



United States Department of State

Washington, D.C. 20520

INTERNATIONAL ADOPTIONS

DISCLAIMER: THE INFORMATION IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE TOTALLY ACCURATE IN A PARTICULAR CASE. QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO FOREIGN ATTORNEYS OR FOREIGN GOVERNMENT OFFICIALS

SUMMARY The subject of international adoptions has become an issue of considerable concern to the Department of State and its embassies and consulates abroad in recent years. There has been an increasing incidence of illicit activities in the area of international adoptions by intermediaries and adoption agencies both in the foreign countries involved and in the United States.

The Department considers adoptions to be private legal matters within the judicial sovereignty of the nation where the child resides. U.S. authorities, therefore, have no right to intervene on behalf of an individual American citizen with the courts in the country where the adoption takes place. However, while we cannot become directly involved in the adoption process, we do receive requests for assistance and information from American citizens who wish to adopt in foreign countries. Requests cover a broad range of subjects from the legal procedures involved to the expeditious issuance of immigrant visas to adopted children, or children being brought to the United States for the purpose of adoption. The information in this brochure is intended to provide a general overview of international adoptions and to warn prospective adoptive parents about problems they might encounter.

DEPARTMENT ASSISTANCE The Department of State can offer assistance in several important ways. We can provide information on the details of the adoption process in the foreign country; make inquiries on behalf of adoptive parents regarding the status of their cases before foreign tribunals; assist in the clarification of documentary requirements; provide information on the U.S. visa application and issuance process; and endeavor to ensure that Americans are not discriminated against by foreign authorities and courts.

ANTICIPATING DIFFICULTIES American citizens who desire to adopt foreign children should be aware of the

numerous problems and pitfalls which may beset them in the natural course of the tedious process of foreign adoptions. Generally, adopting parents may expect to be temporarily frustrated by some of the vagaries of transnational bureaucracies, but in the long run adherence to procedures established by the laws and regulations of the country where the adoption is taking place and avoidance of short-cuts will save time, effort, and heartache.

One crucial fact which must be understood at the outset of any adoption is that the child is a national of the country of its origin (and remains so even after the adoption process is completed) and is subject to the jurisdiction of the foreign courts. Consequently, parents should be certain that the procedures they follow in arranging for such an adoption strictly comply with local (foreign) law. This is usually accomplished by dealing with a reputable, licensed international adoption agency which has experience in arranging adoptions in the particular foreign country, or, in the case of a private adoption, with a local attorney who has routinely handled successful adoptions.

Adopting parents should be wary of any agency or attorney who claims to be able to streamline established procedures. If it sounds too good to be true, it probably is. Procedural irregularities which sometimes result from an intermediary's desire to speed up the process can result in the foreign government's determination that the adoption is illegal and the refusal of that government to finalize the adoption.

GENERAL PROCEDURES

1. Foreign Adoption Practices and Procedures

The majority of countries require that the child who is placed for adoption be legally recognized as an orphan or, in the case where a parent is living, be legally and irrevocably released for adoption prior to any legal activity leading to final adoption of the child. Nowadays, most countries have enacted legislation which requires the full scale adoption of the child through the foreign court after the child has been declared an orphan. Some countries do allow "simple" "adoption" which means that the adopting parent(s) are granted **guardianship** of the child by the foreign court, thus permitting the child to leave the foreign country **to be adopted in country of the adopting parent(s)' nationality**. Some countries may accept the properly authenticated home study of the prospective adoptive parent(s) on its face. Other countries may require the personal appearance of the adoptive parent(s) before the foreign court. This could involve a protracted stay in the foreign country until the court approves the adoption.

2. U.S. Immigration Requirements

In addition to the foreign adoption requirements, prospective adoptive parents must comply with U.S. immigration procedures. It is not possible, for example, to simply locate a child in a foreign country, then go to the U.S. embassy and obtain a visa for the child. Visa procedures in this area are complex, and designed with many safeguards to ensure that children adopted abroad or brought to this country for adoption are truly orphans and will go to healthy homes in the U.S. Contact the U.S. Immigration and Naturalization Service (INS) office having jurisdiction over your place of residence in the U.S. for information early in the process. One area which has been a source of confusion to prospective adoptive parents is whether a child identified in a foreign country actually meets the definition of orphan under U.S. immigration laws.

