

# **Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption**

## **A Guide for State Authorities on Outgoing Adoption Cases from the United States to another Convention Country**

Disclaimer: The following is intended as a general overview of the procedures for outgoing cases under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the Intercountry Adoption Act of 2000 (IAA), and its implementing regulations. It is not a substitute for the actual Convention, the IAA, or regulations, nor is it a comprehensive summary of them for the individual provisions discussed. In the case of any inconsistencies between this document and the Convention, the IAA, or regulations, the Convention, the IAA, or the regulation governs, as appropriate.

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## **I. INTRODUCTION TO THE DEPARTMENT OF STATE GUIDE FOR STATE AUTHORITIES ON OUTGOING CASES FROM THE UNITED STATES TO ANOTHER CONVENTION COUNTRY**

The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the [Convention](#)) entered into force for the United States on April 1, 2008.

A current list of the more than 100 countries party to the Convention can be accessed through the Hague Conference on Private International Law [website](#).

The United States strongly supports the principles of the Convention, which strengthen protections for children, birth parents, and prospective adoptive parents in the adoption process. The Convention provides a framework for Convention countries to work together to ensure that adoptions take place in the best interests of children; and, to prevent the abduction, sale, or trafficking of children in connection with intercountry adoption.

In 2000, Congress passed the Convention's implementing legislation, the Intercountry Adoption Act of 2000 (the [IAA](#)), designating the Department as the U.S. Central Authority (USCA) under the Convention. As Central Authority, the Department has lead responsibility for implementing the Convention and for carrying out Central Authority functions specified by the Convention. Central Authority functions are further described in the IAA and implementing regulations, including the certificate and declaration rule at [22 CFR Part 97](#), as well as parts of 22 CFR Parts [96](#), [98](#) and [99](#).

An outgoing Convention adoption means the adoption of a child resident in the United States by an individual or individuals residing in a Convention country when, in connection with the adoption, the child has moved or will move between the United States and the Convention country. See [22 CFR 96.2](#). An outgoing Convention adoption must comply with the IAA and applicable regulations at [22 CFR Part 96](#) and [22 CFR Part 97](#). Compliance with the processes established by the IAA and its implementing regulations affords adoptees the recognition of their adoption in another Convention country. Compliance is also key to the adoptee's ability to enter and permanently reside in another Convention country.

Contact Information: For questions regarding this Guide or other information requests on outgoing cases, State authorities are encouraged to write to [adoption@state.gov](mailto:adoption@state.gov).

## **II. KEY INFORMATION FOR U.S. STATE COURTS HEARING OUTGOING CASES**

### **A. Key Definitions**

[22 CFR 96.2](#) and [22 CFR 97.1](#) contain key definitions applicable to this guide. Following are the primary definitions used throughout this guide.

*Adoption Court* means the State court with jurisdiction over the adoption or the grant of custody for purpose of adoption.

*Central Authority* means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State.

*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.

*Hague Adoption Certificate (HAC)* means a certificate issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in [22 CFR 97.4\(b\)](#), the IAA.

*Hague Custody Declaration (HCD)* means a declaration issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the Convention and, except as provided in [22 CFR 97.4\(b\)](#), the IAA.

*Primary provider* means the accredited agency or approved person that is identified pursuant to [22 CFR 96.14](#) as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

*Public domestic authority* means an authority operated by a State, local, or tribal government within the United States.

*U.S. Authorized Entity* means a public domestic authority or an agency or person that is accredited or approved by an accrediting entity pursuant to [22 CFR Part 96](#) or a supervised provider acting under the supervision and responsibility of an accredited agency or approved person.

## **B. Identifying an Outgoing Case**

An outgoing Convention adoption will involve a State court's issuance of either a final adoption decree or an order granting custody for the purpose of adoption in another Convention country. To assist State authorities in identifying when an adoption should be an outgoing Convention adoption - and should therefore be concluded in accordance with applicable laws and regulations - this section outlines the key factors to consider: whether the countries involved are parties to the Convention, and the residence of the child and prospective adoptive parents.<sup>1</sup>

Please note that a determination of the child's and prospective adoptive parents' residence is central to the receiving country's approval of the proposed adoption and its determination that the child will be able to enter and reside in the receiving country, which in turn are two of the prerequisites to the State court's finalization of a Convention adoption. See [IAA](#) § 303(b) (incorporating by reference IAA § 303(a)(2)); [22 CFR 97.3\(e\)-\(f\)](#).

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<sup>1</sup> With regard to individuals in the United States, this guide uses the language of “resident” as used in the IAA. When addressing issues regarding individuals outside the United States, the term “habitual residence” is used in line with the language of the Convention.

### 1. Status of both the Country of Origin and Receiving Country as Convention Countries

The requirements for a Convention adoption apply only if the country of origin (the country from which the child is emigrating in connection with their adoption) and the receiving country (the country to which the child is immigrating in connection with their adoption) are parties to the Convention. In an outgoing case, the country of origin is the United States, which is party to the Convention, so the remaining question is whether the receiving country is also a party to the Convention. A complete list of countries that are party to the Convention is available on the Hague Conference of Private International Law website [Convention Status Table](#). Canada, the Netherlands, Mexico, Ireland, and the United Kingdom are among the most common receiving countries in outgoing adoptions, and all are party to the Convention, but the United States processes outgoing adoptions to Convention countries worldwide.

