

**AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND THE SOCIALIST REPUBLIC OF VIETNAM
REGARDING COOPERATION ON THE ADOPTION OF
CHILDREN**

The United States of America and the Socialist Republic of Vietnam (hereinafter referred to as the Parties);

Recognizing that, to ensure the harmonious development of their personalities, children should grow up in a family environment, in a climate of happiness and love;

Acknowledging that the Parties have undertaken, as a matter of priority, measures they respectively deem appropriate to enable children to remain in the care of their family of origin;

Acknowledging that intercountry adoption is an appropriate measure to provide children with a permanent family when an appropriate family cannot be found in their country of origin;

Desiring to confirm that the adoption of children who are citizens of one Party, by citizens of the other Party, take place on the basis of respect for the fundamental values and principles of each Country and consistent with the principles of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at the Hague on May 29, 1993 (hereafter the Hague Adoption Convention), and, in particular, its provisions on protecting the best interests of children and respect for their fundamental rights, and with a view to preventing the abduction, sale, and trafficking in children and improper financial gain from the adoption process, as well as protecting the rights and interests of adopting parents and birth parents;

Agree as follows:

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Agreement between the United States of America and the Socialist Republic of Vietnam is to establish a basis of mutual cooperation in the adoption of children between the two countries.

This Agreement is recognized by the Parties as establishing a common understanding regarding intercountry adoptions between the Parties.

Article 2

Applicable Laws

The Parties recognize the following authorities as relevant in their respective countries with respect to the subject matter of this Agreement:

1. The Vienna Convention on Consular Relations, done at Vienna on April 2, 1963;
2. The Socialist Republic of Vietnam Civil Code promulgated in 1995, Law on Vietnamese Nationality promulgated in 1998 and the Law on Marriage and Family promulgated in 2000;
3. Decree No. 68/2002/ND-CP, July 10, 2002 – Provisions of Child Adoption, and Socialist Republic of Vietnam Justice Ministry Circular No. 07/2002/TT-BTP, December 16, 2002;
4. The United States Immigration and Nationality Act of June 27, 1952 as amended;
5. The United States Public Law 106-279, October 6, 2000 – The Intercountry Adoption Act of 2000;
6. The United States Public Law 106-295, October 30, 2000 – The Child Citizenship Act of 2000;
7. Authorities may be added or subtracted from this list, as mutually agreed upon in writing by the Parties.

Article 3

Scope

1. This Agreement applies to children who are citizens of one Party and resident in the territory of that Party and who are eligible for adoption under the applicable domestic laws of that Party (hereinafter referred to as "adoptive children"), is being adopted by an individual citizen or resident of the other Party, or a man and a woman who are legally married at least one of whom is a citizen of the other Party (hereinafter referred to as "adoptive parents").
2. The Party in which the child has citizenship and permanently resides before being adopted hereafter will be referred to as "Country of Origin". The Party to which the adoptive parent(s) has or have citizenship hereafter will be referred to as "Receiving Country".
3. Adoption is understood by the Parties to be for the purpose of establishing a permanent legal parent-child relationship between the adoptive parent(s) and the adoptive child.

Article 4

Principles

1. The Parties intend to continue, on a voluntary and humanitarian basis and in accordance with their laws, to work cooperatively towards ensuring that adoptions under this Agreement are in the best interests of the children involved.
2. The Parties intend that appropriate measures should be taken under their respective laws to prevent and deal with actions of adoption abuse involving the exploitation of children for labor, sex, illicit gain, and other infringements on a child's lawful rights and interests.
3. On humanitarian grounds and for the purpose of child protection, the Parties support the facilitation of the adoption of orphaned children, in accordance with laws of the Parties.

Article 5
Language and Communication Expenses

In order to carry out this Agreement, the Parties shall communicate with each other in the language of the Country of Origin. Communication expenses will be covered by the communicating Party.

COMPETENT AUTHORITIES

Article 6
Competent Authorities

The following institutions are referred to as competent authorities, for purposes of this Agreement:

1. In the Socialist Republic of Vietnam:
 - a. Ministry of Justice;
 - b. Department of Inter-country Adoption;
 - c. People's Committee of provinces and cities under the Central government; and other competent state agencies which are located in provinces.
2. In the United States of America:
 - a. Public authorities, including judicial authorities, of the states of the United States or local public authorities and courts with jurisdiction in adoption proceedings;
 - b. U.S. Department of State, for purposes of immigrant visa issuance and government-to-government policy matters and information exchange;
 - c. Bureau of Citizenship and Immigration Service, Department of Homeland Security for approval of application for admission that includes petitions for adoption of orphans; applications for entry and residence in the U.S.