A. Does the Child Meet the Definition of Orphan?

Under Section 201(b) of the Immigration and Nationality Act (INA), foreign children may gain entry into the United States as "immediate relatives" of U.S. citizens. In this connection, the INA defines the term "orphan" as a "child under the age of 16 ... who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole surviving parent is incapable of providing the proper care (proper care has been ruled as proper care according to the local (foreign) standard of living, not the U.S. standard of living) and has in writing irrevocably released the child for emigration and adoption." (8 U.S.C. 1101(b)(1)(F)). This means that a child who has been abandoned by both parents may meet the definition of orphan, for example, if the child has been unconditionally abandoned to an orphanage or legally documented as abandoned by a competent legal authority in the child's country of origin.

B. Orphan Petitions for U.S. Immigration

The procedures for adopting a child abroad or bringing a child to the U.S. for adoption must in all cases be initiated with INS. An orphan cannot be brought to the U.S. without a visa based on an INS approved petition (form I-600). **If an adoptive parent(s) simply appears at a U.S. embassy or consulate asking for a visa for an adopted child with no prior processing and approval by INS, the visa cannot be issued immediately. The matter must be referred to INS. It could take a considerable period of time before INS could approve such a petition since a home study of the adoptive parent(s), fingerprint check, and any state pre-adoptive requirements would have to be completed. We urge all prospective adoptive parents to contact INS and initiate the requisite procedures before going abroad to look for a child.**

There are two separate procedures for the adjudication of orphan petitions.

(1) Specific Child Identified and I-600 Petition Fully Approved By INS

If the adoptive parent(s) has identified the child when beginning U.S. immigration processing, it is necessary to file petition form I-600 with the appropriate office of the U.S. Immigration and Naturalization Service (INS) in the United States. In that case, INS adjudicates all aspects of the I-600 petition -- the suitability of the adoptive parent(s), compliance with any state pre-adoption requirements (if the child is to be adopted after entry into the U.S.), and the qualification of the child as an orphan within the meaning of Section 101(b)(1)(F) of the Immigration and Nationality Act. INS will send the approved I-600 to the U.S. embassy or consulate in the country where the child will be adopted. If requested, INS will also send notification of their approval via telegram (the "visas 38" (adopted abroad) or "visas 39" (coming to the U.S. to be adopted) procedure) to help speed-up issuance of the U.S. visa.

In the case of a fully approved I-600 petition, the consular officer at a U.S. embassy or consular abroad must verify that the facts alleged about the child in the approved petition are correct. Information casting doubt upon the child's eligibility as an orphan or disclosing a medical consideration not identified in the approved petition requires return of the petition to the approving INS office for reconsideration.

(2) No Specific Child Identified and I-600A Approved by INS

If prospective adoptive parent(s) in the United States intend(s) to go abroad to locate a child for adoption the adoptive parent(s) should file an application on form I-600A for an advance determination of suitability as adoptive parent(s). This application is filed at the appropriate INS office in the United States with jurisdiction over the adoptive parent(s) place of residence. INS will evaluate the suitability of the prospective adoptive parent(s) in the same manner as would be done if the parent(s) had filed an I-600 petition (see above) and will, if requested, forward the approved I-600A to the appropriate U.S. consular office or overseas office of INS. The INS office will, if requested, send notification of their approval via telegram (the "visas 37" procedure) to help speed-up the issuance of the U.S. visa. This message will also state whether the adoptive parent(s) have fulfilled applicable pre-adoption procedures in their state of residence. Prospective adoptive parent(s) who file and have approved a form I-600A, once having located the child to be adopted, must

file a petition I-600 with the appropriate U.S. consular officer or INS office abroad or with their local INS office in the United States if more convenient.

