

§ 204.311

8 CFR Ch. I (1–1–23 Edition)

(c) *Change in marital status.* If, while a Form I-800A is pending, an unmarried applicant marries, or the marriage of a married applicant ends, an amended Form I-800A and amended home study must be filed to reflect the change in marital status. No additional filing fee is required to file an amended Form I-800A while the original Form I-800A is still pending. See 8 CFR 204.312(e)(2) concerning the need to file a new Form I-800A if the marital status changes after approval of a Form I-800A.

[72 FR 56854, Oct. 4, 2007, as amended at 76 FR 53782, Aug. 29, 2011; 85 FR 46922, Aug. 3, 2020]

§ 204.311 Convention adoption home study requirements.

(a) *Purpose.* For immigration purposes, a home study is a process for screening and preparing an applicant who is interested in adopting a child from a Convention country.

(b) *Preparer.* Only an individual or entity defined under 8 CFR 204.301 as a home study preparer for Convention cases may complete a home study for a Convention adoption. In addition, the individual or entity must be authorized to complete adoption home studies under the law of the jurisdiction in which the home study is conducted.

(c) *Study requirements.* The home study must:

(1) Be tailored to the particular situation of the applicant and to the specific Convention country in which the applicant intends to seek a child for adoption. For example, an applicant who has previously adopted children will require different preparation than an applicant who has no adopted children. A home study may address the applicant's suitability to adopt in more than one Convention country, but if the home study does so, the home study must separately assess the applicant's suitability as to each specific Convention country.

(2) If there are any additional adult members of the household, identify each of them by name, alien registration number (if the individual has one), and date of birth.

(3) Include an interview by the preparer of any additional adult member of the household and an assessment of him or her in light of the requirements of this section.

(4) Be no more than 6 months old at the time the home study is submitted to USCIS.

(5) Include the home study preparer's assessment of any potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. See 8 CFR 204.309(a) for the consequences of failure to disclose information or cooperate in completion of a home study.

(6) Include the home study preparer's signature, in accordance with paragraph (f) of this section.

(7) State the number of interviews and visits, the participants, date and location of each interview and visit, and the date and location of any other contacts with the applicant and any additional adult member of the household.

(8) Summarize the pre-placement preparation and training already provided to the applicant concerning the issues specified in 22 CFR 96.48(a) and (b), the plans for future preparation and training with respect to those issues, or with respect to a particular child, as specified in 22 CFR 96.48(c), and the plans for post-placement monitoring specified in 22 CFR 96.50, in the event that the child will be adopted in the United States rather than abroad.

(9) Specify whether the home study preparer made any referrals as described in paragraph (g)(4) of this section, and include a copy of the report resulting from each referral, the home study preparer's assessment of the impact of the report on the suitability of the applicant to adopt, and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home.

(10) Include results of the checks conducted in accordance with paragraph (i) of this section including that no record was found to exist, that the State or foreign country will not release information to the home study preparer or anyone in the household, or that the State or foreign country does not have a child abuse registry.

(11) Include each person's response to the questions regarding abuse and violence in accordance with paragraph (j) of this section.

(12) Include a certified copy of the documentation showing the final disposition of each incident which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action for anyone subject to the home study and a written statement submitted with the home study giving details, including any mitigating circumstances about each arrest, signed, under penalty of perjury, by the person to whom the arrest relates.

(13) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of any applicant's or additional adult member of the household's history of abuse and/or violence as an offender, whether this history is disclosed by an applicant or any additional adult member of the household or is discovered by home study preparer, regardless of the source of the home study preparer's discovery. A single incident of sexual abuse, child abuse, or family violence is sufficient to constitute a "history" of abuse and/or violence.

(14) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of disclosure by an applicant, or any additional adult member of the household, of a history of substance abuse. A person has a history of substance abuse if his or her current or past use of alcohol, controlled substances, or other substances impaired or impairs his or her ability to fulfill obligations at work, school, or home, or creates other social or interpersonal problems that may adversely affect the applicant's suitability as an adoptive parent.

(15) Include a general description of the information disclosed in accordance with paragraph (m) of this section concerning the physical, mental, and emotional health of the applicant and of any additional adult member of the household.

