

## **The Hague Convention on Intercountry Adoption**

### **A Web-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 Hague Adoption Convention, 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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## TABLE OF CONTENTS

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

- A. The Hague Adoption Convention**
- B. Scope of this Web-Guide**
- C. Definitions**

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

#### **A. Identifying an Outgoing Case**

- 1. Timing of case initiation; transition rule; “appropriate application”**
- 2. Status of both the Country of Origin and Receiving Countries as Convention Countries**
- 3. Residence of child**
- 4. Residence of prospective adoptive parent(s)**
- 5. Movement of the Child to a Receiving Convention Country for the Purpose of Adoption**
- 6. Examples**

#### **B. IAA Requirements for State Court Orders**

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

- 1. Purpose of HAC and HCD**
- 2. Important considerations for State courts**

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

- 1. Eligibility to provide adoption services in Convention adoption cases**
- 2. Accreditation/Approval Standards**

### **III. Frequently Asked Questions**

#### **A. FAQ's: Hague Adoption Convention and Outgoing Cases, Generally**

#### **B. FAQ's: Identifying an Outgoing Case**

#### **C. FAQ's: Requirements in Outgoing Convention Cases**

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

- E. FAQ's: After the State court issues an adoption or custody for purpose of adoption order**
- F. Miscellaneous**

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

**ATTACHMENT 1: Flowchart: Summary of Steps in an Outgoing Case**

**ATTACHMENT 2: Final Rule 22 CFR Part 97**

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

### **A. The Hague Adoption Convention**

The Department of State (the Department) ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) at the Hague, and **the Hague Adoption Convention entered into force for the United States on April 1, 2008.**

A [current list of the more than 70 Convention member countries](http://travel.state.gov/family/adoption/convention/convention_4197.html) with which the Convention will be in force with the United States can be accessed through the Department's website, [http://travel.state.gov/family/adoption/convention/convention\\_4197.html](http://travel.state.gov/family/adoption/convention/convention_4197.html).

The United States strongly supports the principles of the Convention, which strengthen protections for children, birthparents, 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 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.

Pursuant to the IAA, the Department has issued several new regulations, including detailed federal procedures governing the issuance of certificates and declarations in connection with outgoing cases (i.e., adoption cases involving U.S. citizen and non-U.S. citizen children who emigrate from the United States to another Convention country<sup>1</sup> for the purpose of adoption). [22 CFR Part 97](#) (See Attachment 2). For the first time in history, U.S. children who are traveling to another Convention country for the purpose of adoption will have federal and international protections.

**Contact Information:** For questions regarding this Web-Guide or other information requests on outgoing cases, State court authorities are encouraged to write to the dedicated email: [askpri@state.gov](mailto:askpri@state.gov). Also, individual Department attorneys who are in the Bureau of Consular Affairs, Office of Policy Review and Interagency Liaison (CA/OCS/PRI) may be contacted, if necessary: Edward Betancourt at 202-736-9104; Anna Mary Coburn at 202-736-9081; Lisa Vogel at 202-736-9087; or Corrin Ferber at 202-736-9172.

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<sup>1</sup> The term "Convention country" is used in this Web-Guide as it is defined in 22 CFR 96.2 to mean "a country that is a party to the Convention and with which the Convention is in force for the United States."

## **B. Scope of this Web-Guide**

This Web-Guide offers State authorities on-line information on the new procedures for outgoing Convention adoption cases.<sup>2</sup> The applicable laws and regulations are the Convention, the IAA, and the certificate and declaration rule, 22 CFR Part 97. (See [Section IV](#)).

The Department will be update this Web-Guide regularly to include additional information that proves necessary to answer incoming questions about the role of State authorities in outgoing cases.

## **C. Definitions**

Terms are used in this Web-Guide as they have been defined in the IAA's implementing regulations, specifically in [22 CFR Part 96](#) and [22 CFR Part 97](#). Please consult these authorities for a full and complete list definitions used therein.

*Accredited agency* means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include a temporarily accredited agency. (22 CFR 96.2)

*Accrediting entity* means an entity that has been designated by the Secretary to accredit agencies (including temporarily accredit) and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention. (22 CFR 96.2)

*Adoption* means 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 parent(s). (22 CFR 96.2)

*Adoption Court* means the State court with jurisdiction over the adoption or the grant of custody for purpose of adoption. (22 CFR 97.1)

*Adoption record* means any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person, or public domestic authority, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child. An adoption record does not include a record generated by an agency, person, or a public domestic authority to comply with the requirement to file information with the Case Registry on adoptions not subject to the Convention pursuant to section 303(d) of the IAA (42 U.S.C. 14932(d)). (22 CFR 96.2)

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<sup>2</sup> This Web-Guide does not address cases involving U.S. children emigrating from the United States to non-Convention countries or foreign born children immigrating to the United States from another country (incoming cases).