When prospective adoptive parent(s) file a petition form I-600 with a U.S. consular officer abroad after the approval of an I-600A application, the consular officer has the authority by delegation from INS to adjudicate the I-600, relying upon the approval of the I-600A for elements relating to the suitability of the parent(s) and establishing the eligibility of the child as an orphan, and compliance with any state pre-adoption requirements. If any doubt exists as to whether the petition may be approved, the consular officer must refer the petition to the appropriate overseas INS office for adjudication. A petition is clearly approvable only where primary documentation is presented which establishes the elements of eligibility. In orphan cases, there are certain possible circumstances which inherently cannot be documented by primary evidence. This could include issues such as the identity of the child, death of parent or parents, abandonment by parent or parents, disappearance or loss of, or separation from parent or parents and unconditional release by sole or surviving parent. A consular officer cannot approve an I-600 petition unless it is supported by primary evidence of all claimed elements of the eligibility of the child in question as an orphan within the meaning of section 101(b)(1)(F) of the Immigration and Nationality Act. An I-600 petition supported, in whole or in part, by secondary evidence must be referred by the U.S. consular officer to the appropriate overseas INS office for adjudication.

C. Child Who Does Not Meet the Definition of Orphan

If the child does not meet the definition of orphan under the INA, the child may qualify to enter the U.S. under section 101(b)(1)(E) of the INA based on an adoptive relationship if the child was adopted before the age of 16 **and if the child has been in the legal custody of, and has resided with, the adopting parent(s) for at least two years.** The two year legal custody and residence period requirement may take place either before or after the adoption but must take place before issuance of a visa permitting the child to enter the U.S. **This procedure should not be confused with the procedure for orphan petitions which has completely different requirements.**

D. "Proxy Adoptions"

There are no provisions in INS regulations for approving petitions signed by agents with powers of attorney. In addition, a petition cannot be approved if a married petitioner signs the I-600 on behalf of his/her spouse (even with a power of attorney). A signature on a blank I-600 later completed when the child is located abroad is invalid, and no such petition can be approved.

E. Procedures for Issuance of Immigrant Visa

Once petition procedures listed above have been completed and foreign adoption requirements taken care of, an immigrant visa application appointment will need to be scheduled by the U.S. consular officer at the U.S. embassy or consulate abroad. The officer will provide adoptive parent(s) with a list of visa requirements. Among other requirements, adopting parent(s) should be aware of the medical examination fee and the U.S. \$150.00 immigrant visa fee (which must be paid either in local currency or U.S. dollars in cash or money order, cashiers check, or certified check).

VALIDITY OF FOREIGN ADOPTION IN UNITED STATES

In most cases the formal adoption of a child in a foreign court is accepted as lawful in the United States. In some instances, it will be necessary to re-adopt the child in the United States. For example, if the adoptive parent(s) did not see the child prior to or during the full adoption proceedings abroad, the child must be brought to the U.S. to be adopted here (IR-4). **In the case of a married couple, both parents must see the child before the U.S. visa can be issued if the child is to be considered "adopted abroad". Otherwise, the parent(s) must be able to meet the pre-adoption requirements of their state of residence in order for the child to qualify for a U.S. visa to come to U.S. to be adopted here.** This is true even if a full final adoption decree has been issued in the foreign country. Adoptive parents should determine in advance the requirements of their own particular state of residence. Some states do not recognize foreign contracted adoptions, while others have a post-registration requirement to confer legality on the adoption. The office of the state Attorney General in the state capital can provide such information. If no formal adoption is required by the country of the child's origin it will definitely be necessary for the child to be adopted in the state where the parents intend to reside with the child. Of course, a child brought to the U.S. for the purpose of being adopted here, rather than a child legally adopted abroad, must be adopted in accordance with state law.

ADOPTION FRAUD The Department of State refers to INS for investigation all petitions for children whose adoptions have been arranged through private or organizational "facilitators" motivated by undue personal gain or improper profit, or other irregular practices. This policy flows from our general obligation to respect host country laws and is based on a strong desire on the part of the United States not to promote abuse of adoption procedures ("baby-selling", kidnapping, etc.), and not to permit its officials to engage in conduct that might cause

a host country to prohibit altogether further adoptions of host country children by U.S. citizens. To this end, the Department of State has consistently expressed its support for measures taken by foreign states to reduce adoption abuses.

Adoption fraud has recently been on the rise. Fraud can be perpetrated by the facilitator handling the adoption in the foreign country, especially if it is a private adoption, or by the facilitator or adoption agency in the United States. Unfortunately for adoptive parents, there exists a substantial black market trade in adoptive children. International adoptions have become a lucrative business in part because of the huge demand for adoptive infants in the United States.

