

## § 204.4

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the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

(2) *Authority of consular officers.* An American consular officer is authorized to approve an orphan petition if the Service has made a favorable determination on the related advanced processing application, and the petitioner, who has traveled abroad to a country with no Service office in order to locate or adopt an orphan, has properly filed the petition, and the petition is approvable. A consular officer, however, shall refer any petition which is “not clearly approvable” for a decision by the Service office having jurisdiction pursuant to §100.4(b) of this chapter. The consular officer’s adjudication includes all aspects of eligibility for classification as an orphan under section 101(b)(1)(F) of the Act other than the issue of the ability of the prospective adoptive parents to furnish proper care to the orphan. However, if the consular officer has a well-founded and substantive reason to believe that the advanced processing approval was obtained on the basis of fraud or misrepresentation, or has knowledge of a change in material fact subsequent to the approval of the advanced processing application, he or she shall consult with the Service office having jurisdiction pursuant to §100.4(b) of this chapter.

(3) *Child in the United States.* A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204 (d) and (e) of the Act have been met. A child in the

United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

(4) *Liaison.* Each director shall develop and maintain liaison with State Government adoption authorities having jurisdiction within his or her jurisdiction, including the administrator(s) of the Interstate Compact on the Placement of Children, and with other parties with interest in international adoptions. Such parties include, but are not necessarily limited to, adoption agencies, organizations representing adoption agencies, organizations representing adoptive parents, and adoption attorneys.

[59 FR 38881, Aug. 1, 1994; 59 FR 42878, Aug. 19, 1994, as amended at 63 FR 12986, Mar. 17, 1998; 68 FR 46926, Aug. 7, 2003; 72 FR 56853, Oct. 4, 2007; 74 FR 26936, June 5, 2009; 76 FR 53782, Aug. 29, 2011; 85 FR 46921, Aug. 3, 2020]

### § 204.4 Amerasian child of a United States citizen.

(a) *Eligibility.* An alien is eligible for benefits under Public Law 97–359 as the Amerasian child or son or daughter of a United States citizen if there is reason to believe that the alien was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an alien is eligible for classification under sections 201(b), 203(a)(1), or 203(a)(3) of the Act as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of the Act.

(b) *Filing petition.* Any alien claiming to be eligible for benefits as an Amerasian under Public Law 97–359, or any person on the alien’s behalf, may file a petition, Form I-360, Petition for Amerasian, Widow, or Special Immigrant. Any person filing the petition must either be eighteen years of age or older or be an emancipated minor. In addition, a corporation incorporated in the United States may file the petition on the alien’s behalf.

(c) *Jurisdiction.* The petition must be filed in accordance with the instructions on the form.

(d) *Two-stage processing—(1) Preliminary processing.* Upon initial submission of a petition with the documentary evidence required in paragraph

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(f)(1) of this section, the director shall adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen. If the preliminary processing is completed in a satisfactory manner, the director shall advise the petitioner to submit the documentary evidence required in paragraph (f)(1) of this section and shall fingerprint the sponsor in accordance with 8 CFR 103.16. The petitioner must submit all required documents within one year of the date of the request or the petition will be considered to have been abandoned. To reactivate an abandoned petition, the petitioner must submit a new petition, without the previously submitted documentation, to the Service office having jurisdiction over the prior petition.

(2) *Final processing.* Upon submission of the documentary evidence required in paragraph (f)(1) of this section, the director shall complete the adjudication of the petition.

(e) *One-stage processing.* If all documentary evidence required in paragraph (f)(1) of this section is available when the petition is initially filed, the petitioner may submit it at that time. In that case, the director shall consider all evidence without using the two-stage processing procedure set out in paragraph (d) of this section.

