

INTERCOUNTRY ADOPTION



U.S.-Mexico Intercountry Adoption FAQs

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- **What is a Convention adoption?**
 - i. An adoption that follows the Convention of May 29, 1993 on the Protection of Children and Co-operation in Respect to Intercountry Adoption (“Hague Adoption Convention” or “Convention”). “Convention adoption” means an adoption of a child habitually resident in a foreign Convention country by a U.S. citizen habitually resident in the United States, or an adoption of a child habitually resident in the United States by an individual habitually resident in another Convention country.
 - ii. A child habitually resident in a Convention country must qualify as a Convention adoptee under U.S. immigration law and meet the requirements imposed by the country of origin to obtain a Hague Adoption Certificate or Hague Custody Certificate.

- **When does the Convention apply?**
 - i. Generally, the Hague Adoption Convention applies to all intercountry adoption cases by a U.S. citizen habitually resident in the United States seeking to adopt a child who is habitually resident in another Hague Adoption Convention country, such as Mexico. All adoptions that meet these criteria must follow the Convention process.

- **How does one complete a Convention adoption in the United States?**
 - i. The Convention process involves filing a [Form I-800A](#), *Application for Determination of Suitability to Adopt a Child from a Convention Country*, and a [Form I-800](#), *Petition to Classify Convention Adoptee as an Immediate Relative*. In general, the child must qualify as a Hague Convention adoptee pursuant to the Immigration and Nationality Act (INA) Section 101(b)(1)(G), and the Form I-800 must be filed before the child’s 16th birthday, unless an exception applies.
 - ii. Note that at least one prospective adoptive parent must be a U.S. citizen to adopt and bring a child to the United States for immigration through the Convention process (Form I-800/A). If a lawful permanent resident is married to a U.S.



INTERCOUNTRY ADOPTION

citizen and they jointly file for the child, the Hague Adoption Convention process is available.

- **How does the Convention affect me if I am also a citizen of the country I want to adopt from?**
 - i. Under U.S. regulations, dual citizenship does not positively or negatively impact a prospective adoptive parent’s ability to adopt through the Convention process.
 - ii. Because habitual residence (not citizenship) determines whether the Convention applies, a citizen of a foreign Convention country may need to follow the Convention process (instead of the domestic process) to adopt a child from that same Convention country. Failure to comply with the Convention may impact the child’s ability to immigrate to the United States.

- **I want to adopt my relative who is habitually resident in a Convention country. Do I have to follow the Convention?**
 - i. Yes. There are no special procedures under U.S. law for adopting a child who is your relative through the intercountry adoption process. You are required to follow the same steps as for a non-relative adoption.

- **Where can I find a list of the U.S. adoption service providers that can help with a Convention adoption from Mexico?**
 - i. Contacting an adoption service provider to ask specific questions related to your circumstances is generally a good place to start. Accredited agencies and approved persons generally handle intercountry adoptions from specific countries. Our office does not maintain information about the country programs of accredited agencies and approved persons. However, the Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME) has a list on its [website](#) of all accredited and approved providers with program country information. Click the “Who Is Hague Accredited/Approved” button to download the document. You may search for the country from which you wish to adopt, your state of residence, or the term “outgoing” if you reside outside of the United States and wish to adopt a U.S. citizen child.

- **Where can I find resources to help reduce the costs associated with intercountry adoption?**



INTERCOUNTRY ADOPTION

- i. We do not maintain information about sources of financial support for intercountry adoption. An adoption agency may have information or suggestions about where to search for relevant information. You may also wish to consult the relevant child welfare agency in your state of residence or the [Child Welfare Information Gateway](#) for information about assistance with adoption expenses.
- **What if an intercountry adoption did not follow the Convention procedures in order?**
 - i. Generally, USCIS must deny a Form I-800 petition if the petitioner Prospective Adoptive Parent(s) (PAPs) completed the adoption, or acquired legal custody of the child for purposes of emigration and adoption, before the provisional approval of the Form I-800.
 - ii. However, if the child’s country of origin’s laws permit, PAPs may return to the local court and void, vacate, annul, or otherwise terminate the existing adoption or grant of custody for the purpose of adoption. If applicable, PAPs may instead demonstrate that there is no legal mechanism to void, vacate, annul, or terminate an adoption or grant of legal custody in the child’s country of origin.
- **I started a domestic adoption in Mexico and want to change to the Convention process. Is this possible?**
 - i. If the adoption order has been issued, adoptive parent(s) would have to address the out of order issue, as explained above. In Mexico, parents may request a writ of “*Amparo*” from the court to have the original adoption decree amended to reflect that the Convention steps have been taken after the fact. Generally the “*Amparo*” process is only available if it can be established that the child’s rights have been violated under Mexican law, and the process and outcome will vary case by case. The Mexican Central Authority has indicated that the assistance of an attorney will generally be necessary to handle these kinds of cases.
- **What if I have had “prior contact” with the child?**
 - i. Article 29 of the Hague Adoption Convention restricts contact between prospective adoptive parents and the child’s parents, legal custodians, or any other person who has care of the child. Generally, this includes any contact before being formally matched with the child by the proper authority. An authorized ASP sharing general information about the child is not considered “contact” under related U.S. regulations.