The lack of state regulatory requirements for international adoption agencies has permitted unscrupulous individuals to set up businesses, often without prior experience or expertise in the area of adoptions. Exorbitant fees in the tens of thousands of dollars have been extorted from prospective adoptive parents desperate to adopt. Abuses perpetrated by these agencies and individuals have included offering for adoption a supposedly healthy child who is later found to be seriously ill, or obtaining prepayment for adoption of a child who does not actually exist. (In some countries, it is advisable to have a child considered for adoption examined by a doctor before completing adoption procedures.) Many states in the U.S. have experienced problems with such unscrupulous practitioners. Some states have moved to revoke licenses or prosecute the individuals connected with these activities after receiving complaints from adoptive parents who have been defrauded.

It should be noted, however, that by far, the majority of adoption agencies practicing in the United States are legitimate professional organizations with a wealth of experience in domestic and international adoptions. It is the continuing rise of unscrupulous practitioners, who act in violation of regulatory requirements, which taints international adoptions.

Any problems experienced by American citizens in dealing with foreign attorneys or adoption agencies who employ these foreign attorneys should be reported to the American embassy or consulate or to the Office of Citizens Consular Services at the Department of State in Washington.

Any problems experienced with agencies or intermediaries in the United States should be reported immediately to the appropriate state authorities, i.e., Health and Human Services office, police, District Attorney, Better Business Bureau, or state Attorney General's office. The

United States Immigration and Naturalization Service should also be notified of these activities.

FREQUENTLY ASKED QUESTIONS

- What Can You Do To Avoid Adoption Problems?

Contact the local office of the Immigration and Naturalization Service early in the adoption process. Request a copy of the INS publication M-249Y (Revised, 1990) "The Immigration of Adopted and Prospective Adoptive Children".

Contact the Department of State, Office of Citizens Consular Services in Washington or the U.S. embassy or consulate in the country from which you desire to adopt to obtain information on adoption practices and procedures and ascertain if there are any particular problems of which you should be aware in connection with adoption from that country.

Demand an accounting of the services for which you are paying an agency or intermediary. Find out if adoption agencies/intermediaries must be licensed in your state, and if so, whether the one you are working with is licensed. You might also check with the Better Business Bureau, Consumer Affairs Office, or similar office of your District Attorney or Attorney General's office to obtain information about the past record of the agency/intermediary you have chosen to use.

- What Can You Do About Problems Concerning an Orphan Petition for Immigration To the United States?

If your problem concerns the adjudication of an orphan petition (I-600 or I-600A), discuss the matter with the INS examiner assigned to your case. If he/she is unable to assist you, ask to speak with the INS supervisory examiner. If the supervisor is unable to help, ask to speak with the next line supervisor/manager until you have reached the District Director or Officer-in-Charge. If the local INS office is unable to assist you, contact the Regional Office that has jurisdiction over the office handling your case.

- Does an Adopted Child Automatically Acquire U.S. Citizenship?

No. However, there does exist a mechanism by which the child can be expeditiously naturalized as a citizen of the United States. As of November 14, 1986, Section 341 of the Immigration and Nationality Act (INA) was amended to add subsections (b)(1) and (b)(2) which permit an adopting parent or parents to apply to the Attorney General of the United States for a Certificate of Citizenship for an

alien adopted child. Pursuant to Subsection (b)(1), the Attorney General shall issue a Certificate of Citizenship and the adopted child shall then automatically become a naturalized U.S. citizen if the following conditions have been established:

(1) the adopting parent (and spouse, if married) are U.S. citizens.

(2) the child meets the qualifications of Section 341(c)(2) of the INA. This Section defines "child" for the purposes of naturalization. The required criteria are (a) the child be under the age of 18, (b) the child was adopted before the age of 16 by a U.S. citizen parent, and (c) is residing in the United States in the custody of the adopting parent(s) pursuant to lawful admission for permanent residence.

(3) the child is in the United States.

