

7 FAM 1790

INTER-COUNTRY ADOPTION

(CT:CON 231; 01-17-2008)
(Office of Origin: CA/OCS/PRI)

7 FAM 1791 OVERVIEW

(CT:CON 196; 10-01-2007)

- a. The first large wave of internationally adopted children arrived in the United States in the years immediately following the Korean War. Another group followed in the late 1970s, including in particular Amerasian children whose parents were U.S. service member fathers and Southeast Asian mothers. The third wave, consisting of children from Eastern Europe and the former Soviet Union, began after the fall of communism in the late 1980s and early 1990s and continues to this day.
- b. In addition to these groups of children whose adoptions were driven in large measure by geopolitical developments, U.S. citizens have adopted thousands of other children from every part of the globe. In fiscal year (FY) 2006, just as an example, the top twenty countries of origin of children adopted from outside the United States included countries in East Asia, Central and South Asia, Europe, Africa and the Americas. In the first decade of the 21st century, Africa in particular is on the rise as a region to which U.S. citizens are turning to adopt children.
- c. As inter-country adoption continues to expand and more countries of origin develop the legal frameworks and infrastructure to permit non citizens to adopt, consular officers and locally employed staff (LES) at just about every U.S. embassy and consulate are likely to receive occasional inquiries from U.S. families considering adopting a host country citizen child. In this context, it is important for consular personnel to understand that an adoption case is much more than simply the processing of an immigrant visa for an adoptive or prospective adoptive child. An inter-country adoption case involves visa, immigration and American Citizens Services (ACS) assistance to a U.S. family, while on a policy level it may be necessary for other sections of the mission to become involved in working with the host government on a variety of adoption related issues.
- d. The Hague Convention on the Protection of Children and Co operation in Respect of Inter-country Adoption (Hague Adoption Convention or

Convention) is a multilateral treaty that provides the framework of safeguards for protecting children and families involved in inter-country adoption. It was developed under the auspices of the Hague Conference on Private International Law (the Hague Conference) at The Hague, the Netherlands. The treaty was concluded May 29, 1993. The United States signed the treaty on March 31, 1994 and the President transmitted the Convention to the Senate for its advice and consent on June 11, 1998. On September 20, 2000, the Senate gave its advice and consent to the ratification of the Convention and, at the same time, Congress enacted the implementing legislation for the Convention, the Inter-country Adoption Act of 2000 (IAA). Consistent with the Senate's advice and consent, the United States could not ratify the Convention (and thus become a party to it) until it was able to carry out its obligations under the Convention, as specified by the IAA. The 7 FAM will be revised to reflect the dates when the United States deposits its instrument of ratification and when the Convention enters into force with respect to the United States.

- e. This FAM subchapter seeks to provide a broad overview of the Department's approach to inter-country adoption policy and practice and U.S. implementation of the Hague Adoption Convention.

Note on use of terms: Inter-country adoption is often called international adoption. In recent years, the community of professionals involved with the adoption of children between countries have come to prefer the term inter-country adoption over international adoption. This subchapter used to bear the title: International Adoption. That title has been updated to use the more widely accepted term inter-country adoption.

7 FAM 1792 AUTHORITIES

(CT:CON 196; 10-01-2007)

Legal authorities for consular functions and services related to inter-country adoption include:

- (1) Treaties: The Convention on Protection of Children and Co operation in Respect of Inter-country Adoption (Hague Adoption Convention) done at The Hague on May 29, 1993;
- (2) Laws:
 - (a) Inter-country Adoption Act of 2000 (IAA), Public Law 106 279, Oct. 6, 2000, 42 U.S.C. 14901 – 42 U.S.C. 14952;

- (b) Child Citizenship Act of 2000, Public Law 106-395; 114 Statutes at Large 1631, 8 U.S.C. 1431;
 - (c) Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.), 8 U.S.C 1101(b) and 8 U.S.C. 1154(d); and
 - (d) Host country laws.
- (3) Regulations:
- (a) 22 CFR Part 96 – Hague Convention on Inter-country Adoption, Inter-country Adoption Act of 2000, Accreditation of Agencies and Approval of Persons, January 15, 2006; Public Notice 5296; Federal Register Vol. 71, No. 31 pp. 8064 8161;
 - (b) 22 CFR Part 97 Inter-country Adoption—Department Issuance of Certifications in Hague Convention Adoption Cases; Public Notice 5602; Federal Register Vol. 71, No. 212, pp. 64451 64458;
 - (c) 22 CFR Part 98 Inter-country Adoption—Preservation of Convention Records; February 15, 2006; Public Notice 5297; Federal Register Vol 71, No. 31 pp. 8161 8164;
 - (d) 22 CFR Part 99 Inter-country Adoption Reporting on Non Convention and Convention Adoptions of Emigrating Children; Sept. 13, 2006; Public Notice 5539; Federal Register Vol. 71, No. 177, pp. 54001 54005; Final Rule March 6, 2007, Public Notice 5705; Federal Register Vol. 72, No. 43, pp. 9852 9854; and
 - (e) 22 CFR Part 42 – Hague Convention on Inter-country Adoption; Inter-country Adoption Act of 2000; Consular Officer Procedures in Convention Cases is pending publication of the final rule. When it is published the 7 FAM will be revised to reflect the date of publication, Public Notice number and Federal Register Volume Number, and page numbers.
- (4) Delegations of Authority:
- (a) Delegation of Authority 298 Authority to Issue Hague Adoption Certificates and Custody Declarations – April 9, 2007;
 - (b) Delegation of Authority 261 Inter-country Adoption Act of

2000 – Authority of the Secretary of State delegated to the Assistant Secretary for Consular Affairs – April 15, 2003.

7 FAM 1793 DEFINITIONS

(CT:CON 196; 10-01-2007)

The following definitions reflect, to the extent possible, the definitions found in 22 CFR Part 96, but are included here for ease of reference.

Accredited Agency. An adoption agency that has been accredited by an accrediting entity, in accordance with the standards in 22 CFR Part 96 Subpart F, to provide adoption services in the United States in cases subject to The Hague Adoption Convention.

Accrediting Entity (AE). An entity that has been designated by the Secretary (U.S. Department of State) to accredit agencies (including temporarily accredit) and approve persons or agencies for purposes of providing adoption services in the United States in cases subject to the Hague Adoption Convention.

Approved Person. A person is an individual or a private, for profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services. It does not include public domestic authorities or public foreign authorities. An approved person is one that has been approved, in accordance with the standards in subpart F of 22 CFR Part 96, by an accrediting entity to provide adoption services in the United States in cases subject to the Hague Adoption Convention.

Adoption. The judicial or administrative act that establishes a permanent legal parent child relationship between a minor and an adult who is not already the minor's legal parent and terminates the legal parent child relationship between the adoptive child and any former parents.

Adoption Service Providers (ASPs). The phrase Adoption Service Providers has a general and a specific meaning depending on whether it is used in the context of Hague or non Hague adoptions. For non Hague adoptions, ASPs are any agencies, organizations, entities, persons, practitioners, etc., assisting prospective adoptive parents through the inter-country adoption process. In the context of the Hague adoptions, adoption service providers are accredited agencies and approved persons as defined in 22 CFR Part 96 (and as reflected above).

Adoption Tracking Service (ATS). A computer system developed by the Department to track the progress of both incoming and outgoing adoption cases (i.e., cases of children both immigrating to, and emigrating from, the

U.S.), support the functions of the Central Authority, and aggregate data for mandatory reporting to the Congress. This system is sometimes called the case registry. It is designed to electronically link with the adoption data base used by the Department of Homeland Security (DHS).

Bilateral Adoptions. Intercountry adoptions occurring between the United States and a country with which the United States does not have a treaty relationship under The Hague Adoption Convention. Bilateral adoptions are also sometimes called non Hague adoptions.

Office of Children’s Issues in the Bureau of Consular Affairs, Directorate of Overseas Citizens Services (CA/OCS/CI) the office, responsible for inter-country adoption policy and implementation of the Hague Adoption Convention in the United States. It is also known as “CI.” CA/OCS/CI is responsible for the day to day work of the U.S. Central Authority under the Hague Adoption Convention and maintains the following e mail boxes.

AdoptionUSCA@state.gov. The email address of the U.S. Central Authority for the Hague Adoption Convention, Bureau of Consular Affairs, Directorate of Overseas Citizens Services, Office of Children’s Issues (CA/OCS/CI).

ASKCI@state.gov The general email address of the Bureau of Consular Affairs, Directorate of Overseas Citizens, Office of Children’s Issues (CA/OCS/CI).

Case Registry. See Adoption Tracking Service (ATS).