Article 7
Adoption Service Providers

1. For the purpose of facilitating international adoptions, all competent authorities that are mentioned in Article 6 of this Agreement may, in accordance with applicable law, approve the receipt of assistance from adoption service providers.
2. The parties favor the establishment of conditions under which private adoption service providers from the other Party be allowed to operate in its national territory.
3. In accordance with the laws of Vietnam, the Ministry of Justice shall be responsible for the licensing at the national level of U.S. adoption service providers for purposes of intercountry adoptions between the United States of America and the Socialist Republic of Vietnam.
4. The Ministry of Justice shall coordinate with relevant authorities and agencies to supervise and monitor closely the processing of foreign adoption cases in Vietnam as well as the operation of foreign adoption offices in Vietnam. Persons or entities that engage in violations of law or actions that impinge on the best interests of the child, the birth parents or the adoptive parents, will be liable to administrative penalties or criminal liability prosecution subject to their level of gravity.

Article 8
Ethical Practices

The competent authorities of the Parties are responsible for implementing appropriate measures to prevent improper financial or other gain as a result of working for and receiving orphans; and implement necessary measures to penalize such practices under applicable law for inappropriate activities that take place within their own country.

Article 9
Children to be Adopted

1. The decision to make a child available for adoption will be made by the competent authorities of the Country of Origin.

2. The designation of individuals or institutions authorized to give consent to the adoption, and the manner in which such consent is obtained, must be in accordance with the applicable law of the Country of Origin.

3. For the purposes of this Agreement and in accordance with the U.S. Immigration and Nationality Act previously cited, a child shall be determined to be an orphan if the child is under the age of 16 at the time of the adoption and:

- a. The child has no parents because of the death or disappearance of, abandonment or desertion by, or separation from or loss of both parents, as clearly evidenced through documentation certified by the competent Vietnamese authorities; or
- b. The sole or surviving parent is incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption. In such instances, the U.S. competent authorities may require evidence through DNA testing and/or an interview with the child's birth parent. DNA testing and interview expenses shall be borne by the prospective adoptive parent(s).

Article 10 Adoptive Parent(s)

Adoptive parents are expected to comply with the legal requirements of the country within whose jurisdiction they act.

Article 11 Recognition of Adoption Decision

The decision of the competent authorities of one Party on the adoption of a child in accordance with its applicable law is recognized in the other Party's country unless contrary to its public policy, taking into account the best interests of the child.

Article 12
Legal Consequences of Adoption

Legal consequence of adoption contemplated by this Agreement will be in accordance with the applicable adoption laws of the Receiving Country.

ADOPTION PROCEDURES

Article 13
Documentation

1. Dossiers of adoptive parents must be established in accordance with the laws of the Parties. The dossiers must be verified by the competent authorities of the Receiving Country.
2. Dossiers of adoptive parents must be translated into the language of the Country of Origin. Expenses for translation and for certification of the translation will be borne by the adoptive parents.

Article 14
Responsibilities of the Competent Adoption Authorities of the Receiving Country

1. Citizens of the Receiving Country who wish to adopt a child who is a citizen of and resident in the Country of Origin will need to file an application with the following competent authorities:
 - a. In the Socialist Republic of Vietnam, such persons file their application at the Department of International Adoptions, Ministry of Justice.
 - b. In the United States of America, such persons file their applications with the Bureau of Citizenship and Immigration Services.
2. The competent adoption authorities of the Receiving Country, as determined by applicable laws:
 - a. Determine whether adoptive parents meet the necessary qualifications for adoption;

- b. Determine whether adoptive parents have been provided with the requisite adoption counseling in accordance with the laws of the Receiving Country, especially the information on the society and family environment of the Country of Origin;
- c. Upon proper application and approval, will provide adopted children with entry and resident status in the Receiving Country.

Article 15 Documentation Filing

The appropriate competent authorities or adoption service providers of the Receiving Country send the dossiers of adoptive parents to the competent authority of the Country of Origin with a note clearly outlining the following information on the adoptive parents:

1. Names, dates of birth, sexes, passport or identification numbers, places of habitual residence, occupations, mailing addresses;
2. Legal capacity in civil matters; absence of criminal records;
3. Qualifications for adoption, to include financial position, personal, family, medical, and social situation;
4. Reasons for wanting to adopt;
5. Characteristics desired in the child to be adopted.

Article 16 Responsibilities of the Competent Adoption Authorities of the Country of Origin

The competent authorities of the Country of Origin determine whether:

1. The child referred for adoption is adoptable under the applicable law concerning adoption and welfare of children;
 - a. The adoption is in the best interests of the child;
 - b. Consent to the adoption has been given by the persons or institutions authorized to do so;

- c. There were not any improper requests for compensation for the consent to the adoption.
2. The competent authorities of the Country of Origin advise adoptive parents, either directly or through the adoption service providers, of the following information, as available, on the child proposed for adoption:
 - a. Name, sex, date of birth, location;
 - b. Eligibility for adoption;
 - c. Personal, family, and social situation;
 - d. State of health; and
 - e. Special needs, as applicable.
3. Adoptive parents or their adoption service agency are expected to respond to the competent authorities of the Country of Origin at the earliest practicable time.