*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. (22 CFR 96.2)

*Agency* means a private, nonprofit organization licensed to provide adoption services in at least one State. (For-profit entities and individuals that provide adoption services are considered “persons” as defined in this section.) (22 CFR 96.2)

*Approved home study* means a review of the home environment of the child’s prospective adoptive parent(s) that has been: (1) Completed by an accredited agency or temporarily accredited agency; or (2) Approved by an accredited agency or temporarily accredited agency. (22 CFR 96.2)

*Approved person* means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in cases subject to the Convention. (22 CFR 96.2)

*Best interests of the child* shall have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in a child’s best interests.

*Case Registry* means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (42 U.S.C. 14912). (22 CFR 96.2)

*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. (22 CFR 96.2).

*Central Authority function* means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority. (22 CFR 96.2)

*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. (22 CFR 96.2)

*Convention adoption* means the adoption of a child resident in a Convention country by a United States citizen, or an 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. (22 CFR 96.2)

*Convention country* means a country that is a party to the Convention and with which the Convention is in force for the United States. (22 CFR 96.2)

*Country of origin* means the country in which a child is a resident and from which a child is emigrating in connection with his or her adoption. (22 CFR 96.2)

*DHS* means the Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS's responsibilities. (22 CFR 96.2)

*Disruption* means the interruption of a placement for adoption during the post-placement period. (22 CFR 96.2)

*Dissolution* means the termination of the adoptive parent(s)' parental rights after an adoption. (22 CFR 96.2)

*Exempted provider* means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study (or both) in the United States in connection with a Convention adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case. (22 CFR 96.2)

*Foreign Authorized Entity* means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case. (22 CFR 97.1)

*Hague Adoption Certificate* 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 § 97.4(b), the IAA. (22 CFR 97.1)

*Hague Custody Declaration* 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 § 97.4(b), the IAA. (22 CFR 97.1)

*IAA* means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended from time to time. (22 CFR 96.2)

*Legal custody* means having legal responsibility for a child under the order of a court of law, a public domestic authority, competent authority, public foreign authority, or by operation of law. (22 CFR 96.2)

*Legal services* means services, other than those defined in this section as “adoption services,” that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing DHS or Central Authority forms; and providing advice and counsel to accredited agencies, temporarily accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, and the regulations implementing the IAA. (22 CFR 96.2)

*Person* means 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. (22 CFR 96.2)

*Post-adoption* means after an adoption; in cases in which an adoption occurs in a Convention country and is followed by a re-adoption in the United States, it means after the adoption in the Convention country. (22 CFR 96.2)

*Post-placement* means after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s), or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption. (22 CFR 96.2)

*Primary provider* means the accredited agency, temporarily accredited agency, or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used. (22 CFR 96.2)

*Public domestic authority* means an authority operated by a State, local, or tribal government within the United States. (22 CFR 96.2)

*Public foreign authority* means an authority operated by a national or subnational government of a Convention country. (22 CFR 96.2)

*Secretary* means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State’s authority under the Convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority. (22 CFR 96.2)

*State* means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. (22 CFR 96.2)

*Supervised provider* means any agency, person, or other nongovernmental entity, including any foreign entity, regardless of whether it is called a facilitator, agent, attorney, or by any other name, that is providing one or more adoption services in a Convention case under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case. (22 CFR 96.2)

*Temporarily accredited agency* means an agency that has been accredited on a temporary basis by an accrediting entity, in accordance with the standards in subpart N of [22 CFR Part 96], to provide adoption services in the United States in cases subject to the Convention. It does not include an accredited agency. (22 CFR 96.2)

*U.S. Authorized Entity* means a public domestic authority or an agency or person that is accredited or temporarily 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 temporarily accredited agency or approved person. (22 CFR 97.1)

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

### **A. Identifying an Outgoing Case**

#### **1. Timing of case initiation; transition rule; “appropriate application”**

The Convention entered into force for the United States on April 1, 2008.

The IAA’s “transition rule” and Article 41 of the Convention address when the Convention applies to an intercountry adoption case between the United States and another Convention country. [IAA § 505\(b\)](#).