### 2. Residence of child

The residence of the child to be adopted is a key element in determining whether an outgoing case should be processed as a Convention adoption.

U.S. citizen child in United States: In the Department's view, a U.S. citizen child who is living in the United States is generally presumed to be resident in the United States for the purposes of applying the Convention under U.S. law, even if the child is also a citizen of another country. State authorities may proceed based on this presumption after verifying citizenship and residence.

Non-U.S. citizen child in the United States: Conversely, a non-U.S. citizen child in the United States (not in legal permanent resident status) is generally presumed not to be resident in the United States for purposes of application of the Convention to an outgoing adoption. The Department should be contacted for a determination of the child's residence before the adoption proceeds. If the Department determines the child is resident in the United States, the habitual residence of the prospective adoptive parent will determine if the Convention is applied. If the Department finds the child is not resident in the United States, the United States would not be the country of origin for the purpose of an outgoing U.S. Convention adoption. The Central Authority of the child's country of habitual residence should be consulted regarding how the adoption may proceed.

U.S. legal permanent resident child in the United States: In the Department's view, a legal permanent resident living in the United States is generally presumed to be resident in the United States for the purpose of application of the Convention.

### 3. Residence of prospective adoptive parent(s)

The residence of the prospective adoptive parent(s) is another key element in determining whether a case should be processed as a Convention adoption under U.S. law.

Non-U.S. citizens in the United States in non-immigrant status: In the Department's view, a prospective adoptive parent who is present in the United States in a non-immigrant status is generally presumed not to be resident in the United States. However, a prospective adoptive parent who is in a non-immigrant status in the United States that allows for long-term work or study, may seek to rebut this presumption and establish that they are resident in the United

States such that the proposed adoption would not be subject to the Convention. In such a case, the adoption service provider and/or prospective adoptive parent(s) should contact the Department for consideration of the prospective adoptive parent's residence before proceeding with an adoption. If the Department finds the prospective adoptive parent is not resident in the United States, they would need to apply to the Central Authority of the proposed receiving country in order to process a Convention adoption. See outgoing case flowchart in Appendix 1.

NOTE: If the Department determines a non-U.S. citizen prospective adoptive parent is resident in the United States they may be able to pursue a domestic adoption, if permitted under State law. However, the prospective adoptive parent should first ensure the child will be able to enter and reside with the prospective adoptive parent in the parent's home country in the absence of evidence of having completed an adoption pursuant to the Convention.

U.S. legal permanent residents in the United States: In the Department's view, a legal permanent resident living in the United States is generally presumed to be resident in the United States for the purpose of completing a domestic (non-Convention) adoption.

Determination by a foreign Central Authority (and U.S. citizens living outside the United States): In the Department's view, if the Central Authority of the receiving country has determined that the prospective adoptive parent(s) is habitually resident in the receiving country for the purposes of the Convention, the State court should defer to that determination regardless of the prospective adoptive parents' citizenship, including U.S. citizenship.

#### 4. Examples

The following examples illustrate the issues discussed above:

##### **Example 1 - U.S. Citizen Prospective Adoptive Parent(s) Outside the United States.**

Prospective adoptive parents, who are citizens of the United States living in France, seek to adopt a child and bring her to live in France. The child was born in Canada and is not a U.S. citizen but she has been living in the United States in the foster care system since her birth parents died. The State public authority has legal custody of the child. The prospective adoptive parents file an application with the proper French authority to adopt the child and intend to bring the child to France once the adoption is completed.

##### **Discussion of issues:**

1. Status of potential receiving country: France is a party to the Convention.
2. Residence of child: Since the child is a non-U.S. citizen currently living in the United States, the Department should be contacted for a determination of the child's residence before the adoption proceeds.
3. Residence of the prospective adoptive parent(s): As foreign nationals residing in France, the prospective adoptive parents should contact the French Central Authority about whether they are habitually resident there such that they should conduct an outgoing Convention adoption with France as the receiving country. Failure to ensure the receiving country Central Authority agrees to the Convention process may jeopardize recognition of the adoption in that country (and the ability of a child who is not a national of the receiving country to enter and reside with their adoptive parents).

4. Conclusion: If the Department determines that the child is resident in the United States, and the French Central Authority determines that the prospective adoptive parents are resident in France, then the Convention applies to the adoption, because both the country of origin (the United States) and the receiving country (France) are Convention countries.

**Example 2 - Non-U.S. Citizen Prospective Adoptive Parent(s) in United States.** A non-U.S. citizen World Bank employee from Germany residing in the United States in non-immigrant status seeks to adopt a U.S. citizen child living in the United States. The prospective adoptive parent will be residing in the United States for a few more years, and intends to return to Germany thereafter.

