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INTERNATIONAL ADOPTION – HIGHLIGHTS

International adoption was virtually unknown in the U.S. until after World War II. Initially, orphaned or displaced children from European countries subsequent to WWII were the first placements; many of these children were never actually adopted and remained in foster care. Beginning in the 1950's, more children were actually adopted; and children began to come to the U.S. for adoption from Asian countries, particularly beginning with Korea. International adoption expanded, with increasing adoptions from Latin American and other Asian countries. Currently children are adopted into the U.S. from all over the world.

International Adoption begun before April 1, 2008 (implementation of the Hague) and current adoption from non-Hague countries – typically, the INA 101(b)(1)(F) "orphan" process

Adoptive parents work with an adoption agency which handles international adoption. They must be approved by their agency, with an approved homestudy; and they must select the country from which they seek to adopt, preparing the appropriate paperwork which will be required by that country.

They proceed with form I-600A (Application for advance processing of orphan petition). A specific child is identified, and a referral is sent; if the prospective adoptive parents accept the referral, they proceed with I-600 (petition to classify orphan as an immediate relative). Depending upon the country, the adoptive parents will typically travel to receive child (with some countries, such as Russia, the adoptive parents may have to travel more than once); but with some countries the child may be escorted to them in the U.S. They petition for an immigrant visa for the child. This must be done before age 16.

Strict definition of the 'orphan' status can preclude some specific placement situations. Birth parents can not select specific adoptive parents; but can place with an orphanage for international placement.

The manner in which the adoption is handled in the sending country varies. If the child's adoption is finalized in the court of the sending country, the child enters the US with an IR-3 visa stamp in their foreign passport; and the child acquires U.S. citizenship at the time they enter the US. A "readoption" once the child is home in the U.S., is not required but can be helpful for the future.

If the child's adoption if not fully finalized in the sending country, then the adoption must be finalized or a "re-adoption" (also termed domestication of the adoption) must be completed in the U.S. in order to finish the adoption. In these cases, the child enters the U.S. with an IR-4 visa stamp in their foreign passport. The child acquires lawful permanent resident status upon entry; but does not acquire citizenship unless and until the re-adoption is done in the U.S.

Attorneys here in the U.S., are often not necessary or involved in these international adoption cases.

Disruption problems: we have seen a number of cases where the child enters on an IR-4, the "re-adoption" is never done; and anywhere from months to years later the adopting parents wish to disrupt the placement and place the child with different parents. The critical first step in doing so, is typically to first go through the re-adoption process in order to get the child citizenship. However, completing an adoption where the adoptive parent has no intent on parenting/raising the child, raises questions. It must be fully disclosed to the court. Often the court will grant the re-adoption as long as it is part of an already-decided-upon plan for the child's placement; such as we have had cases where the re-adoption is done; immediately followed by a consent to adoption or termination of parental rights; and then immediately the child is re-placed with new, subsequent adoptive parents and the court is fully aware of the plan.

Pipeline cases: there may, depending upon the country, be cases where the adoptive parents initiated their adoption and filed their I-600A prior to the April 1, 2008 date upon which the U.S. implemented the Hague. These cases may be treated as non-Hague cases and processed accordingly.

Documentation problems: it is not uncommon for there to be problems with documentation related to the children; such as passports listing the wrong names and/or genders; documentation using an erroneous age or birthdate; and we've even seen "switched babies" cases. In such cases it is often advisable to involve an attorney and through the U.S. juvenile court doing the finalization or 're-adoption', obtain the necessary orders to ensure the U.S. paperwork will be correct as to name, gender, date of birth, etc.

International Adoption After April 1, 2008 – Hague Convention on Intercountry Adoptions – the INA §101(b)(1)(G) process

On April 1, 2008, the U.S. implemented the Hague Convention on Intercountry Adoptions. Intended to provide more safeguards and assurances of competent, ethical services which meet the best interests of children traveling for purposes of adoption, it in some ways significantly changes the way international adoption occurs. Essentially, now, there are two "tracks" of international adoption in the U.S. – "non-Hague" cases as described above (those begun prior to the Hague's implementation, or those from non-Hague countries); and "Hague" cases.