Article 17 Expenses and Fees

1. The Parties enforce the principle that the collection of money in relation to an adoption in accordance with this Agreement, must not exceed expenses and fees which constitute reasonable payment for necessary activities such as the administrative, court, legal, translation, and/or medical services related to the adoption proceedings.
2. The competent authority at the national level of the Country of Origin will announce a public schedule of adoption fees and send receipts of their services to adoptive parents if requested by them. Pending publication of such schedule, the competent authority of the Country of Origin will provide a list of "for fee services related to intercountry adoption."
3. The Competent authority at the national level of the Country of Origin shall certify in writing to the competent adoption authorities of the Receiving Country that fees collected in support of an intercountry adoption comply with the requirements of this section.

4. The Parties support the principle that appropriate adoption service providers make their fee schedules publicly available in advance of an adoption.

Article 18
Adoption Giving and Receiving Procedures

1. The decision to release a child for adoption, and the giving and receiving procedure to transfer that child to the adoptive parents will be carried out in accordance with the laws of the Country of Origin.
2. At the request of the competent authorities of the Receiving Country, the competent authorities of the Country of Origin are expected to confirm that all the required conditions and procedures for adoption according to its laws have been met.
3. The competent Governmental authorities, or other appropriate Governmental authorities, of the Country of Origin take appropriate actions, in accordance with applicable law, to allow the child to leave his or her Country of Origin.
4. The competent adoption authorities, or other appropriate governmental authorities of the Receiving Country take appropriate actions, in accordance with applicable law, to allow the child to enter and reside permanently in the territory of the Receiving Country.

Article 19
Completion of Adoption Procedures in the Receiving Country

1. The competent authorities of the Receiving Country determine that procedures relating to the adoption are full and final under the applicable laws of the Receiving Country.
2. The competent authorities of the Parties will inform each other directly or through an appropriate adoption service agency of any other matters that may be necessary in handling specific adoption cases, at their discretion and as permitted under applicable law.

COOPERATION OBLIGATION

Article 20 Protection of Children

1. The Parties to this Agreement are committed to taking appropriate action to support the development of adopted children.
2. Children who are citizens of one Party being adopted and allowed to reside permanently in the territory of the other Party will enjoy the same basic protections and rights accorded to citizen children.
3. When the competent adoption authorities of the Receiving Country determine that it is no longer in the best interest of a child to keep that child in its adoptive family, the competent Governmental authorities will be responsible for measures to ensure the child's protection, finding a suitable alternate placement for the child.

Article 21 Information Exchange

1. The competent authorities of the Parties will exchange information on legal and adoption statistical data as well as other appropriate information such as the operation of adoption service agencies in their territory in accordance with applicable law.
2. The competent authorities of the Parties or the appropriate private adoption service agencies gather and preserve information on the adopted child and the adoptive parents needed for the completion of the adoption in accordance with this Agreement.
3. The competent authorities of the Parties take measures to resolve difficulties arising in the process of implementation of this Agreement.

Article 22 Technical Support in Order to Implement the Agreement

In order to effectively implement the Agreement, the Parties are committed to cooperate with each other in the areas of technical support, staff training,

support to the competent adoption Governmental authorities and orphanages as well as exchanging experience in the international adoption field.

Article 23
Amendments and Additions

This Agreement can be amended and added to upon written agreement of the Parties through the diplomatic channels.

Article 24
Meetings

1. The Parties recognize the benefit of meetings between its representatives to evaluate and assess the effectiveness of this Agreement and to formulate proposals for resolving any problems that may arise especially with respect to transparency of fees and expenses as mentioned in Article 17 and 25(1).
2. These meetings will be held annually and the Parties can summon an extraordinary session, should this be necessary. With the consent of the Parties, representative(s) of authorized organization(s) may be allowed to attend as observer at the meetings.

FINAL ARTICLE

Article 25
Date of Effect and Term of Validity

1. This Agreement shall enter into force on the first day of the second month, after the Parties notify each other through the diplomatic channels confirming that each Party has completed the necessary legal procedures for entry into force. The country of origin confirms that it will issue a public schedule of adoption fees, as referenced in Article 17(2).
2. This Agreement will be in force for 3 years and will automatically terminate unless both Parties exchange written notification extending this Agreement for an additional term of 3 years, at least six months prior to the date of termination.

3. Notwithstanding paragraph 2 of this Article, should the Hague Adoption Convention enter into force for both the Socialist Republic of Vietnam and the United States of America, this Agreement shall automatically terminate.

DONE at Washington, D.C., this twenty-first day of June 2005, in duplicate in the English and Vietnamese languages, both texts being equally authentic.

**FOR THE UNITED STATES
OF AMERICA:**

M. T.

**FOR THE SOCIALIST REPUBLIC
OF VIETNAM:**

Phu