Central Authority. The entity designated by each Hague member country under Article 6(1) of The Hague Adoption Convention, among other things, to serve as the central point of contact for Hague adoptions. For the United States, the Department of State is the U.S. Central Authority. The responsibility for the day to day work of the Central Authority has been delegated to CA/OCS/CI.

Complaint Registry. The Hague Complaint Registry (HCR) is the internet based application created by the Department in accordance with 22 CFR Part 96 to receive, distribute, and monitor complaints from the public against accredited agencies, approved persons that raises an issue of compliance with the Hague Adoption Convention, the IAA or the regulations implementing the IAA. The Department, accrediting entities and adoption service providers are required by regulation to investigate or take action on complaints within certain periods of time.

Convention Country. A country that is a member of the Hague Adoption Convention.

Convention. In the context of 7 FAM 1790, Convention refers to the Hague

Convention on the Protection of Children and Co operation in Respect of Inter-country Adoption, done at The Hague on May 29, 1993. The Convention is also referred to as the Hague Adoption Convention. The Convention is a multilateral treaty that provides safeguards for protecting children and families involved in inter-country adoption. Both receiving countries and countries of origin have ratified or otherwise acceded to the Convention.

Country Flyers. Reports about inter-country adoption in foreign countries. They include information about restrictions on inter-country adoption in the country of origin, adoption practices and procedures, and cultural issues to take into account when adopting abroad. They are located on the travel.state.gov website under "Children and Family, Inter-country Adoption, Country Specific Information" and on post's websites.

Country of Origin (COO). The preferred way of referring to the country in which a child is resident and from which a child is emigrating in connection with his or her adoption. COOs have been called sending countries, source countries or birth countries, but these terms have fallen out of general use. For orphan visa purposes, the INA, in 8 CFR 204.3(b), defines COO as "the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States."

Disrupted Adoption/Disruption. The interruption of a placement for adoption during the post placement period (before the adoption has been legally finalized). Disruption results in the child returning to, or entering into temporary care arrangements, and in some cases, placement with a new adoptive family. Disruptions may occur either before or after the issuance of a U.S. immigrant visa and either before or after the travel of the child to the United States. A disrupted adoption thus means a placement for adoption that does not result in a finalized adoption.

Dissolved Adoption/Dissolution. The termination of the adoptive parent's parental rights after an adoption has been finalized and results in the child's return to (or entry into) other temporary care arrangements and in some cases placement with a new adoptive family. Dissolutions may occur either before or after the issuance of a U.S. immigrant visa and either before or after the travel of the child to the United States. A dissolved adoption thus means a finalized adoption where the adoptive parents' parental rights have been terminated.

Hague Adoption. An inter-country adoption between countries that have a treaty relationship under the Hague Adoption Convention.

Inter-country Adoption Act of 2000 (IAA). The U.S. implementing legislation for the Hague Adoption Convention.

Inter-country Adoption. An adoption in which the adopting family and the child being adopted permanently reside in or are citizens of different countries. Sometimes called international adoption or foreign adoption, inter-country adoption is the preferred term of art.

International Adoption. See Inter-country Adoption.

Non Hague Adoptions. See Bilateral Adoptions.

Post Adoption Reporting (PAR). A requirement by a COO to provide reports on a child during the period following the finalization of the adoption. In cases in which an adoption occurs in a Convention country and is followed by a re adoption in the United States, the relevant time period is after the adoption in the Convention country.

Post Placement Reporting (PPR). A requirement by a COO to provide reports on a child during the post placement period. Post placement means after a grant of legal custody or guardianship of a child to the prospective adoptive parent(s) (PAPs), or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption. Because the timeframe encompassed by PPR is longer than that of post adoption reporting, the PPR term is sometimes used in the non Hague context to include both types of reporting requirements.

Prospective Adoptive Parent (PAP). A person seeking to adopt a child.

Receiving Country. The preferred way of referring to the country to which a child adopted abroad is brought by the child's adoptive family.

Sending Country. See Country of Origin.

United States Central Authority (USCA): An acronym for United States Central Authority, the function under the Hague Adoption Convention assigned to the State Department and performed in large part by CA/OCS/CI. See Central Authority.

7 FAM 1794 INTRODUCTION

(CT:CON 196; 10-01-2007)

- a. Sensitivity of Inter-country Adoption: Adoption involves children in need – some in urgent need – of a loving, permanent home and family. U.S.

prospective adoptive parents who embark on the process to bring foreign born orphans and abandoned children into their families are reaching out to fulfill this need and in many cases have undergone an arduous and often frustrating journey navigating the requirements of two different countries. Recognizing the sensitivity of inter-country adoption, the Department and consular personnel abroad must often vigorously engage at both the policy and case levels to protect the interests of all parties involved: children in need, birth parents, prospective adoptive parents and adoptive parents. Also, under applicable multilateral and bilateral treaties, the United States has a broad obligation to act in the best interests of the children, even when such children are not yet U.S. citizens or where U.S. citizen children may be immigrating to another country for the purpose of adoption. In light of this obligation, the Department, at post and in Washington, DC, is oftentimes involved in child welfare and adoption matters in countries of origin and receiving countries at both the policy and case processing levels.

- b. Similarly, the intensive, consistent, and bipartisan attention the issue of inter-country adoption receives from Congress highlights the significant nature of the inter-country adoption process. Senators and Representatives frequently request the Department's assistance on behalf of their constituents. Many members of Congress closely follow developments in child welfare and inter-country adoption, including the Department's diplomatic efforts to implement effective adoption policies and to assist in individual cases. In addition, because of the highly emotional and sensitive nature of an inter-country adoption, Congressional and public affairs aspects, beyond what one might expect in the context of other immigrant visa cases, need to be considered.
- c. Shared Responsibilities for Inter-country Adoption Overseas Citizen Services and the Visa Office:
 - (1) The Office of Children's Issues (CA/OCS/CI), in the Directorate of Overseas Citizens Services, Bureau of Consular Affairs, was created in 1994 to deal in particular with the growing issue of international parental child abduction (see 7 FAM 1710), and the policy aspects of inter-country adoption.
 - (2) CI is responsible for the day to day work of the designated U.S. Central Authority for the Hague Convention on the Protection of Children and Co Operation in Respect of Inter Country Adoption (hereinafter "Hague Adoption Convention" or "Convention"), which is discussed in detail later in this chapter.
 - (3) Because adoption abroad involves both services to U.S.

citizens and immigrant visa services, Overseas Citizen Services (CA/OCS) and the Visa Office (CA/VO) share and have somewhat overlapping responsibilities in this area.

- (4) CA/VO is responsible for all aspects of the immigrant visa process, and provides instructions and guidance to posts on how adoptive or prospective adoptive parents may obtain U.S. immigrant visas for their foreign born adopted children.
 - (5) CA/OCS is responsible for policy issues, including bilateral and multilateral efforts to improve inter-country adoption norms and practices.
 - (6) Note that the U.S. Department of Homeland Security (DHS) also plays a critical role in inter-country adoption cases. DHS governs the immigrant petition approval process, including the review of the suitability and eligibility of prospective adoptive parents to adopt. DHS also admits immigrating children with immigrant visas at ports of entry.
 - (7) CA/OCS also takes the lead on implementing the requirements of the Hague Adoption Convention.
- d. A key aspect of CI's responsibilities is coordination. Inter-country adoption policy involves multiple offices and agencies, including some (depending on the country involved) that might not be intuitive, such as an overseas USAID operation or a U.S. mission to a multilateral organization such as the European Union.
- e. In coordinating adoption policy, CI works with agencies throughout U.S. federal, state and local governments, as well as with Congressional offices, foreign governments and non governmental organizations (NGOs). All of these have important roles to play in formulating adoption policy, sharing information and addressing country or case specific issues that may arise. It is critical that posts maintain excellent contacts with host government officials responsible for inter-country adoption matters and that consular personnel in particular share information on adoption related developments in the host country with CI.
- f. Hague and Non Hague Adoptions: A majority of orphaned and abandoned children adopted from abroad come from countries party to The Hague Adoption Convention. (See Definitions for Hague and non Hague/Bilateral adoptions.) As of this writing, although fewer than half of foreign adoptions arise in non Hague countries, seventy percent of all countries of origin for inter-country adoption are non Hague countries. We begin this chapter with a focus on non Hague issues in 7 FAM 1795. 7

FAM 1796 provides background and practical guidance about fulfilling Hague Adoption Convention responsibilities. 7 FAM 1797 provides guidance on general issues applicable to both Hague and non Hague cases. 7 FAM 1798 highlights communication with the public about inter-country adoption.