**Discussion of issues:**

1. Status of potential receiving country: Germany is a party to the Convention.
2. Residence of child: As a U.S. citizen living in the United States, the child is generally presumed to be resident in the United States for the purpose of applying the Convention under U.S. law.
3. Residence of prospective adoptive parent: As an individual residing in the United States in a non-immigrant status, the prospective adoptive parent is generally presumed not to be resident in the United States. The prospective adoptive parent may seek to overcome that presumption by contacting the Department to consider whether they are resident in the United States relevant to the need to conduct an outgoing Convention adoption.
4. Conclusion: If the Department finds the prospective adoptive parent is resident in the United States, they may be able to pursue a domestic adoption, if permitted under State law. If the Department finds the prospective adoptive parent is not resident in the United States, they would need to apply to the Central Authority of the proposed receiving country in order to process a Convention adoption. If the foreign Central Authority subsequently determines that the prospective adoptive parent is habitually resident in Germany (and/or accepts their application to process a Convention adoption), then the Convention applies and the case should be processed as an outgoing Convention adoption.

For information on U.S. citizens living abroad that seek to adopt a child resident in the United States, see section III.B, FAQs B.2-B.4.

**C. IAA Requirements for State Court Orders**

Section 303(b) of the [IAA](#) establishes certain requirements for U.S. state court orders in outgoing Convention cases. In order to issue a final adoption order or an order granting custody for the purpose of adoption in an outgoing Convention case, the U.S. State court must have:

- Determined that the adoptive placement is in the best interests of the child;
- Received and verified to the extent the court may find necessary:
  - documentation that a child background study has been completed;
  - documentation that the adoption service provider has made reasonable efforts to place the child for adoption in the United States and despite such efforts has been unable to do so;

- documentation that the U.S. authorized entity has determined that the adoptive placement is in the best interests of the child;
- the background report (home study) on the prospective adoptive parent(s) (including a criminal background check) prepared in accordance with the laws of the receiving country;
- the declaration by the Central Authority (or other competent authority) of the receiving country that the child will be permitted to enter and reside permanently, or on the same basis as the adopting parent(s), in the receiving country;
- the declaration by the Central Authority (or other competent authority) of the receiving country that the Central Authority consents to the adoption, if necessary under the laws of the receiving country for the adoption to become final; and
- satisfactory evidence that Articles 4 and 15 through 21 of the Convention have been met.<sup>2</sup>

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<sup>2</sup> In summary, Articles 4 and 15 through 21 of the Convention require:

- 1) Article 4: That the competent authorities of the country of origin have established that the child is adoptable; have determined, after due consideration of opportunities for adoption in the country of origin, that an intercountry adoption is in the child's best interests; have ensured that the proper consents were informed and freely given and obtained from the persons, institutions and authorities whose consent is necessary for adoption; and, depending upon the age and maturity of the child, that the child has been counseled, due consideration was given to the child's wishes and opinions, and that the child has in writing freely consented to the adoption, and that the child has not been coerced or induced by payment or compensation of any kind to consent to the adoption.
- 2) Article 15: That if the Central Authority of the receiving country is satisfied that the prospective adoptive parents are eligible and suitable to adopt, it shall prepare a report on the prospective adoptive parents and transmit that report to the Central Authority of the country of origin.
- 3) Article 16: That if the Central Authority of the country of origin is satisfied that the child is adoptable, it shall prepare a report on the child that gives due consideration to the child's upbringing and ethnic, religious and cultural background, and ensures that consents have been obtained according to Article 4; determine that the placement is in the best interest of the child; and transmit the report to the Central Authority of the receiving country.
- 4) Article 17: That a decision in the country of origin to place the child may only occur if the Central Authority of the country of origin has ensured that the prospective adoptive parents agree, the Central Authority of the receiving country has approved of the decision where required, both Central Authorities have agreed that the adoption may proceed, and that the requirements of Article 5 have been met. (Article 5 requires the competent authorities of the receiving country to: (a) determine that the prospective adoptive parents are eligible and suitable to adopt; (b) ensure that the prospective adoptive parents have been counseled as may be necessary; and (c) determine that the child is or will be authorized to enter and reside permanently in the receiving country.
- 5) Article 18: That the two Central Authorities shall take all necessary steps to obtain permission for the child to leave the country of origin and to enter and reside permanently in the receiving country.
- 6) Article 19: That the child may only be transferred to the receiving country if the requirements of Article 17 have been satisfied; that both Central Authorities shall ensure that the transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents; and that if the transfer does not take place, the reports referred to in Articles 15 and 16 are returned to the authorities who forwarded them.
- 7) Article 20: That the Central Authorities shall keep each other informed about the adoption process and measures taken to complete it, as well as the progress of the placement if a probationary period is required.
- 8) Article 21: That the Central Authority of the receiving country shall take the measures necessary to protect a child if the child was transferred prior to an adoption and the Central Authority of the receiving country determines that continued placement with the prospective adoptive parents is not in the best interests of the child; that these measures shall include withdrawing the child from the prospective



## **D. State Court Findings Integral to Hague Adoption Certificate (HAC) or Hague Custody Declaration (HCD) Issuance**

### 1. Purpose of HAC and HCD

After a court grants the adoption decree or custody for the purpose of adoption, the prospective adoptive parent(s) should apply to the Department of State for a HAC or HCD to help ensure that the adoption or grant of custody will be recognized by the receiving country.

The HAC and HCD are issued by the Department of State, in its role as the U.S. Central Authority. The HAC certifies that an adoption finalized in the United States has been completed in accordance with the Convention and the IAA. The HCD declares that custody of a child for the purpose of adoption has been granted in the United States in accordance with the Convention and the IAA.