(f) *Evidence to support a petition for an Amerasian child of a United States citizen—(1) Two-stage processing of petition—(i) Preliminary processing.* (A) A petition filed by or on behalf of an Amerasian under this section must be accompanied by evidence that the beneficiary was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982. If the beneficiary was born in Vietnam, the beneficiary's ID card must be submitted, if available. If it is not available, the petitioner must submit an affidavit explaining why the beneficiary's ID card is not available. Evidence that the beneficiary was fathered by a United States citizen must also be presented. The putative father must have been a United States citizen at the time of the beneficiary's birth or at the time of the father's death, if his death occurred prior to the beneficiary's birth. It is not required that

the name of the father be given. Such evidence may include, but need not be limited to:

(1) The beneficiary's birth and baptismal certificates or other religious documents;

(2) Local civil records;

(3) Affidavits from knowledgeable witnesses;

(4) Letters or evidence of financial support from the beneficiary's putative father;

(5) Photographs of the beneficiary's putative father, especially with the beneficiary; and

(6) Evidence of the putative father's United States citizenship.

(B) The beneficiary's photograph must be submitted.

(C) The beneficiary's marriage certificate, if married, and evidence of the termination of any previous marriages, if applicable, is required.

(D) If the beneficiary is under eighteen years of age, a written irrevocable release for emigration must be received from the beneficiary's mother or legal guardian. The mother or legal guardian must authorize the placing agency or agencies to make decisions necessary for the child's immediate care until the sponsor receives custody. Interim costs are the responsibility of the sponsor. The mother or legal guardian must show an understanding of the effects of the release and state before signing the release whether any money was paid or any coercion was used. The signature of the mother or legal guardian must be authenticated by the local registrar, the court of minors, or a United States immigration or consular officer. The release must include the mother's or legal guardian's full name, date and place of birth, and current or permanent address.

(ii) *Final processing.* (A) If the director notifies the petitioner that all preliminary processing has been completed in a satisfactory manner, the petitioner must then submit Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, executed by the beneficiary's sponsor, along with the documentary evidence of the sponsor's financial ability required by that form. If the beneficiary is under eighteen years of age, the sponsor must

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agree to petition the court having jurisdiction, within thirty days of the beneficiary's arrival in the United States, for legal custody under the laws of the state where the beneficiary will reside until the beneficiary is eighteen years of age. The term "legal custody" as used in this section means the assumption of responsibility for a minor by an adult under the laws of the state in a court of law. The sponsor must be a United States citizen or lawful permanent resident who is twenty-one years of age or older and who is of good moral character.

(B) Other documents necessary to support the petition are:

(1) Evidence of the age of the beneficiary's sponsor;

(2) Evidence of United States citizenship or lawful permanent residence of the sponsor as provided in § 204.1(f); and

(C) If the beneficiary is under eighteen years of age, evidence that a public, private, or state agency licensed in the United States to place children and actively involved, with recent experience, in the intercountry placement of children has arranged the beneficiary's placement in the United States. Evidence must also be provided that the sponsor with whom the beneficiary is being placed is able to accept the beneficiary for care in the sponsor's home under the laws of the state of the beneficiary's intended residence. The evidence must demonstrate the agency's capability, including financial capability, to arrange the placement as described in paragraph (f)(1) of this section, either directly or through cooperative agreement with other suitable provider(s) of service.

(iii) *Arrangements for placement of beneficiary under eighteen years of age.* (A) If the beneficiary is under eighteen years of age, the petitioner must submit evidence of the placement arrangement required under paragraph (f)(1) of this section. A favorable home study of the sponsor is necessary and must be conducted by an agency in the United States legally authorized to conduct that study. If the sponsor resides outside the United States, a home study of the sponsor must be conducted by an agency legally authorized to conduct home studies in the state of the sponsor's and beneficiary's intended resi-

dence in the United States and must be submitted with a favorable recommendation by the agency.

(B) A plan from the agency to provide follow-up services, including mediation and counselling, is required to ensure that the sponsor and the beneficiary have satisfactorily adjusted to the placement and to determine whether the terms of the sponsorship are being observed. A report from the agency concerning the placement, including information regarding any family separation or dislocation abroad that results from the placement, must also be submitted. In addition, the agency must submit to the Director, Outreach Program, Immigration and Naturalization Service, Washington, DC, within 90 days of each occurrence, reports of any breakdowns in sponsorship that occur, and reports of the steps taken to remedy these breakdowns. The petitioner must also submit a statement from the agency:

(1) Indicating that, before signing the sponsorship agreement, the sponsor has been provided a report covering pre-placement screening and evaluation, including a health evaluation, of the beneficiary;

