



Questions and Answers

October 4, 2007

USCIS ISSUES INTERIM RULE ESTABLISHING NEW PROCEDURES FOR ADOPTED CHILDREN UNDER THE HAGUE CONVENTION

Q. What is the purpose of the USCIS interim rule?

A. The rule entitled “*Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”)*” establishes new USCIS procedures for the immigration of children who are habitual residents in a country that is a member to the Convention and who are adopted by a United States Citizen. The publication of this rule is a necessary step in order for the United States to ratify the Hague Convention.

Q. What is the Convention?

A. The *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* is a treaty developed under the auspices of The Hague Conference on Private International Law. The Convention was opened for signature in 1993, and entered into force on May 1, 1995, once it had been ratified by three State Parties.

Q. What is the purpose of the Convention?

A. The objectives of the Convention are:

- to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child’s fundamental rights as recognized in international law;
- to establish a system of cooperation among contracting States to ensure that those safeguards are respected and thereby prevent the abduction, sale of, or traffic in children; and
- to secure the recognition in contracting states of adoptions made in accordance with the Convention.

Q. Is the United States a State Party to the Convention?

A. The United States signed the Convention on March 31, 1994. The Senate gave its consent to the ratification of the Convention in 2000. However, the consent to ratification was conditioned on the enactment of the necessary implementing legislation and the development of the necessary administrative regulations. This interim rule is one of the regulations necessary to implement the Convention.

Q. When will the United States ratify the Convention?

A. The Department of State (DOS) is finalizing the remaining tasks necessary to deposit its instrument of ratification by the end of 2007.

Q. When does the interim rule take effect?

A. The interim rule takes effect November 5, 2007. However, this new process will not be available for U.S. citizens seeking to adopt a child from a Convention country until the United States formally becomes a party to the Convention, and the Convention has entered into force for the United States.



Q. When will the Convention enter into force with respect to the United States?

A. The Convention will enter into force for the United States on the first day of the first month that begins three months after the date the United States deposits its instrument of ratification. The Department of State will announce the exact date that the Convention will enter into force with respect to the United States approximately three months in advance. The Department of State will also publish the date on its website and in the *Federal Register*.

Q. Does the Convention apply to all intercountry adoptions?

A. The Convention applies only if a child who is a habitual resident in one Convention country is going to immigrate to another Convention country based on an adoption by adoptive parents who habitually reside in that other Convention country. For example, China became a State Party to the Convention on January 1, 2006. Once the United States becomes a State Party, the Convention will govern the immigration to the United States of a child from China by adoptive parents habitually residing in the United States.

Q. What is a Convention country?

A. For purposes of this rule, a Convention country means any country that is a party to the Convention *unless* the Department of State has determined that the Convention is not in force between the United States and that other country. A list of countries that are currently parties to the Convention is provided on the website of the Permanent Bureau of the Hague Conference on Private International Law: www.hcch.net. If the DOS determines that the Convention is not in force between the United States and any of those countries, the DOS will make this determination available on its own website.

Q. How many Convention countries are there?

A. As of October 4, 2007, 74 countries are parties to the Convention.

Q. How will this new Convention procedure be different from what is currently taking place?

A. There will be some significant similarities to the way orphan cases are processed. Like an orphan case, each Convention adoption case will involve two basic determinations: that the U.S. citizens are suitable as adoptive parents, and that the child's adoption meets the eligibility requirements that must be met in order for the child to immigrate. In an orphan case, however, it is possible for the U.S. citizens to adopt the child first, and then to seek a determination that they are suitable adoptive parents and that the child is eligible to immigrate. In a Convention adoption, by contrast:

- USCIS must determine that the U.S. citizens are suitable as adoptive parents *before* the authorities in the other country place a specific child with them for adoption;
- The other country must then determine that intercountry adoption is in the child's best interests, and that any necessary consents have been freely given;
- The U.S. Government must then decide, *before* the adoption takes place, that the proposed adoption will meet the requirements of the Convention and U.S. immigration law, so that the child is eligible to immigrate;
- Thus, a Convention adoption will be completed only if both Governments agree that the adoption should take place and that the child will be able to immigrate to the United States.