Both the HAC and the HCD may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship there, depending on the immigration laws of the receiving country. It may also be useful in finalizing the adoption in the receiving country. In at least one instance, the receiving country has taken legal custody of a child after the child's arrival when the adoptive parents could not demonstrate compliance with the Convention. Pursuant to the Convention, the Department would not issue a HAC or HCD if it determined that the adoption was manifestly contrary to public policy, taking into account the best interests of the child.

### 2. Important considerations for State courts

To obtain the HAC or HCD, a party to an outgoing Convention adoption or custody proceeding must submit form DS-5509 (available [here](#)) to the Department, which must include a copy of the order from a U.S. State court granting the adoption, or custody for purposes of the adoption, to the (prospective) adoptive parent(s). In addition, certain court findings need to be included in the order itself or in supporting documents (see form DS-5509, #7 for a list of supporting documents needed). **This means that the Department requires a copy of a U.S. State court order before it may issue a HAC or HCD.**

The Department promulgated regulations, [22 CFR Part 97](#), describing what documents and findings must be included in the HAC and HCD application materials.

22 CFR Part 97 is based, in part, upon IAA provisions which require State courts to make certain determinations and verifications before entering the order for the adoption or the grant of custody for purpose of adoption. See [IAA](#) § 303(b); section II.C of this Guide, above.

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adoptive parents['] care] and arranging for temporary care, arranging without delay a new placement for the child in consultation with the Central Authority of the country of origin, if appropriate and only after the Central Authority of the country of origin Central Authority has been duly informed of the new prospective adoptive parents; arranging the return of the child as a measure of last resort; and that the child, if of an appropriate age and maturity, be consulted and, where appropriate, their consent obtained in relation to measures described in this Article.

The regulations, however, require parties seeking a HAC or HCD to seek certain additional findings from the court.

Specifically, [22 CFR 97.2](#) requires the party applying for the HAC or HCD to include the following State court findings in support of the application:

- the court’s determination that the adoptive placement is in the best interest of the child and evidence related to that determination (Convention Article 4(b); 22 CFR 97.2(b); IAA § 303(a)(2)(A));
- the competent authority’s determination that the child is eligible for adoption (Convention Article 4(a));
- the court’s grant of adoption or custody for purposes of adoption;
- the court’s verification that substantive regulatory requirements set forth in [22 CFR 97.3](#) (a)-(k) for the following categories have been met:
  - 1) preparation of child background study (Convention Article 16 (1))
  - 2) transmission of child data (Convention Article 16(2))
  - 3) reasonable efforts to find domestic placement (Convention Article 4(b))
  - 4) preparation and transmission of home study (Convention Article 15)
  - 5) authorization for child to enter receiving country (Convention Article 5)
  - 6) consent by foreign authorized entity (Convention Article 17)
  - 7) guardian counseling and consent (Convention Article 4(c)(1))
  - 8) child counseling and consent, if applicable (Convention Article 4(d))
  - 9) authorized entity duties (Convention Article 17, 18, 19, 20 and 21)
  - 10) no prohibited contact (Convention Article 29)
  - 11) no improper financial or other gain (Convention Articles 8 & 32).

Except for 22 CFR 97.3(j) (no contacts) and 97.3(k) (no improper financial gain), listed above as numbers 10 and 11, the State court’s findings in support of the HAC or HCD application may be based on the same evidence used for the verification of Convention Articles 4 and 15 through 21, required under [IAA](#) Section 303(b).

Until these findings are made, or the parties can submit authenticated documentation that the requirements have been met and a written explanation of why the adoption court’s verification of compliance with the requirement cannot be submitted, the parties will not be able to obtain an HAC or HCD.

The State court, of course, has the discretion to issue or not issue the findings. However, without those findings, in accordance with the IAA, the Department may be unable to issue a HAC or HCD.

## **E. Use of Authorized Adoption Service Providers in Outgoing Cases**

### **1. Eligibility to provide adoption services in outgoing cases**

Once it is determined that a case is an outgoing Convention case, an agency or person offering, providing, or facilitating an adoption service in the case must be one of the following (as defined in [22 CFR 96.2](#)), subject to certain limited exceptions (as set out in [22 CFR 96.13](#)):

- an accredited agency,
- an approved person,
- a supervised provider, or
- an exempted provider.

[IAA § 201](#), [22 CFR 96.12 - 96.15](#).<sup>3</sup> The accreditation/approval requirement is in addition to any applicable State requirements. [IAA § 3\(3\)](#).

**Public domestic authorities (as defined in [22 CFR 96.2](#)) may also offer, provide, or facilitate adoption services in a Convention adoption case and do not have to be accredited or approved to do so.**

The IAA defines adoption services as:

- 1) Identifying a child for adoption and arranging an adoption;
- 2) Securing 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, and reporting on such a study;
- 4) Making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;
- 5) Post-placement monitoring a case until final adoption; and
- 6) Where made necessary by disruption before final adoption, assuming custody and providing childcare or any other social service pending an alternative placement.

The Department designates an accrediting entity (AE), or multiple AEs, to accredit, approve, monitor, and oversee the work of adoption service providers. There is currently one designated AE, Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME). IAAME maintains a list of accredited/approved adoption service providers on their [website](#).