Under the transition rule, the Convention and the IAA *do not* apply in an outgoing case involving a U.S.-resident child “if the prospective adoptive parent(s) of the child initiated the adoption process in their country of residence with the filing of an appropriate application” before April 1, 2008. Similarly, the Convention provides that it *does* apply to every case where an application has been received by the central authority of the prospective adoptive parent(s)’ country of residence after April 1, 2008.

The Department considers the phrase “initiate the adoption process in their country of residence with the filing of an appropriate application” to mean any formal, written effort undertaken prior to April 1, 2008, to initiate the adoption process in the prospective adoptive parent(s)’ country of residence filed with (received by) an authorized entity in that country.

Such formal, written efforts may include a written application or request to start the adoption process to the foreign Central Authority, to the responsible government office, or to any other

entity delegated the authority to receive such applications/requests. This could include, depending on the legal structure of the country at issue, an application for screening of prospective adoptive parent eligibility to adopt filed with the appropriate entity authorized to conduct home studies.

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

The Hague Adoption Convention requirements apply only if the country of origin (the United States) and the receiving country (the Convention country to which the child is emigrating in connection with his/her adoption (e.g., Canada)) are parties to the Convention. Specifically, the Department defines a Convention country as a country that is a party to the Convention and with which the Convention is in force for the United States. For example, Canada, Mexico, Great Britain, and Germany are Convention countries for which the Convention is in force for the United States. Please check the Department's website at regularly for updates because new countries are frequently ratifying or acceding to the Convention.

## **3. Residence of child**

The Convention applies only where a child resident in the country of origin has been, is being, or is to be moved to the receiving country for the purposes of adoption by prospective adoptive parent(s) resident in the receiving country. [IAA § 3\(10\)](#).

## **4. Residence of prospective adoptive parent(s)**

The residence of the prospective adoptive parent(s) will in most cases be evaluated by the receiving country prior to the State court adoption proceedings. In a Convention adoption, this determination 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 – two of the prerequisites to the State court's finalization of the adoption. [IAA § 303\(b\)](#)(incorporating by reference IAA § 303(a)(2); [22 CFR §§ 97.3\(e\)-\(f\)](#) (2007).

In the Department's view, if the Central Authority of the receiving country has determined that the prospective adoptive parent(s) are resident in the receiving country, the State court should defer to this determination.

Similarly, in the Department's view, if the Central Authority of the prospective adoptive parent(s) treats the prospective adoptive parent(s) as resident(s) of the United States, the State court should defer to that determination.

However, if the Central Authority of the receiving country has not opined on the residence of the prospective adoptive parent(s), the Department recommends that a State court consider the immigration status of the prospective adoptive parent(s). In the Department's view, a rebuttable presumption should apply to those prospective adoptive parent(s) who were

admitted into the United States under any of the non-immigrant visa categories that they are not resident in the United States.

The Department of State generally considers a U.S. citizen residing in a Convention country to be resident in the United States if the U.S. citizen is domiciled in the United States or intends to establish a domicile in the United States at any point before the child's 18th birthday.<sup>3</sup>

It is the view of the Department of State that a prospective adoptive parent(s) who is a U.S. citizen living abroad intend(s) to retain or re-establish a U.S. domicile. Thus, prospective adoptive parent(s) do not need to submit evidence of intent to retain or reestablish domicile in the United States in order to be considered resident in the United States.

For this reason, a State court may treat an adoption case involving a U.S. citizen currently resident in a Convention country who seeks to adopt a child resident in the United States as a domestic (non-Hague Convention) case, since, in the view of the Department of State, both the adoptive prospective adoptive parent and the prospective adoptive child can be considered to be resident in the United States.

The Department, as U.S. Central Authority, may be contacted<sup>4</sup> about cases involving questions of the residence of the prospective adoptive parents. The Department can coordinate with the potential receiving country to reach an understanding about whether or not to treat the case as an outgoing Convention case.

## **5. Movement of the Child to a Receiving Convention Country for the Purpose of Adoption**

An outgoing Convention adoption occurs when a prospective adoptive parent(s) residing in a Convention country seek to adopt a child resident in the United States, when, in connection with the adoption, the child has moved or will move from the United States to the Convention country (receiving country).

The adoption case may involve a State court's issuance of a final adoption decree or an order granting custody for the purpose of adoption in the other Convention country. Both final adoption cases and custody for the purpose of adoption cases are considered Convention adoption cases.