7 FAM 1795 GENERAL INTER-COUNTRY ADOPTION ISSUES

(CT:CON 196; 10-01-2007)

Posts are most likely to encounter inter-country adoption cases through the immigrant visa process. (See 9 FAM 42.21 for guidance on the processing of adoption immigrant visa (IV) cases.) However, adoptions also have a very strong American Citizens Services (ACS) element and thus consular managers should ensure that both IV and ACS staff are aware of local laws and procedures related to inter-country adoptions. In addition, both IV and ACS personnel should be made aware of the broad range of child welfare and adoption related issues of interest to the Department, as posts may from time to time be called upon to assist. Posts should also pass to CA/OCS/CI any local developments or trends in these areas, so that CI may work with consular staffs to respond appropriately. At some posts the U.S. DHS has officers who work with consular personnel in the petition approval process. At other posts officers work closely with regional DHS offices to process adoption cases and make orphan status determinations. Close coordination with these DHS officers is essential.

7 FAM 1795.1 Outreach and Advocacy

(CT:CON 196; 10-01-2007)

- a. Country Flyers and Special Notices: Consular sections abroad are responsible for preparing and, as necessary, updating country adoption flyers that provide prospective adoptive parents with the best and most recent information available on local adoption conditions, requirements, and practice. Flyers have a specific format and include substantial standard language in addition to the country specific information. It is therefore very important that consular sections coordinate closely with CA/OCS/CI on the drafting and updating of these flyers. In addition, consular sections may sometimes become aware of breaking developments or changes in the host country's inter-country adoption laws or procedures that the Department should publicize to the U.S. adoption community; consular sections must inform CA/OCS/CI

immediately upon becoming aware of any such changes, whether the host country is a Hague or a non Hague country. Both flyers and special notices are posted on the Consular Affairs Bureau's CA internet website and consular sections should link from their own sites to the travel.state.gov website rather than posting the information directly on the embassy/consulate site.

- b. Hague Convention Advocacy: The United States Government's goal is to ensure that all inter-country adoptions are conducted in a manner that serves the best interests of the child. The U.S. Government's opinion is that the Hague Adoption Convention provides the best mechanism for accomplishing this goal. CA/OCS/CI takes the lead in developing bilateral and multilateral strategies to encourage countries of origin not yet party to the Convention to begin the process of revising national practices to bring them in line with the Convention. and to join the Convention. During visits to Washington DC by government, non government and private sector officials from non Hague countries of origin, CA/OCS/CI officers discuss problem practices and Hague consistent safeguards and, where appropriate, coordinate technical assistance.
- c. Posts must coordinate with CA/OCS/CI their diplomatic efforts to improve inter-country adoption practice and encourage ratification and implementation of the Hague Adoption Convention in the host country, in order to prioritize use of Department resources and to maximize the effectiveness of efforts by all parties. Host country officials with questions about the Convention, its implementation in the United States, or how Hague adoptions would be conducted between the host country and the United States may visit the CI website for general information or submit specific questions to CI at AdoptionUSCA@state.gov. CI will continue to maintain and update talking points for posts' use concerning the Hague implementation process. The megatalkers section of the CA Intranet includes talking points for posts' use to encourage the ratification and implementation of the Hague Adoption Convention in host countries and for use with other foreign missions working in the same host country. If specific questions arise that aren't covered by the megatalkers, posts should suggest to CA/OCS/CI that additional talking points be added.

7 FAM 1795.2 Adoption Fraud and other Illicit Practices

(CT:CON 231; 01-17-2008)

a. In General:

- (1) As in all immigrant visa cases, consular officers adjudicating

adoption petitions must exercise due diligence, carefully scrutinizing the statements made to them and the documents presented to them. (See 9 FAM 42.21 N13.2 B(c)).

- (2) Officers must be well versed in the host country's adoption, custody and guardianship laws and procedures, and should rely on competent local authorities to make responsible decisions about the facts surrounding child custody decisions and final adoptions, not second guessing whether such authorities are correctly implementing their own laws or regulations.
- (3) At the same time, officers must keep in mind that terms used by such local authorities (such as "abandonment") may not always be equivalent to definitions for such terms in U.S. immigration law. In all cases, the requirements of U.S. immigration law must be met.

b. **Reliability of Civil Documents:** Many internationally adopted children come from countries where record keeping may be unreliable. Birth, marriage and death certificates as well as other civil documents may be easily forged or altered or real documents may be fraudulently obtained. Civil registrars and other officials may sometimes accept payment to alter such records in order to facilitate an adoption. Posts should develop good working relationships with the key local officials responsible for maintaining civil records as well as those with the authority to accept birth parent relinquishment statements. The reciprocity schedules for each country provide information on the availability and reliability of civil documents in that country. (See 9 FAM 42.21 N13.2-8 and 42.21 N12.4 3(e)). CI also encourages posts to report to CA/OCS/CI, CA/VO (Directorate of Visa Services) and CA/FPP (Office of Fraud Prevention Programs) any concerns it may have with regard to the reliability of civil documents.

See also ...

- Visa Reciprocity and Country Documents Finder on the Bureau of Consular Affairs Visa Office Intranet
- CA Fraud Prevention Programs (CA/FPP) page on the Bureau of Consular Affairs Intranet

c. **Birth Parent Fraud:** Some posts have encountered cases in which impostors presented themselves to local officials as the children's birth parents in order to relinquish "their" parental rights. In addition, U.S. citizens may seek to adopt children from countries that have recently gone through civil wars or other strife. In such situations, children may have been separated from their birth parents, sent to live with relatives,

or even placed in orphanages for temporary care until the birth parents could return for them. The Department is aware of cases in which unscrupulous individuals have attempted to take advantage of such circumstances by presenting as orphan's children whose parents' whereabouts are simply unknown. Posts in countries coming out of wars or other unrest should be particularly alert to such scenarios. (See 7 FAM 1131.5 and 9 FAM 42.21 N13.2-8.)

- d. Child Substitution: Adoption facilitators or orphanage personnel may sometimes offer to U.S. prospective adoptive parents a child who is not in fact the child whose documentation is being presented in support of the case. Consular staffs should remain alert for cases in which a child's stated date of birth does not seem to correspond to the age of the child physically present in front of them. In other scenarios, photographs of the same child may show up in multiple cases although the actual children being taken out of the country of origin are different. This latter type of fraud is especially difficult to detect since many babies may look similar and the consular facial recognition program may not detect the difference. The Department is aware of several cases, however, in which astute LES personnel recognized repeat photographs and were thereby able to prevent fraud. The Kentucky Consular Center (CA/VO/KCC) has staff members who are expert in facial recognition and photographic inspection, and posts should not hesitate to confer with KCC on questionable cases. (See 9 FAM 42.21 N13.2-8.)
- e. Combating Adoption Fraud / Demographic Statistics & Trends: Monitoring overall adoption figures can be helpful in catching problems early on, before they get out of control. Post need not be doing thousands or even hundreds of adoption visa cases per year to be concerned about adoption fraud. In fact, fraud is often easiest where both the host country officials and our own consular personnel don't see adoption cases every day. For instance, if post's immigrant visa unit only adjudicated five adoption cases in all of last fiscal year but has already seen five cases in the first four months of this year, that trend line may be worth exploring sooner rather than later.
- f. Similarly, more specific trends may indicate a more specific problem. Changes in inter-country adoption practices do occur for reasons other than fraud. All of these examples require post scrutiny:
 - (1) Some changes may not be nefarious, but indicators of the beginning of a new inter-country adoption program or a new willingness from the country of origin to permit inter-country adoptions to the United States may result in a marked change in the number of children adopted.

- (2) On the other hand, a sudden upsurge of adoptions from a particular region of the host country could indicate a corrupt local official or orphanage director.
 - (3) A large increase in the number of children younger than the average ages of previously adopted children could point to payments to pregnant women or new mothers to relinquish their children soon after birth. Such trends are indicators only, of course, and consular personnel should not view them as sufficient reason to deny cases; rather, they may mean cases require further investigation.
 - (4) Whatever the cause, post may need to use diplomatic inquiries and meetings to discuss the systemic issues with the appropriate host country child welfare officials or with representatives of other receiving countries to gain a full understanding of developing trends and to convey U.S. Government support or concern.
- g. No matter what causes a change in trend, reporting to CI in a timely fashion will help keep all interested parties in the loop.
- h. Reporting Fraud Cases, Trends and Concerns: All consular sections are required, as part of their Quarterly Fraud Reports, to include information about adoption fraud. Posts should not feel, however, that they must limit their reporting on adoption fraud to these reports or that they should not take action locally in response to concerns. Posts are encouraged to meet with appropriate country of origin officials and raise these issues at the earliest possible date, so that both governments may work together in the children’s best interests. In addition, consular sections should report to CI, FPP and VO any apparent trends or problems as they arise, rather than waiting until the next quarterly report. The CA recipients of post’s fraud information will coordinate among themselves as well as with post and DHS/USCIS to determine whether other specific action is warranted beyond post’s initial discussions with the host government. *(See 7 FAH-1 H- 900.)*
- i. CA/FPP will coordinate with the Bureau of Diplomatic Security (DS) and the Office of the Inspector General (OIG) on fraud matters in accordance with established procedures.