Each country that is a party to the convention has an officially-designated Central Authority. The Central Authority in the child's country will ensure that intercountry adoption is in the child's best interests and that the necessary consents have been freely given.



Q. Will the new rule require the submission of new forms? If so, when will the new forms be made available to the public?

A. Yes. There will be two new USCIS forms to be used in connection with a Convention adoption: Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country and Form I-800, Petition to Classify a Convention Adoptee as an Immediate Relative. The forms will be made available on the USCIS public website at www.uscis.gov in sufficient time before the Convention enters into force.

Q. Once the regulations for the Convention have been completed, will children in Convention countries still have to qualify as “orphans” as defined in U.S. immigration law in order to be eligible to immigrate as the children of their adoptive U.S. citizen parents?

A. No. A child from a Convention country will need to meet the new definition of a Convention adoptee child set forth in Sec 101(b)(1)(G) of the Immigration and Nationality Act, as amended by the Intercountry Adoption Act of 2000, rather than the “orphan” definition in Sec 101(b)(1)(F). Thus, a child habitually resident in a Convention country, who is adopted by a U.S. citizen habitual resident in the U.S. will no longer be eligible for classification as an orphan child and will be required to meet the new definition of a Convention adoptee.

Transition cases

Q. I have already filed a Form I-600A, Application for Advance Processing of an Orphan Petition, at a USCIS office for an intercountry adoption that will take place in a Convention country (i.e. China). Does the new rule apply to my case?

A. Under section 505 of the Intercountry Adoption Act, U.S. law does not require adoptive parents to follow Convention procedures to adopt a child from a Convention country, if the Form I-600A or Form I-600 was filed before the Convention entered into force. If USCIS extends the approval of the Form I-600A that was filed before the Convention enters into force, the prospective adoptive parent(s) will be able to file a Form I-600 in behalf of a child from a Convention country, after the Convention enters into force, so long as it is filed before the approval, or extension of approval, of Form I-600A expires.

Section 505, however, is not binding on another Convention country. Although U.S. law may permit you to continue to use the orphan process, because you filed a Form I-600A or Form I-600 before the Convention entered into force, the other Convention country may have its own rules on how to handle these transition cases. If, under the other Convention country’s law, you must follow the Convention process, then you may not be able to adopt a child from that country, unless you do so.

Q. I have already filed a Form I-600, Petition to Classify an Orphan as an Immediate Relative, at a USCIS office for an intercountry adoption for a child from a Convention country. Does the new rule apply to my case?

A. See the answer to question above.

Q. When is a case considered “filed” with USCIS?

A. USCIS considers a case properly filed when it receives an application or petition, properly signed, along with any required filing fee.



Q. What happens if I am seeking to adopt a child from a non-Convention country?

A. If the child being adopted is from a non-Convention country, then the Convention does not apply to the case. The adoption will therefore be processed under existing U.S. immigration regulations governing orphan adoptions.

Q. What about intercountry adoptions from Cambodia and Guatemala?

A. The processing of orphan cases from Cambodia has been suspended since December 2001. Cambodia recently ratified the Convention. It will still be necessary for Cambodia to develop its own implementing laws and procedures for Convention adoptions before U.S. citizens may seek to adopt a Cambodian child under the Convention. Guatemala ratified the Convention in 2003, but has not yet developed its own implementing laws and procedures for Convention adoptions. U.S. citizens will not be able to seek to adopt a Guatemalan child under the Convention until these processes are in place. Because Cambodia and Guatemala are Convention countries, it will no longer be possible to file orphan cases on behalf of children from these countries, once the Convention enters into force for the United States.

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