## **6. Examples**

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<sup>3</sup> Note that this approach is not inconsistent with the definition of habitual residence found in the Department of Homeland Security (DHS) interim final rule found at [8 CFR 204.303](#) (which applies when a U.S. citizen adopts a child from another Convention country).

<sup>4</sup> See the contact information listed in section I.A of this Web-Guide.

**The following examples illustrate the issues discussed above:**

**Example 1. Timing of adoption case and Transition Rule.** Prospective adoptive parents in Canada seek to adopt a child resident in the United States. The prospective adoptive parent(s) contact a Canadian adoption agency in January 2008 and complete the agency's internal paperwork. The prospective adoptive parent(s) then file an application to adopt in March. The Central Authority in Canada receives the application in March and approves it on April 15, 2008.

**Discussion of issue:** The prospective adoptive parent(s) filed an application to adopt with the appropriate Canadian authority in March 2008. Under the transition rule, the date the appropriate application is filed with and received by an authorized entity in the receiving country – not the date it is approved – determines whether the case is covered by the Convention. Since the prospective adoptive parent(s) filed their application prior to April 1, 2008, their case is not covered by the Convention.

**Example 2. Residence of Child.** Prospective adoptive parents, who are legal permanent residents in the United States and are nationals of France, seek to adopt the 2-year-old child of a close French colleague. The child was born in France and is not a U.S. citizen, but has been living in the United States in the foster care system since her mother died. The State public authority has temporary legal physical custody. The prospective adoptive parents file an application with the proper French authority on April 2, 2008 to adopt and intend to bring the child to France at some point in the future.

**Discussion of issues:**

1. Residence of child: In order to find that this is a Convention adoption case, the State court evaluates whether the child is resident in the United States under applicable State law.
2. Status of country of origin and receiving country as Convention countries: If the State court 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. Moreover, the prospective adoptive parents plan to move the child to France.
3. Timing: The prospective adoptive parents filed the application in France after April 1, 2008, so the case is covered by the Convention.

**Example 3. Residence of Prospective Adoptive Parents.** A non-U.S. citizen World Bank employee from Germany residing in the United States seeks to adopt a U.S.-born child who has been living in the United States with his birthparent(s) for several years. The prospective adoptive parent will be residing in the States for a few more years, but may return to Germany at some later date.

**Discussion of issues:**

1. Residence of child: The child was born in the United States and is resident here.
2. Residence of prospective adoptive parent: Assuming the prospective adoptive parent(s) files an application to adopt in the receiving country, the Central Authority of the receiving country (Germany, in this case) may determine the residence of the prospective adoptive parent, depending on the circumstances. Otherwise, the issue of the prospective adoptive parent's residence may be raised before the State court.

**For information on U.S. citizens living abroad that seek to adopt a child resident in the U.S., see section III.B, FAQs B.4-B.9.**

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

The State court's determination that a case is an outgoing case covered by the Convention will make a difference in what the parties must submit to the State court and what the State court must include in its findings.

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

- Determined that the adoptive placement is in the best interests of the child;
- Verified documentation that a child background study has been completed;
- Verified documentation that the adoption service provider has made reasonable efforts to place the child in the United States and has been unable to do so;
- Verified documentation of the U.S. authorized entity's determination that the adoptive placement is in the best interests of the child;
- Verified the home study on the prospective adoptive parents (background report);
- Verified 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 in the receiving country;
- Verified the declaration by the Central Authority (or other competent authority) of the receiving country that the Central Authority consents to the adoption, if necessary; and
- Verified satisfactory evidence that Articles 4 and 15 through 21 of the Convention have been met.<sup>5</sup>

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<sup>5</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 have been 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 granted to the child's wishes and opinions, and that the child has confirmed in a written statement that he/she has not been coerced or induced by payment or compensation of any kind to consent to the adoption.

## **C. 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 an HAC or HCD in order to ensure that the adoption or grant of custody will be recognized by the receiving country, unless that country determines that the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

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- 2) Article 15: That if the Central Authority of the receiving country is satisfied that the applicants are eligible and suitable to adopt, it shall prepare a report on the applicants 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 interests 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, 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 parent(s) are eligible and suitable to adopt; (b) ensure that the prospective adoptive parent(s) 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 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 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 adoptive parents 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 (though not an adoption unless the country of origin Central Authority has approved of the new prospective adoptive parents), and 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, his or her consent obtained in relation to measures described in this Article.