(2) Describing the agency's orientation of both the sponsor and the beneficiary on the legal and cultural aspects of the placement;

(3) Describing the initial facilitation of the placement through introduction, translation, and similar services; and

(4) Describing the contingency plans to place the beneficiary in another suitable home if the initial placement fails. The new sponsor must execute and submit a Form I-361 to the Service office having jurisdiction over the beneficiary's residence in the United States. The original sponsor nonetheless retains financial responsibility for the beneficiary under the terms of the guarantee of financial support and intent to petition for legal custody which that sponsor executed, unless that responsibility is assumed by a new sponsor. In the event that the new sponsor does not comply with the terms of the new guarantee of financial support and intent to petition for legal custody and if, for any reason, that guarantee is not

enforced, the original sponsor again becomes financially responsible for the beneficiary.

(2) *One-stage processing of petition.* If the petitioner chooses to have the petition processed under the one-stage processing procedure described in paragraph (e) of this section, the petitioner must submit all evidence required by paragraph (f)(1) of this section.

(g) *Decision*—(1) *General.* The director shall notify the petitioner of the decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner may appeal the decision under part 103 of this chapter.

(2) *Denial upon completion of preliminary processing.* The director may deny the petition upon completion of the preliminary processing under paragraph (d) of this section for:

(i) Failure to establish that there is reason to believe the alien was fathered by a United States citizen; or

(ii) Failure to meet the sponsorship requirements if the fingerprints of the sponsor, required in paragraph (f)(1) of this section, were submitted during the preliminary processing and the completed background check of the sponsor discloses adverse information resulting in a finding that the sponsor is not of good moral character.

(3) *Denial upon completion of final processing.* The director may deny the petition upon completion of final processing if it is determined that the sponsorship requirements, or one or more of the other applicable requirements, have not been met.

(4) *Denial upon completion of one-stage processing.* The director may deny the petition upon completion of all processing if any of the applicable requirements in a case being processed under the one-stage processing described in paragraph (e) of this section are not met.

(h) *Classification of Public Law 97-359 Amerasian.* If the petition is approved the beneficiary is classified as follows:

(1) An unmarried beneficiary under the age of twenty-one is classified as the child of a United States citizen under section 201(b) of the Act;

(2) An unmarried beneficiary twenty-one years of age or older is classified as the unmarried son or daughter of a

United States citizen under section 203(a)(1) of the Act; and

(3) A married beneficiary is classified as the married son or daughter of a United States citizen under section 203(a)(3) of the Act.

(i) *Enforcement of affidavit of financial support and intent to petition for legal custody.* A guarantee of financial support and intent to petition for legal custody on Form I-361 may be enforced against the alien's sponsor in a civil suit brought by the Attorney General in the United States District Court for the district in which the sponsor resides, except that the sponsor's estate is not liable under the guarantee if the sponsor dies or is adjudicated as bankrupt under title 11, United States Code. After admission to the United States, if the beneficiary of a petition requires enforcement of the guarantee of financial support and intent to petition for legal custody executed by the beneficiary's sponsor, the beneficiary may file Form I-363 with USCIS. If the beneficiary is under eighteen years of age, any agency or individual (other than the sponsor) having legal custody of the beneficiary, or a legal guardian acting on the alien's behalf, may file Form I-363.

[57 FR 41066, Sept. 9, 1992, as amended at 63 FR 12986, Mar. 17, 1998; 74 FR 26936, June 5, 2009; 76 FR 53782, Aug. 29, 2011]

#### § 204.5 Petitions for employment-based immigrants.

(a) *General.* A petition to classify an alien under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Act must be filed on Form I-140, Petition for Immigrant Worker. A petition to classify an alien under section 203(b)(4) (as it relates to special immigrants under section 101(a)(27)(C)) must be filed on kForm I-360, Petition for Amerasian, Widow, or Special Immigrant. A separate Form I-140 or I-360 must be filed for each beneficiary, accompanied by the applicable fee. A petition is considered properly filed if it is:

(1) Accepted for processing under the provisions of part 103;

(2) Accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien's occupation qualifies as a shortage occupation within