(16) Identify the agency involved in each prior or terminated home study in accordance with paragraph (o) of this section, when the prior home study process began, the date the prior home study was completed, and whether the prior home study recommended for or against finding the applicant or additional adult member of the household

suitable for adoption, foster care, or other custodial care of a child. If a prior home study was terminated without completion, the current home study must indicate when the prior home study began, the date of termination, and the reason for the termination.

(d) *Duty to disclose.* (1) The applicant, and any additional adult members of the household, each has a duty of candor and must:

(i) Give true and complete information to the home study preparer.

(ii) Disclose any arrest, conviction, or other adverse criminal history, whether in the United States or abroad, even if the record of the arrest, conviction or other adverse criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration. A person with a criminal history may be able to establish sufficient rehabilitation.

(iii) Disclose other relevant information, such as physical, mental or emotional health issues, or behavioral issues, as specified in paragraph (m) of this section. Such problems may not necessarily preclude approval of a Form I-800A, if, for example, they have been or are being successfully treated.

(2) This duty of candor is an ongoing duty, and continues while the Form I-800A is pending, after the Form I-800A is approved, and while any subsequent Form I-800 is pending, and until there is a final decision admitting the Convention adoptee to the United States with a visa. The applicant and any additional adult member of the household must notify the home study preparer and USCIS of any new event or information that might warrant submission of an amended or updated home study.

(e) *State standards.* In addition to the requirements of this section, the home study preparer must prepare the home study according to the requirements that apply to a domestic adoption in the State of the applicant's actual or proposed residence in the United States.

(f) *Home study preparer's signature.* The home study preparer (or, if the home study is prepared by an entity, the officer or employee who has authority to sign the home study for the entity) must personally sign the home

study, and any updated or amended home study. The home study preparer's signature must include a declaration, under penalty of perjury under United States law, that:

(1) The signer personally, and with the professional diligence reasonably necessary to protect the best interests of any child whom the applicant might adopt, either actually conducted or supervised the home study, including personal interview(s), the home visits, and all other aspects of the investigation needed to prepare the home study; if the signer did not personally conduct the home study, the person who actually did so must be identified;

(2) The factual statements in the home study are true and correct, to the best of the signer's knowledge, information and belief; and

(3) The home study preparer has advised the applicant of the duty of candor under paragraph (d) of this section, specifically including the on-going duty under paragraph (d)(2) of this section concerning disclosure of new events or information warranting submission of an updated or amended home study.

(g) *Personal interview(s) and home visit(s).* The home study preparer must:

(1) Conduct at least one interview in person, and at least one home visit, with the applicant.

(2) Interview, at least once, each additional adult member of the household, as defined in 8 CFR 204.301. The interview with an additional adult member of the household should also be in person, unless the home study preparer determines that interviewing that individual in person is not reasonably feasible and explains in the home study the reason for this conclusion.

(3) Provide information on and assess the suitability of the applicant as the adoptive parent of a Convention adoptee based on the applicant's background, family and medical history (including physical, mental and emotional health), social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the child(ren) for whom they would be qualified to care.

(4) Refer the applicant to an appropriate licensed professional, such as a physician, psychiatrist, clinical psy-

chologist, clinical social worker, or professional substance abuse counselor, for an evaluation and written report, if the home study preparer determines that there are areas beyond his or her expertise that need to be addressed. The home study preparer must also make such a referral if such a referral would be required for a domestic adoption under the law of the State of the applicant's actual or proposed place of residence in the United States.

(5) Apply the requirements of this paragraph to each additional adult member of the household.

(h) *Financial considerations.* (1) Assessment of the finances of the applicant must include:

(i) A description of the applicant's income, financial resources, debts, and expenses.

(ii) A statement concerning the evidence that was considered to verify the source and amount of income and financial resources.

(2) Any income designated for the support of one or more children in the applicant's care and custody, such as funds for foster care, or any income designated for the support of another member of the household, must not be counted towards the financial resources available for the support of a prospective adoptive child.

(3) USCIS will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, USCIS reserves the right to ask for such detailed documentation.