The HAC is a document issued by Secretary of State certifying that the U.S. adoption has been completed in accordance with the Convention and the IAA.

The HCD is a document issued by the Secretary of State declaring 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. 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.

## 2. Important considerations for State courts

- To obtain the HAC or HCD, the prospective adoptive parent(s) must submit an application (available at [http://travel.state.gov/family/adoption/convention/convention\\_4196.html](http://travel.state.gov/family/adoption/convention/convention_4196.html)) to the Department, which must include documentation from a U.S. State court that the adoption or grant of custody was granted and that certain findings were made. **This means that the Department will use a U.S. State court order as the basis for determining eligibility for an HAC or an HCD.**
- The Department promulgated regulations, [22 CFR Part 97](#), mandating what documents and findings prospective adoptive parent(s) must include in the HAC/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.B](#) of this Web-Guide, above. The regulations, however, require the parties 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 court'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 ([Convention Article 4\(d\)](#))

- 9) authorized entity duties ([Convention Article 17, 18, 19, 20 and 21](#))
- 10) no contacts
- 11) no improper financial gain

See [22 CFR 97.2\(b\)](#).

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\(b\)](#).

The finding on contacts, derived from [Convention Article 29](#), and the finding on lack of improper financial gain, derived from [Convention Article 32](#), must also be included to support an application for an HAC or an HCD; however, these Convention articles were not made directly applicable to the State courts through [IAA Section 303\(b\)\(1\)](#).

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.

## D. 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 case, only the following private providers can offer or provide an [adoption service](#) in that case:

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

[IAA § 201](#), [22 CFR §§ 96.12 - 96.15](#).<sup>6</sup> The accreditation/approval requirement is in addition to any applicable State requirements.

The IAA defines adoption services as:

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<sup>6</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](#).

- 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 home study and reporting on prospective adoptive parents or a background study and report on a child;
- 4) Making non-judicial determinations of a child's best interests and of the appropriateness of an adoptive placement;
- 5) Monitoring a case after a child has been placed with prospective adoptive parents until final adoption; or
- 6) Assuming custody of a child and providing childcare or any other social service, when necessary, because of a disruption pending alternative placement.

**IAA § 3(3).** Public domestic authorities do not have to be accredited or approved to provide adoption services in a Convention adoption case.

The Department maintains a list of accredited/approved adoption service providers at [http://www.travel.state.gov/family/adoption/convention/convention\\_4169.html#](http://www.travel.state.gov/family/adoption/convention/convention_4169.html#).

In the event that the State court determines that an adoption service(s) has been performed in an outgoing case by an individual or entity other than one authorized to provide 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 is unable to issue an HAC or HCD in an outgoing case where an adoption service has been provided by an unauthorized provider.

The Department respectfully requests that the court, the parties, or the attorneys for the parties report the provider immediately to the Department at [askPRI@state.gov](mailto:askPRI@state.gov) as a provider who provided adoption services in an outgoing case without authorization.

## **2. Accreditation/Approval Standards**

The accreditation regulations ([22 CFR Part 96](#)) set standards for accreditation and approval that are 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 standards for temporary accreditation appear in Subpart N of the accreditation regulations.)

In 2006, the Department designated two accrediting entities to perform accrediting functions—the Council on Accreditation (COA) and the Colorado Department of Human Services. The Department will monitor these accrediting entities to ensure that each performs its functions in compliance with the Convention, the **IAA**, its implementing regulations, other applicable law, and the respective accrediting entity agreement with the Department.

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

#### **A. FAQ's: Hague Adoption Convention and Outgoing Cases**

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

A current list of the more than 70 Convention member countries with which the Convention will be in force with the United States can be accessed through the Department's website, [http://travel.state.gov/family/adoption/convention/convention\\_4197.html](http://travel.state.gov/family/adoption/convention/convention_4197.html).

##### **A.2 Will adoptions to non-Convention countries be covered by the Hague Adoption Convention and the new regulations?**

No. Only outgoing adoptions to Convention countries are covered by the Convention, the IAA, and 22 CFR Part 97. However, new reporting requirements in 22 CFR Part 99 apply to outgoing cases to both Convention and non-Convention countries.

##### **A.3 What are the main changes that will affect outgoing cases to Convention countries?**

The main changes affecting outgoing cases include:

- Requirement for a State court to make specific determinations and verifications related to the outgoing case's compliance with the Convention and the IAA (see above section II.B of this Web-Guide; IAA § 303(b));
- Issuance of Hague Adoption Certificates (HAC) or Hague Custody Declarations (HCD) in response to complete and appropriate applications, including required court findings to support the HAC or HCD application (see above section II.C of this Web-Guide); and
- New reporting requirements for outgoing cases.