**NOTE:** In the event an adoption service(s) has been offered, provided, or facilitated in an outgoing case by an individual or entity other than one accredited or approved to offer, provide, or facilitate the adoption service(s), then the individual or entity may have violated section 201 of the IAA and may be subject to civil penalties in accordance with section 404 of the IAA. Moreover, the Department may be unable to issue an HAC or HCD in an outgoing case where an adoption service has been offered, provided, or facilitated by an unaccredited agency or unapproved person.

The Department respectfully requests that the court, the parties, or the attorneys for the parties report such instances immediately to the Department at [adoption@state.gov](mailto:adoption@state.gov).

## 2. Accreditation/Approval Standards

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<sup>3</sup> For illustrations of the accreditation and approval requirements for adoption service providers set forth in 22 CFR 96.12-96.14, please see the examples provided in 22 CFR 96.15.

The accreditation regulations ([22 CFR Part 96](#)) set standards for accreditation and approval designed to ensure that U.S. accredited agencies and approved persons perform their duties in accordance with the Convention and the IAA. Subpart F of the accreditation regulations contains the standards that accrediting entities use in evaluating applicants for accreditation and approval.

The Department monitors AEs to ensure they perform their functions in compliance with the Convention, the IAA, the UAA, the regulations implementing the IAA or UAA, other applicable laws, and the respective accrediting entity agreement with the Department.

### **III. FREQUENTLY ASKED QUESTIONS**

#### **A. FAQs: Adoption Convention and Outgoing Cases, Generally**

##### **A.1 Where can I find a current list of Convention countries?**

A current list of the more than 100 countries party to the Convention can be accessed through the Hague Conference on Private International Law website [Convention Status Table](#).

##### **A.2 Are outgoing adoptions to non-Convention countries covered by the Convention and the regulations?**

Pursuant to the Intercountry Adoption Universal Accreditation Act of 2012 ([UAA](#)), many of the regulations governing intercountry adoptions apply to outgoing adoptions to non-Convention countries. However, only outgoing adoptions to Convention countries require the issuance of HACs or HCDs pursuant to [22 CFR Part 97](#).

##### **A.3 Must a public domestic authority (an authority operated by a State, local, or tribal government within the United States) be accredited in order to provide adoption services in an outgoing adoption case when it is placing a child resident in the United States with prospective adoptive parent(s) in another Convention country?**

No. As described in [22 CFR 96.12\(b\)](#), public domestic authorities are not subject to the accreditation standards.

##### **A.4 Must a public domestic authority be accredited, approved, or an exempted provider to provide adoption services in an outgoing Convention adoption case?**

No. [22 CFR 96.16](#) enables public domestic authorities to provide adoption services without accreditation in intercountry adoption cases, which includes but is not limited to, performing a background study on a child.

##### **A.5 Where are the requirements for intercountry adoptions relevant to State proceedings in outgoing Convention cases published?**

[22 CFR Part 96](#) Subpart C (Accreditation and Approval Requirements for the Provision of Adoption Services);

[22 CFR Part 97](#) (Issuance of Adoption Certificates and Custody Declarations in Hague Convention Adoption Cases); and

[22 CFR Part 99.2](#) (Reporting requirements for adoption cases involving children emigrating from the United States).

**A.6 Can the receiving country Central Authority contact the USCA with questions about an outgoing case?**

Yes. The Office of Children’s Issues of the Department of State’s Consular Affairs Bureau performs many of the responsibilities of the U.S. Central Authority, including liaison with foreign Central Authorities. Receiving country Central Authorities can send questions to the USCA at [adoption@state.gov](mailto:adoption@state.gov).

**A.7 How can a Public Domestic Authority, processing an outgoing Convention case from the United States to a foreign country request a U.S. passport for the child that would allow him/her to travel to the foreign country for a bonding period, prior to finalizing the adoption in a U.S. state court?**

A U.S. citizen child who is in process of being adopted by a prospective adoptive family from another country party to the Convention can be issued a one-year limited validity U.S. passport that will allow him/her to travel to the receiving country with the prospective adoptive family. Since the adoptee has not been formally adopted, the following original documents must be submitted when applying for a passport, along with a completed application ([DS-11](#)) and completed application package:

- A letter (on official letterhead stationery) from your agency or entity that has custody of the child stating the following:
  - The date on which the adoption will become final;
  - The child’s current name (or birth name if the applicant is still using the birth name);
  - The name by which the child will be known after the adoption (if the name will be changed); and
  - The named individual(s) adopting the applicant has temporary custody of the child and also has permission to take the child out of the United States.
- A temporary custody order naming the public or private agency or entity custodians or guardians of the minor applicant

**B. FAQs: Identifying an Outgoing Case**

**B.1 What if a State court has a question about the status of an outgoing case for the Central Authority of the receiving country?**

The Department can work directly with the Central Authorities of receiving countries to try to resolve any questions about whether or not an outgoing case may be treated as a domestic adoption or a Convention adoption as well as to resolve other case-specific questions. However, State authorities are encouraged to contact the Central Authority of the Convention receiving country directly. The Central Authority contact information is on the Hague Conference on Private International Law website [Authorities](#) page.