7 FAM 1795.3 Host Country Views of Inter-country Adoption

(CT:CON 196; 10-01-2007)

- a. As noted elsewhere in this subchapter, inter-country adoption can be an extremely sensitive issue for all parties. This includes the government and general public in the children's countries of origin. Some countries view inter-country adoption as a "safety valve" mechanism for lessening the burden on an already overtaxed child welfare system. Others, however, take it as a matter of pride that they are able to care for their own children, and react negatively to suggestions that they should join The Hague Adoption Convention or that U.S. citizen and other foreign prospective adoptive parents should be permitted to adopt local children. Posts need to remain attuned to host country sentiment, relate significant changes to the Department, and seek opportunities to demonstrate in countries with anti adoption views the positive benefits of inter-country adoption to children in need.
- b. Depending on the country in question, adoption may sometimes become a political issue, dividing host country political blocs into "pro" and "anti" camps. In some countries, certain members of parliament are known anti adoption advocates who regularly introduce legislation that would restrict or stop completely inter-country adoption. Sometimes such measures are specifically aimed at U.S. adoptions. Often, such draft legislation or other anti adoption rhetoric in political speeches or in the local media arises in response to specific high profile adoption cases. In Russia, for instance, the deaths of several Russian born children at the hands of their U.S. adoptive parents have led to repeated outcries that all U.S. adoptions be halted. Other countries, meanwhile, have enacted moratoria in response to U.S. families' non compliance with post placement and post adoption reporting requirements.
- c. In light of country of origin sensitivities, posts may want to consider whether to develop pro inter-country adoption outreach campaigns. While posts must refrain from commenting (e.g., media outreach) in detail on specific cases (in keeping with the restrictions of the Privacy Act and the confidentiality provisions of the Immigration and Nationality Act (INA)), consular sections are encouraged to work closely with their public affairs section colleagues to devise strategies for countering in general terms anti adoption propaganda. As just one example, U.S. Government funded International Visitor Leadership Programs (IVLPs) can often be used to great effect. 10 FAM 216 provides guidance about international visitor programs. CI officers routinely speak to IVLP delegations of adoption and child welfare officials, and the regional bureaus' public diplomacy offices have a great deal of experience in arranging IVLP tours that include meetings with children adopted from the IVLP participants' home countries. The specific circumstances will of course affect post's approach, and an IVLP may not be appropriate or practical in every case, but initiating and maintaining a dialogue with host government officials

and the local media can ultimately prove very beneficial for the children's best interests. All posts should consult with CI when faced with significant anti adoption sentiments in the host country.

7 FAM 1795.4 Post Adoption & Post Placement Reporting

(CT:CON 196; 10-01-2007)

- a. Defining post adoption and post placement reporting: Post adoption reporting (PAR) refers to a requirement imposed by a child's country of origin that adoptive parents or adoption service providers, even after an adoption has been concluded; submit to country of origin authorities occasional reports on the child's progress and welfare. Post placement reporting (PPR) refers to similar requirements after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s) (or, in some cases, to the adoption service provider) and before the final adoption. Some countries grant interim custody or guardianship to the adoption service provider (ASP) rather than directly to the prospective adoptive parents; in such cases, the ASP is generally liable for the post placement reports.
- b. Purpose: Countries with Post adoption reporting (PAR) and Post placement reporting (PPR) requirements say that the purpose of the reports is to receive assurance that they have not permitted their children to be placed or adopted into dangerous environments. In addition, many of these countries permit the children to maintain their country of origin citizenship until they reach adulthood, and thus these governments believe that they have a continued interest in monitoring the children's welfare. A very small number of countries have explicitly stated that they use the data obtained from the reports as one way of evaluating their own child welfare and adoption systems, including how well they prepare children for inter-country adoption. In most cases, however, country of origin governments appear simply to want ongoing confirmation that they made adoption decisions that proved to be in the children's best interests.
- c. Criteria & Procedures: The number and frequency of reports vary from country to country. Some countries want a limited number of reports, for instance at 12, 24 and 36 months after the child has immigrated to the United States. At the other extreme, a small number of countries want reports until the child reaches age 18, even if s/he was adopted as an infant. Many countries fall somewhere in between, asking for more frequent reports in the period immediately following the placement or adoption, followed by more intermittent reports as time goes on.

- d. How post adoption and post placement reporting requirements are met is equally varied. In Russia, for instance, it is the adoptive parents' U.S. adoption service provider that is responsible for ensuring that the reports get filed on time, and the agency's future Russian accreditation and authorization to operate in Russia is linked to client families' compliance. Conversely, Ukraine does not officially recognize the role of adoption service providers in the adoption process, and thus the agreement to comply with post adoption and post placement reporting requirements is made directly between the adopting families and the Ukrainian government.
- e. In addition, the mechanisms for how reports are submitted also differ from country to country. Some, as in Russia, must go through the agency. Others are sent to local child welfare officials in the region of the country of origin where the child was born or the adoption was granted. Still other countries require that adoptive parents submit the reports to the countries' consular representatives in the United States. It is vital that posts understand local PAR and PPR requirements and report them to CA/OCS/CI, so that it can assist prospective adoptive families in understanding the in some cases, significant ongoing reporting obligations that might be involved in adopting a child from a particular country. The Department relies on posts' conversations with host government officials to learn as much as possible about any PAR and PPR requirements that may exist, so that these can be incorporated into CI's country specific adoption flyers that are posted on the CI web pages of travel.state.gov to which post websites link.
- f. Enforcement of Post Adoption and Post Placement Requirements: Some countries have sought U.S. Government assistance in locating adopted children now in the United States because those children's parents reportedly failed to comply fully with PAR or PPR obligations. In response to such requests, the Department has noted that almost all internationally adopted children acquire U.S. citizenship either at the time of or shortly after their entry into the United States and thus are protected by the Privacy Act. 7 FAM 060 provides guidance regarding the Privacy Act. At least one country has attempted to use law enforcement contacts to search for the supposedly "missing" children – an approach that the U.S. Government finds inappropriate because the children are in fact residing with the only people both governments view as their legal parents and thus they are not missing.
- g. That said, as noted above, the Department encourages U.S. citizen adoptive parents to take these obligations seriously, as they may risk the ability of future U.S. citizen families and foreign children to be matched together. In 2005 and 2006, two governments imposed restrictions on

new adoption dossiers by U.S. citizen prospective adoptive parents in response to past parents' reported insufficient compliance with PAR or PPR requirements.

- h. Consular sections in countries with PAR and/or PPR requirements should work with the host government to create informational materials in English explaining the nature of the requirements, and then routinely provide these to adoptive and prospective adoptive parents at the time of the IV interview. Consular officers should also explain such requirements verbally to the parents at that same time. Consular officers should tell parents at the time of the interview about the requirements, especially if they are unclear or only provided in the local language. Posts should also inform CA/OCS/CI which countries have difficulties to include in the flyers.

7 FAM 1795.5 Disrupted and Dissolved Adoptions

(CT:CON 196; 10-01-2007)

a. Background:

- (1) Since 2005, the Department and posts have learned of a small but increasing number of cases in which U.S. citizen adoptive parents or PAPs change their minds about their inter-country adoption. In these cases, parents have decided either:
 - (a) Not to complete the adoption process in the country of origin after the child has been placed with the family, but before departing the COO;
 - (b) Not to complete the immigrant visa process for a child whom they had already adopted under the country of origin's laws;
 - (c) In the case of parents who have been granted custody of the child in the COO with the express intention of completing the adoption in the United States, return to the COO a child who entered on an immigrant visa for the purpose of completing an adoption (i.e. the parents were granted custody of the child in the COO for the express purpose of completing the adoption in the United States); or
 - (d) Return to his/her country of origin a child whom they had already adopted and taken to the United States on an immigrant visa.
- (2) Depending on the specific circumstances, these cases may be

referred to either as disrupted or dissolved adoptions, and the Department's and posts' roles in addressing them may vary greatly.

b. Terms:

- (1) **Disrupted Adoptions:** "Disruption" means the interruption of a placement during the post placement period (before the adoption has been legally finalized). Disruption results in the child returning to, or entering into, other temporary care arrangements and in some cases placement with a new adoptive family. Disruptions may occur either before or after the issuance of a U.S. immigrant visa and either before or after the travel of the child to the United States.
- (2) **Dissolved Adoptions:** "Dissolution" refers to the termination of the adoptive parent's parental rights after an adoption has been finalized and results in the child's return to or entering into other temporary care arrangements and in some cases placement with a new adoptive family. Dissolutions may occur either before or after the issuance of a U.S. immigrant visa and either before or after the travel of the child to the United States.

c. **Reasons:** Adoptive or prospective adoptive parents may have a variety of reasons for deciding not to complete an adoption or visa case or not to parent a child whose adoption they have already completed. The list below is illustrative only, and should not be interpreted as being exhaustive.