How to Apply

The administrative process requires that INS Form N-643 Application for Certificate of Citizenship in behalf of an Adopted Child, be filed with the INS before the child is 18 years of age. The child is not a citizen until the Form N-643 is approved and the certificate of citizenship is issued. For information, contact the INS office nearest you.

- Are There Any International Agreements on Adoption?

The United States is not a signatory to any international agreement or convention relating to international adoptions. The only existing international agreement on adoption is the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees to Adoption of November 15, 1965 which entered into force on October 10, 1978. It is only in force in the United Kingdom, Austria and Switzerland.

The Organization of American States (OAS) is in the process of drafting the Inter-American Convention on the Adoption of Minors. This draft provides in part that the courts of a nation in which the adopting parents are habitually resident may grant an adoption decree and that the adopted child's country of origin should not prevent the child from leaving the country after an adoption is granted in the absence of a public order or for police reasons. We do not expect the convention to be completed or in effect until well after 1992.

Forty nine countries, many of them countries from which children have been adopted, and ten international organizations, participated in the June 11-21, 1990 Hague Conference on Private International Law preliminary

session in preparation for the drafting of a multilateral Convention on International Cooperation in Intercountry Adoptions. The June 1990 meeting was the first of four sessions aimed at adoption of the text of a convention for signature and ratification by States (countries) by spring 1993.

- From which countries are children available for adoption?

The availability of children for adoption from particular countries can change very rapidly.

PROBLEMS For information about procedures in specific countries, please contact the appropriate geographic division of the Department of State, Office of Citizens Consular Services:

Europe and Canada Division	(202) 647-3445
Inter-American Division	(202) 647-3712
East Asia and Pacific Division	(202) 647-3675
Near Eastern and South Asia Division	(202) 647-3926
Africa Division	(202) 647-4994

General recorded information about visa procedures is available from the Department of State's Visa Office at (202) 647-0510.

For questions about U.S. visa petition procedures, contact the nearest office of the U.S. Immigration and Naturalization Service located in the Federal Government section of your telephone book under Department of Justice.



PROSPECTIVE ADOPTING PARENTS

PLEASE TAKE NOTE

-The Immigration and Nationality Act allows for the immigration of two categories of adopted foreign children; they are orphans and non-orphans. Most foreign adopted children who immigrate to the United States are classified as orphans. As an individual considering adopting a foreign child, you should remember that not all children adopted abroad qualify as orphans. Non-orphan adopted children are not eligible to immediately immigrate to the United States.

Under immigration law, the definition of orphan is broader than the common definition of orphan. Under immigration law, a foreign child may be considered an orphan if his/her parents have died or disappeared; if they have unconditionally abandoned or deserted him/her; or if he/she is separated or lost from them. Normally, abandonment involves permanent placement of the child in an orphanage. If the natural parents exercise any parental control over the child, its placement or adoption, its support, or indicate an intent to reclaim the child in the future, a finding of abandonment cannot be made.

A foreign child with one parent may be considered an orphan only if the sole or surviving parent is unable to provide proper care for the child and has, in writing, irrevocably released the child for emigration and adoption. The determination of proper care is based upon the local foreign conditions, that is, the parent must be impoverished by local standards. The fact that the living standards of the country are below standards in the United States is not sufficient to satisfy this test.

The definition of orphan guards against the splitting of intact, functioning foreign families. An orphan immigrant visa petition must be filed before the child is 16 years of age.

A non-orphan adopted child [who does not have to qualify as an orphan] is a child who has been adopted under the age of 16. The child must have resided with, and been in the legal custody of, the adopting parent(s) for at least two years prior to the filing of the immigrant visa petition.

Before you adopt a child abroad, whom you intend to bring to the United States under the orphan procedures, you should be certain that the child is an orphan under immigration law. If you have any questions, please address them to the U.S. Immigration and Naturalization Service. In overseas locations where there is no Service office, you may address your questions to the nearest American Embassy or Consulate.

Please remember:

- **Not all children adopted abroad qualify as orphans.**
- **If you adopt a non-orphan, you will not be able to bring the child into the United States until he/she has resided abroad with you and has been in your legal custody for at least two years.**
- **Ask before you adopt a child who may be ineligible to accompany you home.**
- **Only a U.S. citizen may petition for an orphan.**