

HQADN 70/8.3

JAN 17, 2001

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: Thomas E Cook /s/
Acting Assistant Commissioner
Adjudications Division

SUBJECT: Intercountry Adoption Act of 2000

The Intercountry Adoption Act of 2000 (IAA), Public Law 106-247, enacted on October 6, 2000, provides implementing legislation for the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention).

The IAA will not take effect until the United States implements the Convention. Implementation will occur only after the Immigration and Naturalization Service (Service) and the Department of State publish implementing regulations in the Federal Register and the United States deposits the instruments of ratification with the Permanent Bureau of the Hague Conference. This is expected to take between 24-36 months from October 2000.

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

In May 1993, 66 countries, including the United States, reached an agreement establishing a cooperative framework between the countries of origin of children in need of adoption and their receiving countries to ensure that the children's best interests are safeguarded. The Convention's objective was to prevent abuses such as the abduction or sale of, or the trafficking in, children or any other improper financial gains. It also sought to ensure proper consent to the adoption, allowed for the child's transfer, and established the adopted child's status in the receiving country.

The Convention set minimum international standards and procedures for adoptions that occur between countries, which have implemented the Convention. In the case of adoptions taking place between countries that have implemented it, the Convention ensures greater protection from exploitation for children, birth parents and adoptive parents alike. Not every signatory country has yet implemented the agreement.

Changes to the Immigration and Nationality Act

The new law adds two new sections to the Immigration and Nationality Act (Act), section 101(b)(1)(G) and section 204(d)(2). These sections apply only when the child to

be adopted resides in a country that has implemented the Convention. A child adopted from a country which has not implemented the Convention must qualify as an orphan or an adopted child under existing U.S. immigration law -- Section 101(b)(1)(E) and (F).

Section 101 (b)(1)(G) of the Act expands the definition of "child" beyond its present definition. Between countries that have implemented the Convention, this will permit the immigration of adopted children who do not meet the current "orphan" definition under section 101(b)(1)(F) of the Act. This change will require revisions to 8 CFR 204.3.

Section 204(d)(2) of the Act provides for an adoption or custody certificate issued by the Department of State. This certificate is conclusive evidence of the relationship between the child being adopted and the adoptive parent(s). This will have the effect of changing documentary requirements at 8 CFR 204.3(d)(1) for children adopted from countries that have implemented the Convention.

The Service will develop regulations regarding these changes in the coming months subject to notice and comment. As previously noted, these changes to immigration law will not be effective until the Service and the Department of State publish implementing regulations in the Federal Register.

Further Information

For additional information, please contact Michael Biggs, Assistant Branch Director, in HQ Office of Adjudications at 202-514 3228.

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ISD Field Service Operations
Public Affairs
INS :HQADN:MBiggs:12/13/00:haguememo