFR 204.313(g). This restriction will not apply if a competent authority in the country of the child’s habitual residence voids, vacates, annuls, or terminates the adoption or grant of custody and then, after the provisional approval of the Form I-800, and after receipt of notice under article 5(c) of the Convention that the child is, or will be, authorized to enter and reside permanently in the United States, permits a new grant of adoption or custody. The prior adoption must be voided, vacated, annulled or otherwise terminated before the petitioner files a Form I-800.

(2) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I-800 filed with a new Form I-800A to reflect a change in marital status, the petitioner, or any additional adult member of the household had met with, or had any other form of contact with, the child’s parents, legal custodian, or other individual or entity who was responsible for the child’s care when the contact occurred, unless the contact was permitted under this paragraph. An authorized adoption service provider’s sharing of general information about a possible adoption placement is not “contact” for purposes of this section. Contact is permitted under this paragraph if:

(i) The first such contact occurred only after USCIS had approved the Form I-800A filed by the petitioner, and after the competent authority of the Convention country had determined that the child is eligible for intercountry adoption and that the required consents to the adoption have been given; or

(ii) The competent authority of the Convention country had permitted earlier contact, either in the particular instance or through laws or rules of general application, and the contact occurred only in compliance with the particular authorization or generally applicable laws or rules. If the petitioner first adopted the child without complying with the Convention, the