

Ukraine: UAA Country Specific Guidance 7-14-14

Background:

This guidance pertains to IR-3 and IR-4 intercountry adoption cases initiated in Ukraine on or after the Intercountry Universal Accreditation Act of 2012 (UAA) effective date, July 14, 2014. For guidance on cases already in process on July 14, 2014, see the [UAA transition guidance and example cases](#).

The Family Code of Ukraine does not allow any intermediaries in the adoption process. Only Ukrainian Government authorities (either Ukrainian public foreign authorities or competent authorities¹) may provide services leading to an intercountry adoption. (See: Family Code of Ukraine, article 216. Adoption Resolution by Cabinet of Ministers #905²) U.S. accredited and approved adoption service providers (ASPs) are not permitted to provide, or to supervise others providing adoption services, in Ukraine.

See the [Ukraine adoption country information sheet](#) for a summary description of the adoption process in Ukraine, including key Ukrainian authorities involved in intercountry adoptions. The Ukrainian national governing entity responsible for intercountry adoptions is the Department for Families and Children in the Ministry for Social Policy of Ukraine (DFC). The DFC registers both prospective adoptive parents and children eligible for adoption, proposes matches, and coordinates the adoption process. Children eligible for adoption reside throughout the country under Ukrainian government supervision. Regional courts near where the children reside are responsible for the judicial process resulting in an adoption order. Adoption orders in Ukraine result in a full and final adoption, and in most cases IR-3 visas are issued to adopted children. See below for guidance on using primary providers in IR-3 and IR-4 cases.

¹ 22 CFR 96.2 Definitions:

Competent authority means a court or governmental authority of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Public foreign authority means an authority operated by a national or subnational government of a Convention country.

² Family Code of Ukraine, Article 216. Prohibition of Mediation and Commercial Activities with regard to the Adoption of Children, found at <http://biotexcom.com/wp-content/uploads/2011/06/Family-Code-of-Ukraine.pdf>

1. Mediation and commercial activities with regard to the adoption of children, their placement in custody, care or for education in Ukrainian nationals' families, of aliens or stateless persons are not allowed.

Using Primary Providers in Ukraine on or after July 14, 2014: Guidance for IR-3 Cases:

- A primary provider is required in every adoption case in Ukraine for cases initiated on or after July 14, 2014;
- Under 22 CFR Part 96 (the accreditation regulations), a primary provider is responsible for:
 - Ensuring that all six adoption services defined at 22 CFR 96.2³ are provided consistent with applicable laws and regulations;
 - Supervising and being responsible for supervised providers where used (see 22 CFR 96.14); and
 - Developing and implementing a service plan in accordance with 22 CFR 96.44.
- The primary provider's service plan would reflect that adoption services provided in Ukraine will be provided directly by Ukrainian authorities and courts and not by any non-governmental entity. The plan would identify the appropriate Ukrainian public authorities responsible for providing each of these adoption services. For example, adoption services provided in Ukraine IR-3 cases include:
 - (1) Identifying a child for adoption and arranging an adoption:
 - Provided by the Ukrainian national adoption authority, the DFC;
 - (2) Securing the necessary consent to termination of parental rights and to adoption:
 - Provided by the regional children's services and Ukrainian national adoption authority, the DFC;
 - (3) Performing a background study on a child and reporting on such a study;

³ 22 CFR 96.2 Definitions:

Adoption service means any one of the following six services:

- (1) Identifying a child for adoption and arranging an adoption;
- (2) Securing the necessary consent to termination of parental rights and to adoption;
- (3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
- (4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;
- (5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or
- (6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

- Provided by the regional children’s services to the Ukrainian national adoption authority, the DFC, which then provides it to the prospective adoptive parents;
 - (4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;
 - Provided by the regional children’s services and Ukrainian national adoption authority, the DFC;
- While the primary provider needs to ensure that all six adoption services are provided, under 22 CFR 96.14(d), the primary provider “is not required to provide supervision or to assume responsibility for” services provided by Ukrainian public authorities.
- The primary provider would be responsible for the following adoption services:
 - (3) a home study on a prospective adoptive parent(s), and reporting on such a study;
 - Provided by the primary provider directly or by a supervised provider or by an exempted provider, and reviewed and approved by an accredited agency if not initially provided by one;
- The primary provider is also responsible for other services required under the accreditation standards, such as training of prospective/adoptive parents.

Using Primary Providers in Ukraine on or after July 14, 2014: Guidance for IR-4 cases in Ukraine

While most adoption visas issued in Ukraine are IR-3 visas, in some cases adopted children receive IR-4 visas. IR-4 visas are issued in Ukraine when one of the parents is not listed as a party to the adoption in the adoption order. Ukrainian law does not permit the court to include both spouses’ names in the adoption order if one of them, when requested to do so, did not participate in the court proceeding. The issuance of an IR-4 visa is appropriate in such cases based on the INA requirement that the child was adopted abroad by a U.S. citizen and spouse jointly.⁴ The primary reason the visa classification matters is its impact on the application of the Child Citizenship Act. Children admitted on IR-3 visas typically

⁴ [See INA 101\(b\)\(1\)\(F\)\(i\)](#)

acquire U.S. citizenship upon admission to the United States. Children admitted on IR-4 visas are admitted as U.S. lawful permanent residents and only acquire citizenship when they have a full and final adoption or they are re-adopted under State law.

Despite the issuance of an IR-4 visa in some Ukrainian adoption cases, i.e., treating the case as a guardianship case for visa purposes, when the adoption is full and final under Ukrainian law, for purposes of determining whether the primary provider has adoption services to perform, the Ukrainian adoption, not the visa classification, is key. If the adoption is full and final under Ukrainian law, no additional adoption services remain to be performed in the case. See the example of IR-3 cases for how the guidance applies when in an IR-4 case the Ukrainian adoption order is full and final.

If a Ukrainian court were to issue a guardianship order permitting prospective adoptive parents to take the child back to the United States and adopt her/him there, then two adoption services would remain for a primary provider to perform: the post placement monitoring (adoption service number 5) and the possibility of assisting if a disruption of the placement were to occur in the case (adoption service number 6).