**B2. How do you determine whether the Convention applies in a case involving U.S. citizen prospective adoptive parent(s) residing abroad who seek to adopt a child resident in the United States?**

U.S. citizen prospective adoptive parents should consult the Central Authority in the Convention country where they live for a determination of habitual residence. The Convention country in which a U.S. citizen prospective adoptive parent is living may determine the U.S. citizen to be habitually resident in that country such that the citizen should follow a Convention process in order for a U.S. resident child to legally enter and reside in that country. As noted, the State court should defer to any such determination by a foreign Central Authority.

**B.3 Would the U.S. Convention process apply in adoption cases where a U.S. citizen living in a Convention country is considered not to be resident in that country and is seeking to adopt a child resident in the United States?**

If the Central Authority in the Convention country in which a U.S. citizen prospective adoptive parent is living determines they are not habitually resident in that country, the U.S. citizen may be able to process a domestic adoption in accordance with the applicable laws and regulations of the U.S. State where the adoption takes place. The prospective adoptive parent should ensure the child will be able to enter and reside with the prospective adoptive parent in the country in which they reside.

**B.4 What about military and other U.S. government employees stationed abroad?**

In determining application of the Convention, absent specific provisions of foreign law, the habitual residence of military or other U.S. government employees stationed overseas is addressed in the same way as that of other U.S. citizens. See pages 5-6 regarding residence of prospective adoptive parents.

**B.5 What if I am a U.S. citizen, but my spouse or partner is not?**

A U.S. citizen completing an outgoing Convention adoption will need to follow the Convention process of their country of residence as well as the adoption laws of the U.S. State in which the child resides. Those laws will determine whether the citizenship of the U.S. citizen's spouse has any effect on the adoption process.

**C. FAQs: Requirements in Outgoing Convention Cases**

**C.1 What are the key steps in processing an outgoing case?**

Please see the flowchart at Attachment 1 for a summary of steps. Part III of the Department's Guide to Outgoing Cases from the United States also has a fuller description of these steps.

**C.2 What must the State court do before entering an adoption order or an order granting custody for purposes of adoption in a Convention case?**

In an outgoing Convention adoption, section 303(b) of the [IAA](#) requires the State court to receive and review certain information before entering an order. A summary of what the State court must review and verify and the relevant citation(s) are provided in section II.B above.

**C.3 In what language should documents submitted to the State court be?**

[22 CFR 96.55\(d\)\(2\)](#) requires that an English copy or a certified English translation of the home study be provided. State law and/or local court practices and procedures regarding translations of written or oral testimony or other Evidence may also apply.

#### **C.4 What are the standards for child background studies?**

[22 CFR 96.53](#) establishes the standards for child background studies in outgoing cases. Among other requirements, 22 CFR 96.53(a) sets forth specific elements to be included in a child background study, and 22 CFR 96.53(b) requires that when the child background study is not performed by an accredited agency, the background study must be reviewed and approved in writing by an accredited agency.

[22 CFR 96.16](#) enables public domestic authorities to provide adoption services without accreditation in intercountry adoption cases, which includes but is not limited to, performing a background study on a child.

#### **C.5 What should the State court consider when evaluating documentation that an adoption service provider has made “reasonable efforts” to find a domestic placement for the child in accordance with sections 303(a)(1)(B) and 303(b)(1)(A) of the [IAA](#)?**

The State court should be mindful of the following provisions of the accreditation regulations. [22 CFR 96.54\(a\)-\(b\)](#) provides:

- (a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:
  - (1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in the United States;
  - (2) Listing information about the child on a national or State adoption exchange or registry for at least sixty calendar days after the birth of the child;
  - (3) Responding to inquiries about adoption of the child; and
  - (4) Providing a copy of the child background study to potential U.S. prospective adoptive parent(s).
- (b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

[22 CFR 96.54\(a\)\(1\)-\(4\)](#) clearly identifies the domestic placement procedures that will constitute “reasonable efforts” in most cases, with certain delineated exceptions.

The exceptions from the domestic placement procedures set forth in 22 CFR 96.54(a) include when the birth parent(s) have identified specific prospective adoptive parent(s). 22 CFR 96.54(a) does not preclude an accredited agency or approved person from providing adoption and other services to a birth parent(s), including access to information on domestic or foreign



prospective adoptive parent(s). The birth parent(s) may identify/select prospective parents based on information and counseling an adoption service provider has provided. Similarly, this provision of the regulations does not prohibit birth parent(s) who might choose to identify prospective parents independently from receiving general counseling from adoption service providers. After the identification of prospective adoptive parents, the birth parent(s) may continue to work with an adoption service provider to complete the adoption process, and the adoption service provider may provide the full range of other adoption services.

Documentation of reasonable efforts under 96.54(b) may include copies of print, media, and internet information on the child, copies of the adoption exchange or registry listing on the child, written responses to inquiries about the child, and proof that the child background study was sent to potential U.S. prospective adoptive parents.

22 CFR 96.54 recognizes that in some cases "reasonable efforts" can include no efforts at all, if no such efforts are in the child's best interests. The regulations also permit a State court to accept or reject an accredited agency's or approved person's recommendation that it is not in the best interest of a particular child that the procedures set forth in 96.54(a)(1)-(4) be followed. This approach is fully consistent with the IAA and the Convention, which require merely that due consideration be given to placing the child in the country of origin.