(i) *Checking available child abuse registries.* The home study preparer must ensure that a check of the applicant, and of each additional adult member of the household, has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th birthday. USCIS may also conduct its own check of any child abuse registries to which USCIS has access. Depending on the extent of access to a relevant registry allowed by the State or foreign law, the home study preparer must take one of the following courses of action:

(1) If the home study preparer is allowed access to information from the

child abuse registries, he or she must make the appropriate checks for the applicant and each additional adult member of the household;

(2) If the State or foreign country requires the home study preparer to secure permission from the applicant and each additional adult member of the household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals and make the appropriate checks;

(3) If the State or foreign country will only release information directly to an individual to whom the information relates, then the applicant and the additional adult member of the household must secure such information and provide it to the home study preparer.

(4) If the State or foreign country will release information neither to the home study preparer nor to the person to whom the information relates, or has not done so within 6 months of a written request for the information, this unavailability of information must be noted in the home study.

(j) *Inquiring about history of abuse or violence as an offender.* The home study preparer must ask each applicant and each additional adult member of the household whether he or she has a history as an offender, whether in the United States or abroad, of substance abuse, sexual abuse, or child abuse, or family violence, even if such history did not result in an arrest or conviction. This evaluation must include:

(1) The dates of each arrest or conviction or history of substance abuse, sexual abuse or child abuse, and/or family violence; or,

(2) If not resulting in an arrest, the date or time period (if occurring over an extended period of time) of each occurrence and

(3) Details including any mitigating circumstances about each incident.

Each statement must be signed, under penalty of perjury, by the person to whom the incident relates.

(k) *Criminal history.* The applicant, and any additional adult members of the household, must also disclose to the home study preparer and USCIS any history, whether in the United States or abroad, of any arrest and/or conviction (other than for minor traffic

offenses) in addition to the information that the person must disclose under paragraph (j) of this section. If an applicant or an additional adult member of the household has a criminal record, the officer may still find that the applicant will be suitable as the adoptive parent of a Convention adoptee, if there is sufficient evidence of rehabilitation as described in paragraph (l) of this section.

(l) *Evidence of rehabilitation.* If an applicant, or any additional adult member of the household, has a history of substance abuse, sexual abuse or child abuse, and/or family violence as an offender, or any other criminal history, the home study preparer may, nevertheless, make a favorable finding if the applicant has demonstrated that the person with this adverse history has achieved appropriate rehabilitation. A favorable recommendation cannot be made based on a claim of rehabilitation while an applicant or any additional adult member of the household is on probation, parole, supervised release, or other similar arrangement for any conviction. The home study must include a discussion of the claimed rehabilitation, which demonstrates that the applicant is suitable as the adoptive parent(s) of a Convention adoptee. Evidence of rehabilitation may include:

(1) An evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, the offender's acceptance of responsibility for his or her conduct, and any type of counseling or rehabilitation programs which have been successfully completed, or

(2) A written opinion from an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker.

(m) *Assessment with respect to physical, mental and emotional health or behavioral issues.* The home study must address the current physical, mental and emotional health of the applicant, or any additional adult member of the household, as well as any history of illness or of any mental, emotional, psychological, or behavioral instability if the home study preparer determines, in the exercise of reasonable professional

judgment, that the suitability of the applicant as an adoptive parent may be affected adversely by such history. Paragraph (g)(4) of this section, regarding referral to professionals, applies to any home study involving prior psychiatric care, or issues arising from sexual abuse, child abuse, or family violence issues if, in the home study preparer's reasonable professional judgment, such referral(s) may be necessary or helpful to the proper completion of the home study.

(n) *Prior home study.* The home study preparer must ask each applicant, and any additional adult member of the household, whether he or she previously has had a prior home study completed, or began a home study process in relation to an adoption or to any form of foster or other custodial care of a child that was not completed, whether or not the prior home study related to an intercountry adoption, and must include each individual's response to this question in the home study report. A copy of any previous home study that did not favorably recommend the applicant or additional adult member of the household must be attached to any home study submitted with a Form I-800A. If a copy of any prior home study that did not favorably recommend the applicant or additional adult member of the household is no longer available, the current home study must explain why the prior home study is no longer available. The home study preparer must evaluate the relevance of any prior unfavorable or uncompleted home study to the suitability of the applicant as the adoptive parent of a Convention adoptee.