##### **A.4 Must a public domestic authority (an authority operated by a State, local, or tribal government within the United States) comply with IAA procedures for outgoing cases when it is placing a child resident in the United States with prospective adoptive parent(s) in a Convention country?**

No. The IAA applies only to accredited agencies and approved persons. However, a public domestic authority placing a child in an outgoing case should be aware that the outcome of the case depends on its completion of the steps outlined in the IAA, so that the State court is legally able to issue the order granting adoption or custody for purposes of adoption. Should the parties desire an HAC or an HCD, they would also need the public domestic authority to complete the requirements in 22 CFR Part 97 so the Department is legally able to issue an HAC or HCD.

##### **A.5 Must a public domestic authority be accredited, temporarily accredited, approved, or an exempted provider to provide adoption services in an outgoing Convention adoption case?**

No.

**A.6 Where are the new requirements published?**

22 CFR Part 96 (Accreditation of Agencies and Approval of Persons Under the Intercountry Adoption Act of 2000);

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

22 CFR Part 99 (Reporting on Convention and Non-Convention Adoptions of Emigrating Children).

The best way to obtain these regulations is to go to the Government Printing Office (GPO) website at [www.gpo.gov](http://www.gpo.gov) and use the title, date, or cite of the regulation to locate it, using the GPO search guidance.

**A.7 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 [adoptionusca@state.gov](mailto:adoptionusca@state.gov) or send inquiries to U.S. Central Authority for the Hague Intercountry Adoption Convention, Department of State, Office of Children's Issues, 2100 Pennsylvania Avenue, 4<sup>th</sup> Floor, Washington, DC 20520.

Legal questions from State court authorities or judicial authorities in the receiving country should be sent to [askpri@state.gov](mailto:askpri@state.gov).

**B. FAQ's: Identifying an Outgoing Case**

**B.1 When will the Convention apply to outgoing cases?**

The Convention entered into force for the United States on April 1, 2008. The Convention does not apply in an outgoing case if the prospective adoptive parent(s) initiated the adoption process before April 1, 2008. (See section II.A.1 of this Web-Guide for more detailed information on the timing of the case, the transition rule, and the meaning of the phrase "initiate the adoption process.")

**B.2 What if a family started an outgoing adoption case before April 1, 2008, but now wants to pursue a Convention adoption?**

A family may re-start the case in the receiving country after April 1, 2008, as a Convention adoption, and must comply with any applicable Convention application requirements in the receiving country. Contact information on the Central Authorities for Convention countries is provided on the website of the Permanent Bureau of the Hague Conference on Private International Law at [http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=69](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69).

**B.3     What if a State court authority has a question about the status of an outgoing case for the Central Authority of the receiving country?**

The Department plans to work directly with the Central Authorities of receiving countries to resolve any questions about whether or not an outgoing case may be treated as a non-Convention case (initiated before April 1, 2008) or a Convention case as well as to resolve other case-specific questions. State court authorities may also contact the Central Authority of the Convention receiving country directly. The Central Authority contact information is listed at [http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=69](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69).

**B.4     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?**

The Department of State generally considers a U.S. citizen residing in a Convention country to be resident in the United States if the U.S. citizen is domiciled in the United States or intends to establish a domicile in the United States at any point before the child's 18th birthday.

It is the view of the Department of State that a prospective adoptive parent(s) who is a U.S. citizen living abroad intend(s) to retain or re-establish a U.S. domicile. Thus, prospective adoptive parent(s) do not need to submit evidence of intent to retain or re-establish domicile in the United States in order to be considered resident in the United States for purposes of the IAA.

For this reason, a State court may treat an adoption case involving a U.S. citizen currently resident in a Convention country who seeks to adopt a child resident in the United States as a domestic (non-Hague Convention) case, since, in the view of the Department of State, both the adoptive prospective adoptive parent and the prospective adoptive child can be considered to be resident in the United States.

It is important to note, however, that the relevant State court is *not required* to follow this guidance in determining the residence of the prospective adoptive parent(s) and consequently whether an adoption case is covered by the Hague Convention in accordance with the IAA.

Nothing in this guidance precludes U.S. citizen prospective adoptive parent(s) residing abroad from initiating and completing an intercountry adoption in accordance with the Hague Convention intercountry adoption process to avoid the risk that a U.S. State court may later find that the case must be processed as a Convention adoption case.