- (1) **Medical Issues:** Some U.S. families first meet the child(ren) to be adopted when they travel to the country of origin for the immigrant visa interview. Sometimes, after meeting the child in person, these parents become concerned that the child may have more serious medical conditions than those previously revealed to the family. After getting second opinions or having their doctors in the United States review more carefully the child's medical file (if such file is available), the parents conclude that they cannot raise the child. This may be due to emotional or financial considerations, or because they already have other children with special needs. In some cases, the U.S. Citizenship and Immigration Service (USCIS) did not approve the prospective adoptive parents at the "Application for Advance Processing of Orphan Petition" stage to adopt a special needs child.
- (2) **Psychological & Behavioral Issues:** The quality of foreign orphanages or foster care can vary tremendously, as can the level of interaction that children in those orphanages have with adults

and other children. Depending on these and other factors, children adopted from abroad may have difficulties assimilating into their new U.S. families and may act out against parental authority. Some children become violent towards siblings, schoolmates and pets. Some parents who are not sufficiently prepared for such behaviors, who do not have access to counseling resources, or who have tried in vain to help their children overcome these issues, may ultimately conclude that they are unable to continue parenting.

- (3) **Other Family Considerations:** In a small number of cases, the Department has become aware of U.S. couples who initiated adoption proceedings, and in some cases have completed the adoption process, but then later decided to divorce. If one or the other prospective adoptive parent no longer wishes to complete the adoption or to maintain the parental relationship following an adoption while the marriage is breaking up, the adoption may be disrupted or face dissolution.
 - (4) **The Children’s Wishes:** Some internationally adopted children, despite the best efforts of their U.S. citizen families, simply have no desire to remain in the United States. This is more common among older children, who may have left friends or biological siblings behind in the country of origin. Older children may also have ongoing ties to their extended families, particularly grandparents, who are willing to take the children back if the adoptive placement or adoption does not work out. U.S. citizen parents may be initially reluctant to undertake this step but eventually decide that it is better for them and for the child not to continue to resist the wishes of an older child who does not want to stay a part of their family.
- d. **Citizenship Considerations:** Under the Child Citizenship Act of 2000, internationally adopted children acquire citizenship automatically upon entry into the United States or upon the finalization of their adoption in the United States (whichever is later), provided the other criteria of the law are met. 7 FAM 1150 provides guidance on adjudication of citizenship claims under the Act. Consular officers should note that the U.S. Citizenship and Immigration Service (USCIS) has determined that such citizenship, once acquired, is not lost if the child’s U.S. citizen adoptive parents subsequently determine to dissolve the adoption and either turn the child over to a U.S. social services agency or return him/her to his/her country of origin. This is particularly important in the latter cases, as post American Citizen Services (ACS) section consular officers may be asked to conduct welfare and whereabouts visits or undertake other actions with regard to the U.S. citizen minor now living back in the country of origin. 7 FAM 140 provides guidance on

conducting welfare and whereabouts visits.

- e. Department and Post Actions: As the number of disrupted and dissolved adoptions coming to the Department's attention has grown, it has become clear that we have a role in assisting these families and children. Possible actions for the Department or posts to take may include:
- (1) Assisting U.S. families who contact CA/OCS/CI prior to disrupting/dissolving their adoptions in finding counseling and other resources in the United States;
 - (2) Informing state or local officials of possible disrupted/dissolved adoptions, so that such officials may review the situations and take appropriate actions to protect the children;
 - (3) Contacting government officials in the child's country of origin to determine the country's receptiveness to receiving a returned child after a dissolved adoption. Such contact should include finding out what arrangements might be made for the child's care once returned, what the country of origin considers to be the child's citizenship status, and what legal ramifications the return could have on the adoptive parents;
 - (4) Providing to the U.S. parents information obtained from host government officials about how they might dissolve a completed adoption and their continuing legal obligations, if any;
 - (5) Conducting welfare and whereabouts visits on returned U.S. citizen children and conveying to local child welfare officials any concerns about such children's ongoing well being. 7 FAM 140 provides general guidance about conducting welfare and whereabouts visits; and
 - (6) Arranging for the repatriation to the United States of U.S. citizen children when appropriate based on the facts in the case. 7 FAM 300 provides guidance about the repatriation loan program. 7 FAM 1770 provides general guidance about return of children.
- f Information Sharing and Reporting Requirements: CA/OCS/CI will report to concerned posts any information it receives regarding children whose U.S. citizen adoptive parents contact the Department and state an intention to return their adoptive children to their country of origin. CI may request posts' assistance in answering some of the questions listed at part (d) above in order to provide that information to the parents. Posts should also report to CI on any cases it learns about in which a U.S. citizen family has returned (or intends to return) an adopted child to the

country of origin.

- g. Posts should also note that while the adoption aspects of these cases fall to the Office of Children’s Issues, a returned U.S. citizen child for whom a welfare and whereabouts check is requested should be viewed primarily as an ACS case. Additionally, CA/OCS/ACS takes the lead on all repatriation cases of children whose adoption has been dissolved, with legal and policy guidance from CA/OCS/PRI (ASKPRI@state.gov) as appropriate. Requests for welfare and whereabouts visits on such children will be routed via the appropriate country officer in CA/OCS/ACS, but posts’ reports to CA/OCS/ACS should also be brought to the attention of CA/OCS/CI.

7 FAM 1795.6 Adoptions in the United States of Children Who Did Not Enter the Country on Immigrant Visas

(CT:CON 196; 10-01-2007)

- a. General: Adoption in the United States, as a family court matter, has traditionally been the purview of state and local courts rather than the federal government. State/local judges occasionally encounter adoption petitions filed on behalf of children who entered the United States other than via the immigrant visa process but whose adoptions may fall under the jurisdiction of (and be perfectly legal under) state law, regardless of the children’s immigration status. The eligibility of the child to adjust status may vary greatly and depend on a multitude of variables. 7 FAM 890 provides guidance regarding notarial services related to children who are in the United States in a temporary status.
- b. Four Common Scenarios:
 - (1) Family Adoptions: The greatest number of the cases described above involves prospective adoptive parents who are already related, either biologically or through marriage, to the children being adopted. In many cases, the children’s birth parents are still alive, living in the country of origin, and are in regular contact with their children. One common scenario is for children to travel to the United States on tourist visas for supposedly short visits with uncles/aunts, and then for those uncles/aunts to adopt the children in order that the children may remain and be educated in the United States.
 - (2) Summer Programs: Some countries of origin permit older children residing in orphanages to participate in two to three month summer

- camp programs in which the children travel to the United States and stay with host families. Depending on the country of origin and the parameters of the particular program, participating children may or may not be eligible for adoption under the laws of their countries of origin. Some programs state clearly that the children are not eligible for adoption. Other programs may permit prospective adoptive parents (PAPs) to adopt the children who are eligible for adoption after the child is returned to the COO. But no program for which children receive temporary visitor visas is authorized to permit children to be adopted during their temporary visit. They are obliged to return to the COO to initiate adoption proceedings. To the extent that PAPs ignore these obligations and the courts permit adoptions of children temporarily visiting the United States, the difficulties noted above arise.
- (3) **Medical Cases:** Similar in nature to summer programs are the cases of foreign orphans who have traveled to the United States to obtain long term medical care that they cannot receive in their countries of origin. Children with chronic illnesses, birth defects or traumatic injuries (such as extensive burns or a need for prostheses) often receive tourist visas, travel to the United States for care, and live for extended periods with U.S. host families. Such arrangements occur with the consent of country of origin officials, who may require host families to agree in writing that they will not attempt to adopt the children during the children's time in the United States. Non governmental, medical or religious organizations are also often involved in such cases as sponsors, sometimes paying for the treatment. Host families become understandably attached to the children who are staying with them and may seek to adopt them. Depending on the nature of the children's medical needs and how long a sponsoring organization is willing to pay for care, one consideration in the host families' thinking may also be the children's eligibility for health insurance.
- (4) **Unaccompanied Minors:** Probably the smallest sub group of cases discussed in this section involves foreign born children who come to the attention of U.S. state/local social services agencies after having been orphaned or abandoned by their birth parents. In some instances, the children's parents were in the United States illegally and have been deported. In others, how the children entered the United States is not known. While practices of course vary among jurisdictions, U.S. social services agencies may take these children into the child welfare system, place them with foster families, and eventually consider permitting them to be adopted.