(o) *Living accommodations.* The home study must include a detailed description of the living accommodations where the applicant currently resides. If the applicant is planning to move, the home study must include a description of the living accommodations where the child will reside with the applicant, if known. If the applicant is residing abroad at the time of the home study, the home study must include a description of the living accommodations where the child will reside in the United States with the applicant, if known. Each description must include an assessment of the suitability of ac-

commodations for a child and a determination whether such space meets applicable State requirements, if any.

(p) *Handicapped or special needs child.* A home study conducted in conjunction with the proposed adoption of a special needs or handicapped child must contain a discussion of the preparation, willingness, and ability of the applicant to provide proper care for a child with the handicap or special needs. This information will be used to evaluate the suitability of the applicant as the adoptive parent of a special needs or handicapped child. If this information is not included in the home study, an updated or amended home study will be necessary if the applicant seeks to adopt a handicapped or special needs child.

(q) *Addressing a Convention country's specific requirements.* If the Central Authority of the Convention country has notified the Secretary of State of any specific requirements that must be met in order to adopt in the Convention country, the home study must include a full and complete statement of all facts relevant to the applicant's eligibility for adoption in the Convention country, in light of those specific requirements.

(r) *Specific approval for adoption.* If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child from the specific Convention country or countries, and a discussion of the reasons for such approval. The home study must include the number of children the applicant may adopt at the same time. The home study must state whether there are any specific restrictions to the adoption based on the age or gender, or other characteristics of the child. If the home study preparer has approved the applicant for a handicapped or special needs adoption, this fact must be clearly stated.

(s) *Home study preparer's authority to conduct home studies.* The home study must include a statement in which the home study preparer certifies that he or she is authorized under 22 CFR part 96 to complete home studies for Convention adoption cases. The certification must specify the State or country under whose authority the home

study preparer is licensed or authorized, cite the specific law or regulation authorizing the preparer to conduct home studies, and indicate the license number, if any, and the expiration date, if any, of this authorization or license. The certification must also specify the basis under 22 CFR part 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention adoption home studies.

(t) *Review of home study.* (1) If the law of the State in which the applicant resides requires the competent authority in the State to review the home study, such a review must occur and be documented before the home study is submitted to USCIS.

(2) When the home study is not performed in the first instance by an accredited agency or temporarily accredited agency, as defined in 22 CFR part 96, then an accredited agency or temporarily accredited agency, as defined in 22 CFR part 96, must review and approve the home study as specified in 22 CFR 96.47(c) before the home study is submitted to USCIS. This requirement for review and approval by an accredited agency or temporarily accredited agency does not apply to a home study that was actually prepared by a public domestic authority, as defined in 22 CFR 96.2.

(u) *Home study updates and amendments.* (1) A new home study amendment or update will be required if there is:

(i) A significant change in the applicant's household, such as a change in residence, marital status, criminal history, financial resources; or

(ii) The addition of one or more children in the applicant's home, whether through adoption or foster care, birth, or any other means. Even if the original home study provided for the adoption of more than one adopted child, the applicant must submit an amended home study recommending adoption of an additional child, because the addition of the already adopted child(ren) to the applicant's household is a significant change in the household that should be assessed before the adoption of any additional child(ren);

(iii) The addition of other dependents or additional adult member(s) of the household to the family prior to the prospective child's immigration into the United States;

(iv) A change resulting because the applicant is seeking to adopt a handicapped or special needs child, if the home study did not already address the applicant's suitability as the adoptive parent of a child with the particular handicap or special need;

(v) A change to a different Convention country. This change requires the updated home study to address suitability under the requirements of the new Convention country;

(vi) A lapse of more than 6 months between the date the home study is completed and the date it is submitted to USCIS; or

(vii) A change to the child's proposed State of residence. The preadoption requirements of the new State must be complied with in the case of a child coming to the United States to be adopted.

(2) Any updated or amended home study must:

(i) Meet the requirements of this section;

(ii) Be accompanied by a copy of the home study that is being updated or amended, including all prior updates and amendments;

(iii) Include a statement from the preparer that he or she has reviewed the home study that is being updated or amended and is personally and fully aware of its contents; and

(iv) Address whether the home study preparer recommends approval of the proposed adoption and the reasons for the recommendation.