Finally, the foreign country in which a U.S. citizen prospective adoptive parent resides may have a different understanding of residence and may require U.S. citizens residing within its borders to follow a Hague Convention intercountry adoption process in order for the child to enter that country legally. Prospective adoptive parents should consult the Central Authority in the Convention country where they reside or may contact the U.S. Central Authority to seek our

assistance in accessing information from the other Convention country about relevant immigration requirements.

**B.5 Would the U.S. Convention case rules apply in adoption cases where a U.S. citizen is residing in a Convention country, is considered to be resident in the United States in accordance with the above, and is seeking to adopt a child resident in the United States?**

No. The domestic adoption laws and regulations of the U.S. State where the adoption takes place would apply.

**B.6 Do the transition procedures apply to these cases?**

No. Since these cases will usually be U.S. domestic adoptions and not Convention adoptions, they are not subject to the transition provisions.

**B.7 Who may conduct home studies in these cases?**

Since they are not Convention cases, the Convention rules do not apply to it. For more information on completing home studies in non-Convention cases, see [www.travel.state.gov](http://www.travel.state.gov).

**B.8 What about military and other U.S. government employees stationed abroad?**

By their nature, U.S. government employees assigned abroad in the military and in other U.S. government agencies are on temporary assignments. These U.S. citizens are considered to be habitually resident in the United States and thus their adoption of U.S. children will be considered to be a U.S. domestic adoption, not a Convention adoption.

**B.9 What if I am a U.S. citizen, but my spouse or partner is not?**

If the U.S. Citizen prospective adoptive parent were domiciled in the United States or were to be returning to establish a domicile in the United States at any point before the child's 18<sup>th</sup> birthday, the Department would consider the case to be a domestic U.S. adoption not a Convention case.

**C. FAQ's: Requirements in Outgoing 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 an outgoing case, 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 What language should documents submitted to the State court be in?**

An English copy or a certified English translation of the home study should be provided. See [22 CFR 96.55\(d\)\(2\)](#). The IAA does not prohibit the State court from applying any State law and/or local court practices and procedures to translations of written or oral testimony or other evidence.

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

Section [22 CFR 96.53\(a\)](#) sets forth specific content elements for child background studies, and, pursuant to section [96.53\(b\)](#), an accredited agency or temporarily accredited agency prepares the child background study. Alternatively, when the child background study is not performed by an accredited agency or temporarily accredited agency, the background study is reviewed and approved in writing by an accredited agency or temporarily accredited agency.

### **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\(b\)\(1\)\(A\)](#) and [303\(a\)\(1\)\(B\)](#) 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.
- Section 96.54(a)(1)-(4) clearly identifies the parent recruiting procedures that will constitute “reasonable efforts” in most cases, with certain delineated exceptions.

- The exception from the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4), in cases where the birth parent(s) have identified the prospective adoptive parent(s), applies only when an adoption service provider, or its agents, has not assisted the birth parent(s) in identifying the prospective adoptive parent(s).
- 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. But if the adoption service provider assists birth parent(s) in identifying prospective adoptive parents, the exception for birth parent identification does not apply.
- If, even after counseling by an adoption service provider, birth parent(s) identify prospective adoptive parents in another Convention country through their own efforts and without assistance from an adoption service provider or its agent in that identification, birth parent(s) may continue to work with an adoption service provider to complete the adoption process, and such adoption service provider may provide the full range of other adoption services without following the 96.54(a)(1)-(4) recruiting procedures.
- Documentation of reasonable efforts 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 on the child, and proof that the child background study was sent to potential U.S. prospective adoptive parents.

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

The Convention has a “no contact” rule that prohibits direct contact between the birthparent and 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 birthparent, or any other person who has care of the child, unless the child is being adopted by a relative. Pre-adoption contacts between birthparent(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? 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.**

Paragraph (1) of [22 CFR 96.53\(c\)](#) 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. 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 his or her ethnic, religious, and cultural background. How can the agencies/persons reconcile this with the Multi-ethnic Placement Act (MEPA) and the Interethnic Adoption provisions of the Small Business Job Protection Act (IEPA)?**

The regulation on “due consideration” is derived directly from Article 3 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....”

If the parties or State court believe a particular IAA section or regulation is inconsistent with relevant State law, then the State court will need to determine if the State law provision is in fact inconsistent with the Convention or the IAA and thus should be preempted.

