

August 4, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-68

This letter is to address a policy memo released by United States Citizenship and Immigration Services (USCIS) and its implications regarding the completion of intercountry adoption home studies.



KIM JOHNSON
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

August 4, 2023

ALL COUNTY LETTER NO. 23-68

TO: ALL LICENSED INTERCOUNTRY ADOPTION AGENCIES
ALL CDSS ADOPTION REGIONAL OFFICES
COMMUNITY CARE LICENSING DIVISION
ALL TITLE IV-E TRIBES

SUBJECT: CLARIFICATION OF U.S. CITIZENSHIP AND IMMIGRATION
SERVICES POLICY MEMO 602-0165: ADDITIONAL SUITABILITY
RELATED ISSUES AND PRE-ADOPTION REQUIREMENTS

REFERENCE: [POLICY MEMO 602-0165](#); [TITLE 22 DIVISION 2 ADOPTION
REGULATIONS SUBCHAPTER 6](#); [ALL COUNTY LETTER 16-63](#);
[ALL COUNTY LETTER 08-46](#), [ALL COUNTY LETTER 08-46E](#), [ALL
COUNTY LETTER 08-49](#), [ALL COUNTY LETTER 08-49E](#), AND [ALL
COUNTY LETTER 09-16](#); [FEDERAL REGULATION 8 CODE OF
FEDERAL REGULATIONS SECTION 204.301 AND 204.311\(i\)](#);
[HEALTH AND SAFETY CODE 1522.1](#)

Purpose

The purpose of this All County Letter (ACL) is to provide guidance for private adoption agencies licensed to complete intercountry adoptions in implementing United States Citizenship and Immigration Services (USCIS) Policy Memorandum (PM) 602-0165. Specifically, this ACL will provide clarity as to how PM-602-0165 adds additional requirements to Title 22 Adoption Regulations. This ACL will also outline the California pre-adoption requirements that need to be listed in the home study for a child who will be coming to the United States for adoption. This ACL is not inclusive of all home study requirements. For the most current guidance, review the [USCIS Policy Manual](#).

Background

The Intercountry Adoption Universal Accreditation Act (UAA) of 2012 impacted the adjudications of intercountry adoption cases in four suitability-related ways: home study preparation, home study elements, definition, and the duty to disclose. Suitability as defined by federal regulation 8 Code of Federal Regulations (CFR) section 204.301 means “USCIS is satisfied, based on the evidence of record, that it is reasonable to conclude that the applicant is capable of providing, and will provide, proper parental care to an adopted child.”

In the process of implementing the UAA, USCIS identified the need to clarify 22 suitability-related issues and issued PM-602-0165 to provide clarity on these suitability-related matters. The [ACL 16-63](#) addressed the Implementation of the UAA of 2012 without this additional clarity from the USCIS. This ACL will supplement and clarify the suitability-related changes that overlap with Title 22 Adoption Regulations. For a full list of the 22 suitability-related issues, see [Policy Memo 602-0165](#).

Suitability-Related Changes Based on Policy Memorandum-602-0165

Title 22, Division 2 Adoption Regulation Subchapter 6, Article 3

Assessment of the Applicant outlines the procedures for assessment and suitability. However, in addition to California regulations, USCIS has outlined specific areas to be addressed in the assessment. Furthermore, some of the USCIS suitability standards exceed or differ from California regulations and laws. These areas will be addressed below.

Information to Applicants during Assessment

In addition to the information outlined in Title 22 Adoption Regulation 35267, the agency must inform the applicant:

- 1) The USCIS has the sole authority to make suitability determinations and may issue an approval notice that varies from the home study preparer’s recommendation; and
- 2) The USCIS requires that the home study be no more than six months older than the date of the home study preparer’s signature when submitted to USCIS, including those that a public domestic or public foreign authority conducts.

Criminal Background Checks

Criminal background checks are outlined in regulation 35270 and ACLs [08-46](#), [08-46E](#), [08-49](#), [08-49E](#), and [09-16](#). In addition to California standards, per PM-602-0165:

“A home study preparer cannot make a favorable recommendation based on rehabilitation while a Prospective Adoptive Parent (PAP) or Adult Member of Household (AMH) is on probation, parole, supervised release, or other similar arrangement for any conviction. In addition, USCIS will not make a favorable recommendation if there are pending criminal charges or deferred decisions against such individuals. If a PAP or AMH is on probation, parole, supervised release, or other similar arrangement for any conviction, or if criminal charges are pending or adjudication is deferred, USCIS may issue a Request for Evidence (RFE). If the individual completes their period of probation, parole, supervised release, or other arrangement, resolves the pending or deferred criminal adjudication, and the PAP is able to provide a favorable home study recommending that the individual has been appropriately rehabilitated within the RFE response period, USCIS may consider that 8 CFR 204.311(l) has been satisfied.”