**C.6 What are the applicable provisions in the Convention on contacts between birth parent(s) or caregivers and prospective adoptive parent(s)?**

The Convention has a "no contact" rule that prohibits direct contact between the birth parent or other person caring for the child and the prospective adoptive parent(s) unless the adoption takes place within a family or the contact is in compliance with the conditions established in the country of origin. See Convention Article 29. Pursuant to [22 CFR 97.3\(j\)](#) in order to obtain an HAC or HCD, there must not have been any contact between the prospective adoptive parent(s) and the birth parent, or any other person who has care of the child prior to determining the child's adoptability and the PAP's suitability under Convention Articles 4(a)-(c) and 5(a), respectively, unless the child is being adopted by a relative. Pre-adoption contacts between birth parent(s) and prospective adoptive parent(s) that comply with conditions established by a relevant State or public domestic authority are exempt from this rule.

**C.7 Does the consent standard in [22 CFR 96.53\(c\)](#) apply to unnamed fathers and/or fathers who cannot be located? For example, sometimes in these cases, the termination of parental rights (TPR) won't happen until several months later. If the child is placed with the prospective adoptive family while the TPR is pending, it is considered a legal risk placement.**

22 CFR 96.53(c)(1) refers to "persons, institutions, and authorities whose consent is necessary for adoption." Whether the consent of unnamed fathers and/or of fathers who cannot be located is necessary for adoption is a question of State law. For example, if State law requires the consent of the birth father in addition to that of the birth mother, then the birth father is a "person whose consent is necessary for the adoption" under this standard. See 71 Fed. Reg. 8111 (Feb. 15, 2006) (Comment and Response #4 to 96.53).



**C.8 [22 CFR Part 96.54\(e\)](#) asks the agency/person to take all appropriate measures to give due consideration to the child’s upbringing and to their ethnic, religious, and cultural background. How can the agencies/persons reconcile this with the Multi-ethnic Placement Act (MEPA) as amended by the Interethnic Adoption provisions of the Small Business Job Protection Act (IEPA)?**

The regulation on “due consideration” is derived directly from Article 4 of the Convention. The regulation is not inconsistent with the federal requirements of MEPA-IEPA. A measure that is prohibited under other provisions of federal law would not be an “appropriate measure” under this regulation.

**C.9 How does a State court resolve cases in which a State law conflicts with the Convention, the IAA, or the implementing regulations for the IAA?**

With respect to State law, section 503(a) of the [IAA](#) directly addresses this question. It reads: “Preemption of Inconsistent State Law – The Convention and this Act shall not be construed to preempt any provision of the law of any State . . . , except to the extent that such provision of State law is inconsistent with the Convention or this Act....” The Department may be consulted if a State court believes a particular provision of State law is inconsistent with the Convention, IAA or its implementing regulations.

**C.10 Under [22 CFR 96.55\(b\)](#), copies of documentation of the State court proceedings are to be provided to the Department. If State law prohibits identifying birth parent information from being released, will a redacted copy of the information be acceptable?**

With respect to an outgoing case, the [IAA](#) requires the Secretary, upon receipt and verification of required material and information, to certify that the child was adopted or custody was granted for the purpose of adoption in accordance with the Convention and the IAA. The certification—an HAC or an HCD—is case-specific and obligates the receiving Convention country to recognize the adoption or grant of custody, unless the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

The Department needs documents from State court proceedings, including the order granting the adoption or legal custody, to certify that the adoption or grant of custody complied with the Convention and the IAA.

Birth parent names are not required as part of the HAC/HCD application; however, redacted State court documents that omit birth parent identification information may not have sufficient information necessary for the Department to issue an HAC or HCD in accordance with [22 CFR Part 97](#). The Department will make this determination at the time the family applies for an HAC or an HCD.

**C.11 What types of notices will the receiving country provide to show that the child is eligible to enter and reside permanently in the receiving country? Who will provide such a notice to the State court?**

The Central Authority of the relevant receiving country typically provides the entry authorization and notification of consent to the adoption to the parties to the adoption proceeding. The parties then would provide the notice issued pursuant to Articles 5 and 17 to the State court.

### **C.12 What are the reporting requirements for outgoing cases?**

[22 CFR Part 99](#) outlines reporting requirements for outgoing Convention and non-Convention cases. In summary, the reporting provider (typically the primary provider in Convention cases or the provider responsible for child placement in non-Convention cases) reports to the Department of State's Office of Children's Issues for each outgoing case:

- (1) the name, date of birth of child, and place of birth of child;
- (2) the U.S. State from which the child is emigrating;
- (3) the country to which the child is immigrating;
- (4) the U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and
- (5) The reporting provider's name, address, phone number, and other contact information.

This report is required within 30 days of learning that the adoption case involves emigration of a child from the United States to a foreign country. The reporting provider, not the court, is required to report the outgoing case information to the Department. More information about reporting requirements (including a link to a form that can be used by adoption service providers/reporting providers that are not accredited or approved to submit required information about non-Convention cases) can be found on our [website](#)

### **D. FAQ's: Hague Adoption Certificates (HACs) and Hague Custody Declarations (HCDs)**

#### **D.1 After a court grants the adoption decree or custody for purpose of adoption decree, what should the parties to the adoption do?**

The parties may apply to the Department for an HAC or HCD. Applications (Form DS-5509 "Application for a U.S. Hague Adoption Certificate or Custody Declaration") are available [here](#).