- c. **Consular Involvement:** The Department may learn about such cases from a number of different sources, including state/local judges, foreign government officials, the prospective adoptive families themselves, or the media. Overseas posts that learn of these cases should bring them to the attention of CA/OCS/CI, including both the facts as known and the source of the information. CA/OCS/CI will inform post of cases involving the host country that are pending the United States and seek post's input/guidance on possible COO reaction.
- d. **Immigration Considerations:** The ramifications of immigration law in cases involving the adoption scenarios noted in part (b) above are critical. Although USCIS may eventually be able to adjust the status of such adopted children, this will not be true in all cases, and the finalization of an adoption in a U.S. court may not, in and of itself, be sufficient to confer an immigration benefit on the children. Assisting parties to such adoptions in understanding immigration issues, where appropriate, may help them avoid serious problems down the road.
- e. **Liaison with Host Governments:** Posts may be asked to discuss the cases with country of origin government officials to determine how such situations would be viewed. These cases have the very real potential of undermining the U.S. Government's inter-country adoption goals with specific countries of origin, depending on how widely the cases become known and how they are portrayed by local politicians and the media. Particularly in cases where children are in the United States for medical care or as participants in short term summer programs, officials in the children's countries of origin may view the completion of a U.S. adoption as an intentional flouting of their own laws and usurping of that government's authority to take decisions regarding the placement and well being of its citizen children. Some countries may even demand that the children be returned to the country of origin in order for the U.S. prospective adoptive parents to go through the adoption process there as if the U.S. adoption had never occurred. Although countries of origin have little recourse for enforcing such requirements, the Department has on occasion intervened with local U.S. authorities to note the larger considerations and has successfully arranged for the children's return to their countries of origin.

7 FAM 1796 HAGUE CONVENTION ADOPTIONS

(CT:CON 196; 10-01-2007)

Adoptions involving parents and children residing in countries party to the

Hague Convention on Protection of Children and Co operation in Respect of Inter-country Adoption (the Hague Adoption Convention or the Convention) with whom the United States has a treaty relationship under the Convention are covered by the Convention and are subject to the law and regulations implementing the Convention in the United States. (See 7 FAM 1791.)

7 FAM 1796.1 Background: The IAA and the Accreditation System

(CT:CON 196; 10-01-2007)

- a. The Accreditation System in the IAA: Prior to passage of the IAA, State licensing law alone governed most aspects of inter-country adoption. The IAA established how the United States would meet its obligations under the Convention. It created a system of accreditation and approval of Adoption Service Providers through accrediting entities selected and designated by the Department. The IAA defined when an ASP needed to be accredited or approved to provide a particular adoption service and created a new category of adopted child eligible for a visa to immigrate to the United States (INA 101(b)(1)(G), 8 U.S.C. 1101(b)(1)(G)). The IAA sets forth the Department's oversight responsibilities and creates a system of adverse actions that may be taken against ASPs who fail to substantially comply with published inter-country adoption regulations.
- b. Department Inter-country Adoption Regulations: The Department published new regulations governing many aspects of inter-country adoption to implement the Convention pursuant to the IAA. The regulations govern accreditation and approval of adoption service providers, creation and retention of adoption records, revisions to the orphan visa process (see 9 FAM 42.21 N14) for changes to visa procedures consistent with 22 CFR Part 42, reporting of adoptions of emigrating children and the creation and production of Hague Adoption Certificates and Hague Custody Declarations. The regulatory framework and responsibilities outlined in the following sections of this subchapter illustrate the broad impact of the IAA and the Department's implementing regulations on the Department and on consular officers at U.S. embassies and consulates.

7 FAM 1796.2 Central Authority Functions

(CT:CON 196; 10-01-2007)

- a. Section 101 of the IAA designates the Department as the U.S. Central Authority for purposes of the Convention, and the Secretary as head of

the Central Authority. Section 102 sets forth the responsibilities of the Secretary. (As noted above, these responsibilities have been delegated to the Assistant Secretary for Consular Affairs. See Delegation of Authority 261.) These responsibilities include liaison with Central Authorities in other Convention countries and coordination of activities under the Convention by all parties subject to U.S. jurisdiction.

- b. In addition, the IAA requires the Department to provide information to other Convention countries including information concerning accredited agencies and approved persons, and Federal and State laws relevant to implementing the Convention.
- c. The Department must also ask each Convention country to specify any requirements regarding adoption, including restrictions on eligibility of persons to adopt, and then inform Federal agencies and State courts about, for example, persons authorized to perform Convention functions in each such country. The Department will request Convention information from consular officers on an as needed basis.
- d. Another role mandated by the IAA is monitoring individual Hague adoptions involving U.S. citizens. CA/OCS/CI must provide effective and appropriate liaison with other Central Authorities; it collects and disseminates information, and monitors and facilitates Hague adoptions, as appropriate, by a variety of means including, but not limited to, the following:
 - (1) Direct contact with counterpart Central Authorities in Convention countries;
 - (2) Liaison with diplomatic offices of Convention countries in Washington;
 - (3) Coordination with U.S. embassies and consulates to contact Central Authority counterparts, as appropriate;
 - (4) Liaison with the Permanent Bureau of the Hague Conference on Private International Law;
 - (5) Inclusion of Convention country of origin requirements in CA/OCS/CI's adoption flyers; and
 - (6) Provision of updated information on accreditation and approval and adverse actions to the Hague Permanent Bureau for immediate posting on its website to ensure this information is immediately available to all Convention country central authorities.
- e. On behalf of prospective adoptive parents, CA/OCS/CI may also provide

the following services:

- (1) Maintaining email listservs (AdoptionUSCA@state.gov, AskCI@state.gov) to give the public information about cases of concern;
- (2) Facilitating communication between prospective adoptive parents and officials in other Convention countries;
- (3) Intervening, as appropriate, in cases that come to the Department's attention through the Hague Complaint Registry; and
- (4) Intervening, as appropriate, in cases that come to the Department's attention from foreign Central Authorities.

7 FAM 1796.3 Accreditation and Approval of Adoption Service Providers (22 CFR Part 96)

(CT:CON 196; 10-01-2007)

- a. National Standards for Hague Adoption Service Providers: The Department published its final regulations on accrediting and approving adoption service providers, 22 CFR Part 96, in February 2006. This new set of regulations was the culmination of six years of consultations with and comment from the U.S. adoption community, U.S. child protection professionals, Congressional staffers, and the public at large. It lays out the process and standards for accrediting and approving adoption service providers by the designated accrediting entities.
- b. Accrediting Entity Responsibilities: The Department designated two accrediting entities (AEs) in 2006, the Council on Accreditation and the State of Colorado's Department of Human Services. AEs operate under Memoranda of Agreement signed with the Department. AEs receive applications from adoption service providers (ASPs) for accreditation or approval (and temporary accreditation during the initial accreditation period), evaluate applicants, accredit/approve those adoption service providers that are in substantial compliance with the accreditation/approval standards, monitor ASP compliance with the IAA and the accreditation regulations following accreditation/approval, and take adverse action as appropriate against those ASPs that fall out of substantial compliance. Pursuant to the MOAs, AEs must coordinate closely with the Department through CA/OCS/CI. Note that during the initial accreditation period, all references to accredited agencies in this chapter of the FAM include those agencies that have received temporary accreditation. Posts with inquiries concerning AE actions or functions

must direct them to CA/OCS/CI (AdoptionUSCA@state.gov).

