

DOS Cable Implementing Section 402 of the Adam Walsh Child Protection And Safety Act Of 2006 (P.L. 109-248)

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SUBJECT: REFERRAL OF ALL I-130 PETITIONS TO USCIS SERVICE OFFICES FOR ADJUDICATION

REF: 03 STATE 146632

1. Summary: CA and USCIS have completed a thorough analysis of the Adam Walsh Protection act and come to the conclusion that posts must cease accepting or adjudicating any I-130 petition for family-based immigrant status that was not adjudicated by USCIS, and inform any individual wishing to file such a petition that it is necessary to file it with the appropriate USCIS office and refrain from assisting further. This change is effective immediately. In any case in which a post has already accepted an I-130 from a petitioner but has not yet issued a visa, post must forward the petition to the appropriate USCIS overseas office as "not clearly approvable." We are working with USCIS and will provide subsequent guidance on processing I-600 petitions and previously approved I-130 petitions. CA recognizes that this change may cause difficulties and encourages posts to advise their resident American citizen communities that new procedures are in place so that they may plan ahead. End summary.

2. On July 27, 2006, the Adam Walsh Child Protection and Safety Act (Adam Walsh Act), Pub. L. No. 109-248, became law. Section 402 of that Act amends INA 204(a)(1) and 101(a)(15)(K), rendering ineligible to file a petition for immigrant status under INA 203(a) (I-130 or I-600), or for nonimmigrant K status (I-129F), any petitioner who has been convicted of a "specified offense against a minor," defined in section 111 of the Adam Walsh Act as an offense involving any of the following:

BEGIN QUOTE

- A) An offense (unless committed by a parent or guardian) involving kidnapping.
- B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- C) Solicitation to engage in sexual conduct.
- D) Use in a sexual performance.
- E) Solicitation to practice prostitution.
- F) Video voyeurism as described in section 1801 of title 18, United States Code.
- G) Possession, production, or distribution of child pornography.
- H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- I) Any conduct that by its nature is a sex offense against a minor.

END QUOTE

Section 402 of the Adam Walsh Act provides that the bar against filing a petition because of such a conviction will not apply if the Secretary of Homeland Security, in his sole and unreviewable discretion, determines that the petitioner poses no risk to the beneficiary.

3. USCIS has provided interim guidance to its adjudicators to search its IBIS database for criminal history record information regarding USPER petitioners in family-based immigrant status cases and K nonimmigrant status cases. If there is an IBIS hit for one of the specified offenses against a minor, the USCIS field office must issue a Request for Evidence for all police arrest records and court disposition documents, and must schedule the petitioner for fingerprinting.

4. Consular officers do not have access to criminal history record information regarding USPER petitioners and therefore are unable to determine whether a petitioner has a conviction for a specified offense against a minor that renders the petitioner ineligible under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i)(II) to file a petition. The limited extract information in CLASS downloaded from the FBI's National Crime Information Center relates solely to aliens, and INA 105 provides for the use of such information "for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file."

5. In the absence of access to information that is essential to the determination of whether a petitioner is eligible to file a petition for immigrant status in a family-based classification, consular officers are unable to take any action on an unadjudicated I-130 petition. Rather, posts must advise individuals who seek to file such a petition that they should submit it directly to the appropriate USCIS office. USCIS maintains an office locator page, based on place of residence, on its website at https://egov.immigration.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=OS. In cases in which a post has already accepted an I-130 for filing but has not yet issued an immigrant visa, the consular officer must consider the petition "not clearly approvable" because of the inability to fulfill INA 204(a)(1)'s requirement for a determination of the petitioner's eligibility to file. Pursuant to 9 FAM 42.41 N4.2-3(d) and 8 CFR 204.1(e)(3), posts must forward all such I-130 petitions that petitioners filed at post, with all supporting documents, to the appropriate USCIS office. To reiterate, consular officers are no longer authorized to accept or adjudicate I-130 petitions at post under any circumstances. 9 FAM Appendix N 200 is being revised accordingly. We are preparing press guidance, which posts will be able to access at <http://intranet.ca.state.gov/PPAffairs/ppaffairs.htm>.

6. We are requesting clarification from USCIS regarding the validity, for Adam Walsh Act criminal record check purposes, of the fingerprint clearance procedures at the time of I-600 processing that are specified in Reftel (SOP-21) and 9 FAM 42.21 N13.3(d), as well as the applicability of section 402 of the Adam Walsh Act to petitions for family-based immigrant status or K nonimmigrant status that were approved prior to the act's effective date. Further guidance will follow our receipt of the USCIS clarification.

7. Minimize considered.

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