INTERCOUNTRY ADOPTION

- ii. USCIS must deny a petition if there is prohibited prior contact. However, contact is permitted if the first contact occurred only after (i) USCIS approved the Form I-800A, and (ii) after a competent authority of the Convention country had determined the child was eligible for intercountry adoption and that the required consents to the adoption had been given.
 - iii. Additionally, there are other exceptions for an adoption that takes place within a family, or if the contact is in compliance with the conditions established by the competent authority of the child's state of origin.
- **Are there any other mechanisms, other than the Hague Adoption Convention process, to bring a child to the United States?**
 - i. If the adoptive parents are able to demonstrate the Convention does not apply to the adoption, the adoptive parents may pursue the family based immigration process to bring an adopted child to the United States for immigration. U.S. immigration law provides for the immigration of an adopted child as an immediate relative or family member of a lawful permanent resident pursuant to INA Sections 101(b)(1)(E) and 201, 203 and 204 by filing a [Form I-130, *Petition for Alien Relative*](#).
 - ii. For a child to meet the requirements of INA Section 101(b)(1)(E), a final adoption must generally take place before the child's 16th birthday and the adoptive parent(s) must have legal custody of the child, as a result of a formal grant of legal custody from a court or authorized governmental entity, for at least two years and must have lived with the child in joint residence for at least two years prior to filing a Form I-130 petition.
 - iii. However, USCIS **cannot** approve a Form I-130 petition filed by a U.S. citizen for a child habitually resident in another Hague Adoption Convention country, unless the adoptive parent can establish that the Hague Adoption Convention does not apply to the adoption. One way to establish that the Hague Adoption Convention does not apply is by satisfying the two year legal custody and two year joint residence requirements outside the United States. The two years of legal custody and joint residence will be calculated in the aggregate; therefore, the adoptive parent does not have to reside in the child's country of habitual residence for two years continuously. However, the parent who is residing with the child must demonstrate that he or she had his or her principal living place with the child for a total of two years, and exercised primary parental control during the two years of joint residence.
 - iv. The Mexican Central Authority has informed the United States Central Authority it does not issue statements of habitual residence for a child residing in the United



INTERCOUNTRY ADOPTION

States. Adoptive parents may be able to establish that the Hague Adoption Convention does not apply to the adoption of a child from Mexico who is present in the United States if USCIS determines that the child is not habitually resident in the country of origin, on the basis of a finding that three additional criteria are met: 1) Intent criteria (the child's entry was **not** for the purpose of adoption), 2) Residence criteria (the child has established compelling ties to the U.S. for a substantial period of time) and 3) Notice Criteria (the petitioner has provided the Central Authority with notice of the adoption proceedings and a minimum of 120 days to object to the adoption for an adoption after February 3, 2014).

- v. If a U.S. domestic adoption has already taken place, the adoptive parents may be able to satisfy the Notice Criteria by setting a hearing date with the court having jurisdiction over the adoption. Adoptive parents must obtain an amended adoption order and provide notice of the amended adoption hearing to the Central Authority with 120 days to object to the amended order. The adoptive parent must then provide a copy of the notice and the amended order to USCIS.
- vi. If the lawful permanent resident is not married to a U.S. citizen, he or she may be able to adopt a child in the child's country of origin and pursue the child's immigration through the family-based immigration process by filing a Form I-130. If the petition is approved, the child may be eligible for an immigrant visa under the F-2A preference category. Note, family-based preference immigrant visas are subject to numerical limitations. Even if a Form I-130 petition is approved, there is likely to be an additional waiting period before a visa number becomes available. If you have questions contact the USCIS National Customer Service Center at 800-375-5283.