(3) If submission of an updated or amended home study becomes necessary before USCIS adjudicates the Form I-800A, the applicant may simply submit the updated or amended home study to the office that has jurisdiction over the Form I-800A.

(4) If it becomes necessary to file an updated or amended home study after USCIS has approved the Form I-800A, the applicant must file a Form I-800A Supplement 3 with the filing fee specified in 8 CFR 106.2 and the amended or updated home study. If USCIS determines that the amended or updated

home study shows that the applicant remains suitable as the adoptive parent(s) of a Convention adoptee, USCIS will issue a new approval notice that will expire on the same date as the original approval. If the applicant also wants to have USCIS extend the approval period for the Form I-800A, the applicant must submit the updated or amended home study with an extension request under 8 CFR 204.312(e)(3), rather than under this paragraph (u) of this section.

(5) Each update must indicate that the home study preparer has updated the screening of the applicant and any additional adult member of the household under paragraphs (i) through (l) of this section, and must indicate the results of this updated screening.

[72 FR 56854, Oct. 4, 2007, as amended at 85 FR 46922, Aug. 3, 2020]

§ 204.312 Adjudication of the Form I-800A.

(a) *USCIS action.* The USCIS officer must approve a Form I-800A if the officer finds, based on the evidence of record, that the applicant is eligible under 8 CFR 204.307(a) to file a Form I-800A and the USCIS officer is satisfied that the applicant is suitable as the adoptive parent of a child from the specified Convention country. If the applicant sought approval for more than one Convention country, the decision will specify each country for which the Form I-800A is approved, and will also specify whether the Form I-800A is denied with respect to any particular Convention country.

(b) *Evaluation of the home study.* In determining suitability to adopt, the USCIS officer will give considerable weight to the home study, but is not bound by it. Even if the home study is favorable, the USCIS officer must deny the Form I-800A if, on the basis of the evidence of record, the officer finds, for a specific and articulable reason, that the applicant has failed to establish that he or she is suitable as the adoptive parent of a child from the Convention country. The USCIS officer may consult the accredited agency or temporarily accredited agency that approved the home study, the home study preparer, the applicant, the relevant State or local child welfare agency, or

any appropriate licensed professional, as needed to clarify issues concerning whether the applicant is suitable as the adoptive parent of a Convention adoptee. If this consultation yields evidence that is adverse to the applicant, the USCIS officer may rely on the evidence only after complying with the provisions of 8 CFR 103.2(b)(16) relating to the applicant's right to review and rebut adverse information.

(c) *Denial of application.* (1) The USCIS officer will deny the Form I-800A if the officer finds that the applicant has failed to establish that the applicant is:

(i) Eligible under 8 CFR 204.307(a) to file Form I-800A; or

(ii) Suitable as the adoptive parent of a child from the Convention country.

(2) Before denying a Form I-800A, the USCIS officer will comply with 8 CFR 103.2(b)(16), if required to do so under that provision, and may issue a request for evidence or a notice of intent to deny under 8 CFR 103.2(b)(8).

(3) A denial will be in writing, giving the reason for the denial and notifying the applicant of the right to appeal, if any, as provided in 8 CFR 204.314.

(4) It is for the Central Authority of the other Convention country to determine how its own adoption requirements, as disclosed in the home study under 8 CFR 204.311(q), should be applied in a given case. For this reason, the fact that the applicant may be ineligible to adopt in the other Convention country under those requirements, will not warrant the denial of a Form I-800A, if USCIS finds that the applicant has otherwise established eligibility and suitability as the adoptive parent of a Convention adoptee.

(d) *Approval notice.* (1) If USCIS approves the Form I-800A, USCIS will notify the applicant in writing as well as the Department of State. The notice of approval will specify:

(i) The expiration date for the notice of approval, as determined under paragraph (e) of this section, and

(ii) The name(s) and marital status of the applicant; and

(iii) If the applicant is not married and not yet 25 years old, the applicant's date of birth.

(2) Once USCIS approves the Form I-800A, or extends the validity period for