The first question which must be answered, is whether the prospective adoptive parents are "habitually resident" in the U.S. (which can include U.S. citizens residing abroad in some circumstances); and also whether the sending country is a Hague signatory. As a place to start, the U.S. Department of State website maintains a current listing of countries which have implemented the Hague. http://adoption.state.gov/hague/overview/countries.html

If the sending country is a signatory to the Hague, then the adoption must proceed in compliance with the Hague. Numerous regulations and requirements apply. The next critical question is ensuring that the adoption agency is accredited pursuant to the Hague. *Only Hague-accredited agencies may proceed with adoptive placements under the Hague*. The cost and burden of becoming Hague-accredited has led to some smaller agencies "dropping out" of international adoption placements. To determine whether an entity is Hague accredited, visit: http://adoption.state.gov/hague/accreditation/agencies.html

Summarized very simply, similarly to the 'old process' the adoptive parents must work with their agency to be approved, complete a homestudy, and prepare other paperwork. Then, in order to proceed, the prospective adoptive parents file the I-800A, (application for determination of suitability to adopt a child from a convention country). A child is then identified and referred and information is provided; if the prospective adoptive parents accept the referral they then file the I-800 (petition to classify convention adoptee as an immediate relative). If the I-800 is provisionally approved; then the consular officer notifies the Central Authority of an Article 5 determination authorizing the family to proceed; then the adoption or guardianship in the foreign country may be sought. Then the visa is sought.

Then, again similarly to the 'old process,' the question becomes whether the adoption is finalized in the sending country. If so, the child enters the U.S. on an IH-3 visa; acquiring citizenship automatically upon entry to the U.S. In such cases the child should automatically be sent a Certificate of Citizenship by the USCIS. If the adoption must be finalized in the U.S., the child enters on an IH-4 visa. The child does not automatically acquire U.S. citizenship upon *entry*; but is a lawful permanent resident until the adoption is finalized in the U.S. At that point, then the child acquires citizenship.

Notable changes due to the Hague include the fact that the Hague's definition of an "adoptable child" is broader than the previous "orphan" definition; that children can be released by two living birth parents for adoption; and significantly include a prohibition on any contact between the adoptive parents and the birth parents prior to the adoption.

The U.S. as an Outgoing Country

While not terribly common, the U.S. does actually place children for adoption in other countries. Some U.S. agencies are accredited as outgoing pursuant to the Hague and do place kids outside the U.S. The U.S. Department of State is our Central Authority. These cases previously were not well-tracked; but the Hague's requirements will result in better tracking of these cases and thus better figures.

What About Kids Who Are Already Here In The U.S.?

Not infrequently, prospective adoptive parents will seek to adopt a non-citizen child already in the U.S. The child may be here on an undocumented basis; may have overstayed a medical or tourist visa; etc.

In the past, and where the child is not from a Hague country, then these cases proceed pursuant to INA §101(b)(1)(E), the "adopted child" provisions. Generally, these cases have been first handled with a straightforward adoption process in the state juvenile court. Immigration status is simply not relevant to the Minnesota juvenile court's authority to grant the adoption; so if the Minnesota laws for the adoption were met then the adoption would be granted.

Then, these families must work with an immigration attorney. Where an "adopted child" has been adopted by qualifying adoptive parent(s); is under age 16 or is a sibling of a child under age 16 also being adopted; and has resided in the joint custody of the adoptive parent(s) for at least two years; then an I-130 petition for an immediate relative, if done before age 21, should result in the granting of lawful permanent resident status. Typically there is no effect on the child of underlying unlawful status in the U.S. prior to that; but the child may have to return to the sending country for consular processing.