- c. CA/OCS/CI Hague Adoption Oversight Responsibilities: CI is the office responsible for providing Department oversight of the AEs. It must ensure that accrediting entities fulfill their duties as outlined in 22 CFR Part 96 and in the MOAs. CI accomplishes this oversight responsibility by coordinating closely with the AEs, following up on complaints against AEs, requiring corrective action as appropriate, and taking adverse action as defined in 22 CFR Part 96 when warranted. In addition, CI coordinates with all necessary Department offices regarding any changes to AE procedures requiring Department approval.
- d. Taking adverse action against Hague Adoption Service Providers: CA/OCS/CI takes the lead in recommending adverse action against ASPs in accordance with 22 CFR Part 96 when AEs fail to take appropriate adverse action or when it deems action on the Department's own initiative is appropriate.
- e. What Accreditation Means to the Consular Officer Abroad: In practical terms, every ASP who works on a Hague adoption must be accredited or approved or supervised by an accredited agency or approved person or exempt from the requirement of accreditation. In many cases post will work directly with an accredited agency or approved person. Post will also encounter cases handled by supervised providers, who themselves do not have to be accredited or approved, but should act in accordance with the relevant regulations. Failure to do so puts the accreditation of the supervising agency/person at risk. Thus, the supervising agency or person has a strong incentive to ensure that its supervised provider adheres to the standards. A list of accredited agencies and approved persons will be posted on the travel.state.gov website and will be updated as changes occur.
- f. Similarly, accredited agencies and approved persons may use foreign providers in the country of origin, including foreign supervised providers, pursuant to the standards laid out in 22 CFR Part 96. In many cases, foreign supervised providers will interact most frequently with post's consular section.
- g. Prospective adoptive parents should be aware of the accreditation and approval regulations and post can direct inquiries from prospective adoptive parents who contact them to informational materials highlighting the importance of accreditation and the Hague inter-country adoption standards. See, for example, the booklet entitled: A Guide for Prospective Adoptive Parents.
- h. Keeping the Department Informed: About actions not in compliance with

Hague Adoption Regulations: 22 CFR Part 96 places the burden of determining whether ASPs are in substantial compliance with the standards squarely on the AEs. This includes ensuring that accredited or approved ASPs provide effective supervision of their foreign supervised providers. When Embassies or Consulates in Hague countries become aware of questionable practices or patterns of behavior not consistent with the Convention, the IAA or the standards in 22 CFR 96.29 through 96.55, Federal Register Notice, Subpart F, pp. 8141–8152 and 96.95 through 96.111, Federal Register Notice, Subpart N, pp. 8158-8161, they must share such information with CA/OCS/CI at AdoptionUSCA@state.gov, as soon as it becomes available so that CI may initiate appropriate action. Posts can also use current procedures to report issues of concern to the Department. Posts will have access to substantiated reports filed against approved persons or agencies operating in their jurisdictions that were received through the complaint registry.

- i. Assisting the Department to Confirm Information about Improper Actions: Through complaints or other sources, the Department may become aware of actions by ASPs or their foreign supervised providers that are not in compliance with Hague standards. In such cases, CA/OCS/CI may request that posts seek confirmation or other related information about the alleged actions, which it will then use to take appropriate action. Information gained through such investigations is sensitive in nature and could be critical to assisting the AEs to meet their obligations under their Memoranda of Understanding with the Department. Posts receiving such requests must seek confirmation or take other appropriate investigative action, consistent with post resources, in a timely manner, and provide the resulting information to CA/OCS/CI for review and action.

7 FAM 1796.4 Convention Records (22 CFR Part 98)

(CT:CON 196; 10-01-2007)

- a. 22 CFR Part 98 implements the IAA requirement for rules governing preservation of Convention records, and requires that the Departments of State and Homeland Security preserve Convention records as defined in the regulation for 75 years.
- b. Preserving Convention Records generated or received by the Department: As defined in 22 CFR 98.1, Convention record is any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, including the information contained in the Adoption Tracking Service, a photograph, an audio or video tape, or any

other information storage medium of any type whatsoever that contains information about a specific past, current, or prospective adoption covered by the Convention (regardless of whether the adoption was made final) that has been generated or received by the Department or DHS. It includes a record, generated or received by the Department or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Department or DHS performs a Central Authority function. All Department offices which generate or receive such records must preserve them for the required 75 years, as prescribed in 22 CFR Part 98.

- c. Preserving Convention Records Generated or Received by Posts: The preservation requirements for Convention records apply not only to records generated or received in the Department. They apply also to Convention records, as defined above in paragraph b, received or generated by posts. The electronic collection of Convention case data in the immigrant visa data base and the Adoption Tracking Service – even those data collected abroad – will be archived by the Department. All other electronic and physical records received or generated at posts shall be sent for appropriate archiving as directed in the relevant Records Disposition Schedule.

7 FAM 1796.5 Hague Adoptions - Incoming Cases (Child Immigrating to the United States) - New Processes and Certificates (22 CFR Part 42 and 22 CFR Part 97)

(CT:CON 231; 01-17-2008)

- a. INA 101(b)(1)(G), 8 U.S.C. 1101(b)(1)(G): The IAA makes two significant changes to the Immigration and Nationality Act (INA): it creates a new definition of child applicable to Hague adoptions, INA 101(b)(1)(G) ("*Convention adoptee*"). It also incorporates Hague procedures into the immigration process for children covered by INA 101(b)(1)(G), most directly by precluding approval of an immigration petition under this classification until the Department has certified that the Central Authority of the child's country of origin has notified it that the child was adopted in accordance with the Convention and the IAA. Of critical importance is the provision in the Department's implementing regulation which will be codified in 22 CFR 42.24 (under development), that a child habitually resident in a country that has a treaty relationship with the United States under the Convention who is traveling to the United States in connection with an adoption must qualify for visa status under the provisions of 101(b)(1)(G) and will not be accorded status

under 101(b)(1)(F).

- b. Certificate Requirements in Incoming Cases (Child Immigrating to the United States) – Consular Officer Responsibilities: Incoming Hague adoptions are those where children are immigrating to the United States from other Hague countries. 22 CFR Part 42 adapts the immigrant visa process to the requirements of the Convention and the IAA. See 9 FAM 42.21 N14 for Hague orphan visa procedures. Its provisions incorporate the certification requirements of IAA Section 301(a) and INA section 204(d)(2), 8 U.S.C. 1154(d)(2). 22 CFR Part 42 provides that, following notification from the Hague country of origin that the adoption or grant of custody has occurred, and before issuance of an immigrant visa for the child, the consular officer, if satisfied that the adoption or grant of custody met the requirements of the IAA and the Convention, must affix a certificate to the adoption decree or grant of custody so indicating. *(This subchapter implements in the FAM changes made in the newly published revised regulations, 22 CFR Part 42.24(j), published at Federal Register Volume 72, No. 209, October 30, 2007, pages 61301-61306 (Public Notice 5976)).* 22 CFR Part 42.24(j) provides guidance on how to determine whether the requirements of the IAA and the Hague Adoption Convention have been met and those provisions are incorporated into 9 FAM. The certificate itself will be generated automatically by the Immigrant Visas Overseas system (IVO) as a controlled step in the process of issuing the immigrant visa at post. The Office of Field Support Liaison, Bureau of Consular Affairs, Directorate of Visa Services (CA/VO/F), is responsible for questions and concerns relating to the issuance of Hague Adoption Certificates and Hague Custody Declarations and the retention of copies of issued certificates.
- c. Incoming Case Hague Adoption Process: The Hague immigrant visa process for incoming (immigrating) cases varies significantly from the non Hague immigrant visa process, as outlined in 22 CFR Part 42. See the Reciprocity Schedule for the country of origin. The Reciprocity Schedule for each Convention country of origin lists all the required documents for establishing a child’s eligibility for inter-country adoption.

Note:

COO changes to the adoption process may happen quickly. Consular officers must share changes they learn about quickly with VO and CA/OCS/CI so the Reciprocity Schedules can be updated and kept current.

7 FAM 1796.6 Hague Adoptions - Outgoing Cases (Child Emigrating from the United States)- New

Processes, Certificates and Declarations, and Reporting (22 CFR Parts 97 and 99)

(CT:CON 196; 10-01-2007)

a. Outgoing Cases – Another New Role for the Department:

- (1) Because the Hague Convention covers both incoming and outgoing adoptions between Convention countries, the IAA created new national requirements for outgoing cases. Subsequently, the Department promulgated regulations to incorporate these new requirements, as described in the following sections.
- (2) In addition to the rules governing individual Hague adoptions, both incoming and outgoing, the Department is also responsible for reporting to Congress about all outgoing adoptions, both Hague and Non Hague. An example of an outgoing case is as follows:
 - (a) Prospective adoptive parents residing in Canada have found a child in the United States in need of a permanent home and wish to adopt her.
 - (b) Since Canada is a Hague country, the Convention applies in this case and, therefore, the regulations concerning Hague adoptions also apply.
 - (c) The adoptive parents must work with accredited agencies or approved persons or appropriate State government authority throughout the adoption process (22 CFR Part 96).
 - (d) The adoption itself is governed by State law and the process for completing it will be the process of that State.
 - (e) Obtaining Hague Adoption Certificates or Hague Custody Declarations that the adoption or grant of custody for the purpose of adoption have met Convention requirements are the subject of 22 CFR Part 97.
 - (f) Reporting about Hague adoptions, as well as non Hague adoptions, for children emigrating from the United States is the subject of 22 CFR Part 99.

b. Outgoing Case Hague Adoption Process (Child Emigrating from the United States):

- (1) Outgoing cases involve children adopted in the United States or children with a grant of custody for the purpose of emigration and

adoption whose parents reside in a Convention country and who are emigrating to a Convention country.