#### **D.2 What is the purpose of a Hague Adoption Certificate (HAC)?**

Article 23 of the Convention states that an adoption shall be recognized by operation of law in other countries party to the Convention when the competent authority of the country where the adoption takes place certifies that the adoption was made in accordance with the Convention, unless a country determines that the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

The HAC may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship, depending on the immigration laws of the receiving country.

#### **D.3 What is the purpose of a Hague Custody Declaration (HCD)?**

Section 303(c) of the [IAA](#) requires that the Department of State issue an official declaration that custody for the purpose of adoption has been granted in accordance with the Convention and

the IAA upon receipt and verification of information that, in fact, the grant of custody has been so granted.

The HCD may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship, depending on the immigration laws of the receiving country. It may also be useful in finalizing the adoption in the receiving country.

**D.4 Must the State court send its court order and findings directly to the Department?**

No. The party applying for the HAC or HCD must obtain an official copy of the court order and findings and transmit those documents to the Department along with their application (DS-5509).

**D.5 What will the Department accept as an official copy of a State court order?**

An official copy is one obtained directly from the State court authorities and which meets the applicable State authority's authentication requirements, if any, for copies of court orders. The copy must be a true and legible copy of the original adoption or custody order signed by the adoption court judge. If there is any question about the authenticity of the official copy of State court order, the Department will contact the appropriate State court administrative authorities directly to confirm that the order submitted to the Department is the same as the order actually issued in the case.

**D.6 Is the U.S. state court system responsible for issuing the HACs and HCDs?**

No, the HACs or HCDs are issued by the Department through the Office of Children's Issues in the Bureau of Consular Affairs at the Department of State in Washington, D.C. However, please note that specific State court findings are mandatory components of the HAC or HCD application ([22 CFR 97.3](#)), with a limited exception.

**D.7 What happens if a needed State court finding is not included as part of an HAC or HCD application?**

If the State court does not verify compliance with one or more items listed in [22 CFR 97.3](#), the HAC or HCD application must then include authenticated documentation showing satisfaction of the requirement(s) and a written explanation of why the adoption court's verification of compliance could not be submitted.

**E. FAQ's: After the State Court Issues an Adoption or Custody for Purpose of Adoption Order**

**E.1 If the child is a U.S. citizen, does the child retain U.S. citizenship or acquire the citizenship of the receiving country?**

Adoption of a U.S. citizen child by non-U.S. citizen parents does not itself affect the child's U.S. citizenship. The child may acquire the citizenship of the prospective adoptive parent(s), depending on their citizenship status and the laws of the receiving country.

**E.2 What passport does the child use to travel to the receiving country?**

A U.S. citizen would be eligible for a U.S. passport, but the child may also have a passport of another nationality obtained by the prospective adoptive parents. U.S. law requires that all

American citizens depart the United States on a U.S. passport. The prospective adoptive parent(s) will need to check with the receiving country's immigration authorities for entry requirements.

**E.3 How should a State court address any request to change the child's name?**

The State court should follow its own applicable law and procedures for changing the child's name. When the parties submit the application for HAC or HCD to the Department, they may submit any court-ordered name change so the HAC and HCD can be issued in the child's legal name.

**E.4 How do the parties finalize the adoption in the receiving country if the child departed the United States and entered the receiving country based on an U.S. custody order?**

The parties finalize the adoption according to the receiving country's legal requirements, which will vary by country.

**E.5 Who issues the final adoption certification required under Convention Article 23 when the United States issues an HCD?**

In an outgoing case, the Central Authority or other competent authority of the receiving Convention country will issue the final adoption certification, since that country will be the "state of the adoption" under the Convention.

## **IV. APPLICABLE LAWS AND REGULATIONS**

### **A. Primary Sources of Law and Regulation for the Hague Adoption Convention**

The Hague Adoption Convention

Complete citation: [Convention](#) on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded May 29, 1993

[The Intercountry Adoption Act of 2000](#) (IAA), also 42 U.S.C. 14901 et seq.

Implementing regulations:

Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000 (IAA), [22 CFR Part 96](#)

Issuance of Adoption Certificates and Custody Declarations in Hague Convention Adoption Cases, [22 CFR Part 97](#)

Intercountry Adoption—Convention Record Preservation, [22 CFR Part 98](#)

Reporting on Convention and Non-Convention Adoptions of Emigrating Children, [22 CFR Part 99](#)

Consular Officer Procedures in incoming Convention Cases, [22 CFR Part 42](#)

Intercountry Adoption of a Convention Adoptee, [8 CFR Subpart C](#) (Department of Homeland Security)

**B. Other Laws and Regulations that Relate to the Convention**

The Immigration and Nationality Act, [8 U.S.C. 1101](#), et. seq.

Indian Child Welfare Act of 1978, [25 U.S.C. 1901](#) et. seq.

Multi-Ethnic Placement Act, (P.L. 103-382), as amended by Removal of Barriers to Interethnic Adoption provisions of the Small Business Job Protection Act of 1996, (P.L. 104-188, Section 1808).

