

U.S. LAW, THE HAGUE ADOPTION CONVENTION, AND GUATEMALA

The Hague Convention on Intercountry Adoptions (the Convention) provides the gold standard for protection of children in intercountry adoptions. The United States is finalizing preparations to fully implement the Hague Adoption Convention. The United States will not be able to continue processing intercountry adoptions of children from Guatemala after the Convention has been fully implemented in the United States, unless the Government of Guatemala institutes reforms to meet its obligations under the Convention. From a practical perspective, under the terms of the Convention and the Intercountry Adoption Act of 2000 (IAA), when considering a visa application of a child adopted in a “Hague country,”¹ the U.S. Consular Officer will be required to issue a certificate verifying that the requirements of the Convention have been met with respect to each adoption. We have developed a chart to explain why this certification would not be possible under the current system of adoption in Guatemala. This list is not exhaustive, but is intended to set forth some of the reasons why the Convention will not allow us to continue to process adoptions in Guatemala under its current system after the Convention goes into force for the U.S.

Question	YES	NO
<p>1. Has Guatemala established a functioning Central Authority? <i>(Convention, Article 6)</i> <i>The Convention requires that member countries establish a Central Authority to be the authoritative source of information and point of contact in that country, to carry out certain functions under the Convention, and to cooperate with other Central Authorities. Guatemala currently does not have a functioning Central Authority.</i></p>		X
<p>2. Has Guatemala enacted legislation to enable it to meet its Convention obligations? <i>Legislation is necessary to set and enforce most of the Convention’s requirements in Guatemala. Because Guatemala does not have any enforceable legislation, regulations, procedures, or policies to implement the Convention, it cannot carry out its Convention obligations.</i></p>		X
<p>3. Does Guatemala have a structure to investigate extended family placement or domestic adoption? <i>(Convention, Article 4)</i> <i>The Convention requires that possibilities for domestic placement of a child within the country of origin be explored before intercountry adoption is considered. There is currently no infrastructure in Guatemala to provide for this.</i></p>		X
<p>4. Does Guatemala have competent, public authorities handling the determination that the child is eligible for an intercountry adoption and ensuring that birth parents are counseled? <i>(Convention, Articles 4 and 5)</i> <i>The Convention requires that competent authorities (i.e., public bodies) determine that the child is eligible for intercountry adoption and that birth parents are counseled. Public authorities must also determine that the adoption is in the child’s best interest. Currently in Guatemala, private, for-profit adoption service providers match children with prospective adoptive parents before any government authority reviews the child’s eligibility. The Guatemalan system contains no requirement of counseling for birth mothers.</i></p>		X

¹ A country that has ratified or acceded to the Convention.

Question	YES	NO
<p>5. Does Guatemala prohibit improper payments and regulate permissible fees in the adoption process and enforce both? <i>(Convention, Article 32)</i> <i>The Convention prohibits any improper financial or other gain in an intercountry adoption and allows adoption service providers to charge only costs and expenses, including reasonable professional fees. In Guatemala, there is no transparency of adoption fees.</i></p>		X
Question	YES	NO
<p>6. Does Guatemala have a system to accredit adoption service providers? <i>(Convention Article 22(1))</i> <i>If a Hague Convention country permits non-public entities to perform the Central Authority functions in Articles 15 to 21 of the Convention, such as providing adoption services, those non-public providers must be accredited. Guatemala does not have a system for accrediting adoption service providers.</i></p>		X

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