- (2) These adoption cases are subject to the Convention; agencies or persons engaged in assisting prospective adoptive parents such outgoing cases must be accredited and be in substantial compliance with the standards in 22 CFR Part 96.
- (3) The actual process of adoption in these cases is governed by applicable U.S. State law and practice. State laws governing such adoptions may be found at the website of HHS' Child Welfare Information Gateway.

c. Hague Adoption Certificates and Hague Custody Declarations in Outgoing Cases:

- (1) Any party to an outgoing Convention adoption or custody proceeding may apply for a Hague Adoption Certificate or a Hague Custody Declaration. These cases involve a child adopted in the United States and immigrating to another Convention country, or a child who is the subject of a grant of custody from a U.S. public authority for the purpose of finalizing an adoption in another Hague country.
- (2) 22 CFR Part 97 sets forth the requirements for each type of document.
- (3) CA/OCS/CI, as the U.S. Central Authority, is responsible for receiving applications for both types of document, preparing them for adjudication, and returning them to the applicants; the CA/OCS Deputy Assistant Secretary (DAS) will adjudicate the applications.
- (4) While 22 CFR Part 97 does not specify a required time frame for completing this certificate process, CI must make every effort to complete the process as quickly as possible. Where practical, CI shall use fax or other electronic means to receive applications and supporting documentation to facilitate the process.

d. Reporting on Outgoing Adoptions (22 CFR Part 99):

- (1) The IAA requires creation of a case registry that includes information on children adopted in the United States, or for whom custody has been granted in the United States for the purpose of immigrating to a country abroad.
- (2) This Case Registry is part of the automated Adoptions Tracking Service (ATS).

- (3) The Congress also imposed new reporting requirements regarding information collection on all emigrating children, including both Hague and non Hague adoptions.
- (4) 22 CFR Part 99 addresses collecting information about emigrating children and places the burden of providing this information to the Department on public entities and others involved in outgoing adoption cases.
- (5) CA/OCS/CI shall make appropriate efforts to inform these parties of their new regulatory requirements. Accredited or approved adoption service providers will enter data required by 22 CFR Part 99 directly into the ATS. In some cases, CA/OCS/CI will receive data required by 22 CFR Part 99 and enter it directly into the ATS.

7 FAM 1797 COMMUNICATING WITH THE DEPARTMENT ABOUT INTER-COUNTRY ADOPTION

(CT:CON 196; 10-01-2007)

- a. In order to provide the best possible service to prospective adoptive parents, posts need to know where to go for assistance and guidance on adoption issues and processing.
- b. TAGS: All cables concerning adoption issues shall include both the "CVIS" and "KOCI" tags to ensure delivery to appropriate offices within both CA/VO and CA/OCS/CI. In addition, cables containing information about inter-country adoption fraud should include the KFRD tags to ensure the information reaches CA/FPP.
- c. Immigrant Visa Process Questions to CA/VO: If you are not sure about how to process a visa for children adopted abroad, ask the Office of Field Support Liaison, Post Liaison Division, CA/VO/F/P, for assistance. Posts covered by a Regional Consular Officer (RCO) may wish to pose their questions, including questions on the basic "how to" of handling an orphan or Hague adoption petition, first to their RCO or at least include the RCO on e mail and/or telegraphic correspondence with CA/VO/F/P. Questions concerning whether a child meets the U.S. legal definition of an orphan, the proper visa classification of a case, as well as those regarding potential ineligibilities, may be sent to the Advisory Opinions Division of the Office of Legislation, Regulations, and Advisory Assistance, CA/VO/L/A, as advisory opinion requests. Prior consultations with CA/VO can accomplish two things:

- (1) Let the consular officers at post know ahead of time whether the case appears to rise to a standard with which DHS will agree; and
- (2) Help posts draft revocation memos that DHS is more likely to support.

d. Inquiries from Host Governments:

- (1) Posts sometimes receive inquiries about U.S. inter-country adoption policy from host governments. Such inquiries should generally be directed to CA/OCS/CI for a coordinated response.
- (2) In some cases, such requests are routine requests for clarification of Department policies and procedures. Posts may answer these inquiries directly without forwarding them to CA/OCS/CI when using information available on the Department's website.
- (4) The Department encourages posts to inform CA/OCS/CI of its liaison activities with host country adoption officials, particularly with the Central Authority if one exists. Consular officers can determine whether a country is party to the Convention on the Hague Permanent Bureau Adoption Convention Website status table.

7 FAM 1798 COMMUNICATING WITH THE PUBLIC ABOUT INTER-COUNTRY ADOPTION, BOTH HAGUE AND NON HAGUE COUNTRIES

(CT:CON 231; 01-17-2008)

- a. Bureau of Consular Affairs Internet Website: The Bureau of Consular Affairs Internet website contains a large amount of regularly updated, useful information that will help prospective adoptive parents. Any U.S. citizen thinking of adopting overseas should be directed to the website's material that, among other things, outlines what the Department can and cannot do to assist prospective adoptive parents. The booklet also explains the role of USCIS in adoption cases, the U.S. legal definition of an orphan, and the non Hague immigrant visa petition process. The website also has extensive information on Hague adoption rules, the definition of a *Convention adoptee*, the Hague adoption process, and country specific notices.

See:

- Hague Convention on Inter-country Adoptions A Guide to Prospective Adoptive Parents
- CA International Adoption Internet page
- CA International Adoption Country Specific Flyers

b. Country Adoption Information – Country Flyers: Country flyers, also on the travel.state.gov website, provide country specific information on foreign adoption regulations and requirements. CA/OCS/CI is responsible for preparing, updating, and disseminating information on adoption requirements in foreign countries. Posts should first direct inquirers to the travel.state.gov website for general information on inter-country adoption or to the toll free call center, which has access to the same information. The call center can be reached at 888-407-4747 (toll free) or 202-736-9099 (multiple lines, but a toll call). For case specific questions, inquiries may be made through CA/OCS/CI's public email address: askci@state.gov. Case specific Hague adoption inquiries may also be submitted to AdoptionUSCA@state.gov.

Note: The country specific information found in the country adoption flyers is also useful to posts when processing an immigrant visa case that involves a third country adoption.

- c. State Adoption Laws: When processing immigrant visa cases related to adoption, consular officers sometimes encounter questions relating to U.S. state adoption laws, particularly concerning state requirements after the adoption or grant of custody has been finalized in the country of origin including which office in a given State is responsible for adoption. Information on state legal requirements and a wide variety of related information is available on the website of HHS' Child Welfare Information Gateway.
- d. Finding Specific Information in the Department: Posts with questions about where to turn to answer specific questions from the public should refer to the "Who's Who in CA" listing on the Bureau of Consular Affairs intranet site that includes officer portfolios and numbers for internal Department use. Officers assigned to posts with significant adoption workloads or with challenging adoption issues are encouraged to arrange consultations with CA/OCS/CI and with CA/VO/F/P prior to departure for post or when in Washington DC on other business.

See: CA Intranet CAWeb:

- Who's Who in OCS

- Who's Who in VO

e. Public Complaints about Hague adoptions: Posts must refer complaints about adoption service providers to the relevant adoption service provider itself for resolution. The Department maintains an internet based complaint registry (Hague Complaint Registry or HCR) dedicated for use by the public to submit complaints about any aspect of a Hague adoption or conduct by any person or entity involved with a Hague adoption that raise an issue of compliance with the Hague Convention, the IAA, or the regulations implementing the IAA, including the accreditation standards. Any person may lodge a complaint against an accredited or approved adoption service provider including complaints concerning their use of supervised providers. CA/OCS/CI and the accrediting entities are required to follow up on all complaints within a specified period of time and may, when warranted, take action against an accredited or approved service provider. A link to the complaint registry and guidelines for its use may be found on the Bureau of Consular Affairs travel.state.gov web page.

See:

- CA Internet link to the complaint registry (under development)

7 FAM 1799 KEY U.S. GOVERNMENT INTERNET PAGES ON INTER-COUNTRY ADOPTION

(CT:CON 196; 10-01-2007)

U.S. Department of State Bureau of Consular Affairs

- Hague Convention on Inter-country Adoptions A Guide to Prospective Adoptive Parents
- CA International Adoption Internet page
- CA International Adoption Country Specific Flyers
- CA Hague Convention on Inter Country Adoption
- CA Hague Implementation
- CA Inter-country Adoption Important Notices

- Orphan Visa Statistics
- CA Other Sources of Information

Contact Information

- Visas – Adopting a Child

Family Liaison Office

- Inter-country Adoption Guidelines for the Foreign Service Family

U.S. Department of Homeland Security U.S. Citizenship and Immigration Services (USCIS)_

- USCIS Inter-country Adoptions

U.S. Department of Health and Human Services Administration for Children and Families (HHS/ACF)

- HHS' Child Welfare Information Gateway

Federal Citizen Information Center

- General Services Administration International Adoptions
- International Adoptions – Differences to Expect