However – now it must first be determined if the sending country is a Hague country. If so, it must be understood that pursuant to the Hague, the "Central Authority" of that country has the right to decide whether the child is a "habitual resident" of their country of citizenship. If the central authority says they are a "habitual resident", then the adoption is subject to the Hague – and if so, some of the Hague requirements may prohibit the adoption or require significant changes in order to do the adoption in compliance with the Hague. The central authority's right to make this decision is their discretionary authority. Even a child who's been in the U.S. for years, may be determined to be a "habitual resident" of their country of citizenship. As a result, these cases where children are already here and either having contact with or even living with the prospective adoptive parents, can become difficult or impossible under the Hague. Alternative options such as special immigrant juvenile status or other options, may have to be considered. A collaboration between experienced adoption and immigration counsel in these cases is often critical.

Child Citizenship Act of 2001 – 8 USCA Section 1431A.

In summary, this provides automatic citizenship to foreign-born children adopted by an American citizen, if certain criteria are met. The children are granted citizenship when they enter the US as lawful permanent residents and if meet the requirements:

- have at least one American citizen parent by birth or naturalization;
- be under 18 years of age;
- live in the legal and physical custody of the American citizen parent; and
- be admitted as an immigrant for lawful permanent resident.

The adoption must be full and final. Accordingly, children who enter under IR-3 or IH-3 are granted citizenship automatically upon entry; children who enter under IR-4 or IH-4 are *not* granted citizenship automatically upon entry - but *are* granted citizenship upon the finalization of the adoption in Minnesota.

While the child may automatically acquire citizenship – still need to prove it or document it with appropriate documentation. There are two possible routes.

- Can either automatically receive (if enter on Ir-3 or IH-3), or apply for (upon finalization in the U.S., with an IR-4 or IH-4) a Certificate of Citizenship
    - (N-600 form, application for Certificate of Citizenship) from the BCIS in Dept. of Homeland Security.
- Or – can apply for a passport. With proof of relationship to parent; certified copy of adoption decree (translated into English if necessary); foreign passport showing the BCIS I-551 stamped in the passport or the child's lawful permanent resident 'green card'; proof of identity of parents; passport application, fees and photos.

So much is done, in reality, with kids on the basis of an American birth certificate. For that reason, going through the steps to obtain a Minnesota birth certificate, may be worth it for ease of future interactions such as school enrollment etc. Pursuant to Minn. §259.60, the adoptive parents can request that the MN court recognize their foreign adoption and obtain a MN birth certificate as a result; provided the child entered on an IR-3 (and presumably an IH-3, although the statute has not yet been updated as to that). Generally the court does not require a personal appearance and

instead will issue the appropriate order resulting in a MN certificate of foreign birth upon receipt of the required documents. If the child entered on an IR-4 or IH-4, then as stated above the finalization or re-adoption must be done in the U.S. anyway; and will then result in a MN certificate of foreign birth.

For More Information, an excellent resource is *The International Adoption Sourcebook*, edited by Dan H. Berger, from the American Immigration Lawyers Association, copyright 2008. Also, the website of the Joint Council on International Children's Services www.jcics.org is quite helpful.

Statistics: According to the United States Department of State, for FY 2008:

Region	IR-3	IH-3	IR-4	IH-4
Africa (mostly Ethiopia; Nigeria; Liberia; Ghana)	572	0	1827	0
Asia (mostly China; India; South Korea; Vietnam; Philippines)	4631	8	2222	0
Europe (mostly Ukraine; Russia; Kazakstan)	3009	1	60	0
North America (mostly Guatemala; Haiti)	2921	0	1740	0
South America (mostly Colombia)	426	0	12	0

Of note – these are FY 2008 statistics. With the implementation of the Hague by the U.S. in 2008, these will change over time. Also note that some countries represented in these statistics, such as Guatemala and Vietnam, are generally not processing adoptions to the U.S. at this time.