The California Health and Safety Code 1522.1 outlines the requirement for checking the Child Abuse Central Index. California only requires an agency to check the registry of another state if any person 18 years or older residing in the home has lived in the other state in the preceding five years. Per PM-602-0165 federal regulation 8 CFR section 204.311(i) requires:

“A home study preparer checks available child abuse registries for any state or foreign country in which PAPs or AMHs have resided since their 18th birthday and include the results of these checks in the home study. The USCIS requires that all such child abuse registry checks be no older than 15 months at the time of the home study preparer’s signature and the home study contain the full results of such child abuse registry checks. For a home study update, USCIS only requires the results of such child abuse registry checks for the current residence and any state or foreign country the PAPs or AMHs have resided in since the prior home study or home study update submitted to USCIS.”

Assessment of Prospective Adoptive Parent's Children

In addition to collecting school reports and having contact with all children residing in the applicant's home per California regulations, a home study must identify the following for each child resident:

- Name, date of birth, country of birth;
- Alien registration number (if any);
- Relationship to the Prospective Adoptive Parents;
- Each child's overall well-being, including their physical, mental, emotional, and behavioral health;
- Any special needs;
- Any criminal history; and
- Any additional information that is relevant to the overall suitability of the home and the PAP's ability to care for additional children considering the children already in the home.

The home study preparer's recommendation must also include a discussion of any children in the home, including how their characteristics would impact the overall suitability of the home and the PAP's ability to care for additional children.

Physical, Mental and Emotional Health of Prospective Adoptive Parent and Adult Member of Household

In addition to the requirements outlined in California regulation 35271, the home study preparer "must address physical, mental and emotional health of PAPs and AMHs." These requirements include addressing the following:

- History of abuse;
- Substance abuse (even if the history did not result in an arrest or conviction); and
- Current or past use of state-legal marijuana consistent with other controlled substances (requirement that the home study preparer refers an individual to a substance abuse counselor if there are areas beyond their expertise that need to be addressed).

When assessing the applicant's history of abuse, the home study preparer must also inquire about Unregulated Custody Transfers (UCT). The UCT also known as "re-homing," is the practice of adoptive parents transferring custody of a child to another individual or group without involvement of relevant authorities¹. Per PM-602-0165 "USCIS considers UCT to be a form of child abuse or neglect, the home study preparer must ask the PAPs and any AMHs if they have ever transferred or received permanent custody of a child outside of the state/local authorities or outside of the state/local process and include their responses in the home study. If the PAPs or AMHs have transferred or received permanent custody outside of the state/local process, USCIS will treat it as an adverse suitability factor. The home study preparer will need to assess and address whether the PAPs and/or AMHs have been appropriately rehabilitated before USCIS can make a favorable suitability determination."

Recommendation/Approval

The USCIS PM-602-0165 is requesting that the home study preparer use the phrase "recommends approval" as USCIS will have final authority to "approve" suitability of the applicants. Furthermore, in the recommendation/approval section, the home study must state the home study preparer's specific recommendation of the PAPs for adoption and the reasons for the recommendation. The home study preparer must also state the number of children they recommend the PAPs adopt, the specific country or countries they recommend they adopt from², and a recommendation of any specific restrictions to the adoption, such as age, gender, or other characteristics of the children.

Home Study Updates

California Intercountry Adoption Regulations do not provide procedures for home study updates. Please refer to PM-602-0165 for USCIS home study update events and requirements.

CALIFORNIA Pre-adoption Requirements

Pre-adoption requirements only need to be identified in the home study for children who will be coming to the United States for adoption. The USCIS considers a child to be coming to the United States for adoption if:

- 1) The PAPs will not complete the child's adoption abroad and will only obtain legal custody abroad for the purposes of emigration and adoption in the United States;

¹ United States Department of Health & Human Services, Office of the Administration for Children and Families, Children's Bureau.

² This requirement is only for home studies for cases that are subject to the UAA. See [USCIS PM-602-0165](#) for further guidance.

- 2) Only one PAP of a married couple adopts the child abroad, so that it will be necessary for the other spouse to adopt the child in the United States; or
- 3) In orphan cases, if at least one PAP did not see or observe the child before or during the adoption proceedings.

The PAPs must provide evidence with their suitability application that they have complied with California Pre-adoption requirements. The PAPs will indicate if they have met or when they will meet the California pre-adoption requirements on Forms [I-600A](#), [I-600](#), [I-800A](#), and [I-800](#). Additionally, the home study must also describe what California requirements the PAP will or will not have met and why, *citing any relevant state statutes and regulations*.

The USCIS will generally rely on the home study preparer's statement on pre-adoption requirements; therefore, it is important for the agency and home study preparer to know California's pre-adoption requirements. Although USCIS relies on the home study preparer's statements, USCIS has discretion to further investigate and/or issue a request for evidence as needed.

Based on CA Title 22, Division 2 Adoption Regulations, the following five pre-adoption requirements need to be completed:

- 1) Assessment of the Child (outlined in Regulations 35275 through 35287);
- 2) Background Information on the Birth Parents (Regulations 35289 through 35295);
- 3) Placement of the Child (Regulation 35297);
- 4) Supervision of Adoptive Placement (Regulations 35299 through 35311); and
- 5) Intercountry Adoption Court Report (Regulations 35313 through 35319).

If you have any questions or need additional guidance regarding the information in this letter, contact the Adoption Policy Unit at APU@dss.ca.gov.

Sincerely,

Original Document Signed By

DIANNA WAGNER
Assistant Deputy Director
Children and Family Services Division