**C.10    Under 22 CFR 96.55(b), copies of documentation of the State court order granting the adoption, proceedings etc. are to be provided to the Department. If the state laws prohibit identifying birthparent 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.

Birthparent names are not required as part of the HAC/HCD application; however, redacted State court documents that omit birthparent identification information may or 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 be provided from the receiving country 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?**

Because the provision of this evidence is an explicit requirement under Article 5 of the Convention, applicable to any receiving country, once the Convention enters into force for the United States, the relevant receiving country will provide the entry authorization and notification of consent to the adoption to the parties. The parties must provide the Article 5 notice to the State court.

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

22 CFR part 99 outlines new 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 parties, not the court, are 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 under [Federal Reporting Requirements for Outgoing Adoption Cases](#).

**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 do?**

The parties may apply to the Department for an HAC or HCD. Applications (Form DS5509 "Application for a U.S. Hague Adoption Certificate or Custody Declaration") are available at: [http://travel.state.gov/family/adoption/convention/convention\\_4196.html](http://travel.state.gov/family/adoption/convention/convention_4196.html).

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

Article 23 of the Convention states that an adoption made in accordance with the Convention shall be recognized by operation of law in other Hague countries 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 parties must obtain an official copy of the court order and findings and transmit those documents to the Department along with their application for an HAC or HCD.

**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 will be 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?**

The child retains his/her U.S. citizenship but may also 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 may 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 Hague Adoption Convention 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 Hague Adoption Convention final adoption certification, since that country will be the "state of the adoption" under the Convention.

**F. FAQ's: Miscellaneous**

**F.1 Are there any new rules governing adoptions in the United States of children from other countries of which State courts should be aware?**

Section 301(c) of the [IAA](#) provides:

Condition on Finalization of Convention Adoption by State Court.—In the case of a child who has entered the United States from another Convention country for the purpose of adoption, an order declaring the adoption final shall not be entered unless [the Department of State] has issued the certificate provided for in subsection [301(a)] with respect to the adoption.

In other words, this section provides that a State court cannot grant a final adoption order in the case of a child who has entered the United States from another Convention country for the purpose of adoption based on a grant of custody for purposes of adoption from the country of origin, unless the Secretary of State has issued an HCD certifying that the grant of custody met the requirements of the Convention and the IAA. See [22 CFR Part 42](#).

Thus, when the child's country of origin has granted the prospective adoptive parents custody of the child for purposes of adoption pursuant to the Convention and IAA and the consular officer issuing the child's visa for travel to the United States has also issued an HCD to the parents, a State court need only require prospective adoptive parents to present the HCD in order to meet Section 301(c).

When a child has entered the United States from a Convention country either without a visa (under the visa waiver program, through parole, or illegally) or on a tourist or other non-immigrant visa, an HAC or a HCD generally will not have been issued.

If the prospective adoptive parents are unable to present either a HCD or an HAC, the Department recommends that a State court examine the facts closely to determine if the purpose of the visit to the United States was adoption. In the Department's view, a State court does not have the authority to enter a final adoption order in accordance with Section 301(c) if it determines that the child entered the United States for the purposes of adoption without an HCD or an HAC having been issued.

Moreover, under applicable regulations of the Department of Homeland Security's Bureau of Citizen and Immigration Services, [8 CFR 204.2\(d\)\(2\)\(vii\)](#), any child whose habitual residence was in a Convention country prior to entering the United States must comply with Hague procedures in order to acquire U.S. citizenship unless the adoptive parents are determined in accordance with the regulations to have been habitually resident outside of the United States at the time of the adoption. In order to be found habitually resident outside the United States under this regulation, adoptive parents would generally have to establish that they had custody and resided with the child for two years outside the United States.

To avoid difficult situations in which U.S. citizen parents are unable to establish eligibility for U.S. citizenship for their adopted child, the Department urges State courts to consider whether the desired adoption or grant of custody unlawfully circumvents Hague adoption procedures. Prospective adoptive parents whose cases are denied for this reason should be directed to initiate Hague processes in accordance with DHS regulations.

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

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

###### **The Hague Adoption Convention**

- Complete citation: Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *concluded* May 29, 1993.

**The Intercountry Adoption Act (IAA), 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** (2007).

Issuance of Adoption Certificates and Custody Declarations in Hague Convention Adoption Cases, **22 CFR Part 97** (2007).

Intercountry Adoption—Convention Record Preservation, **22 CFR Part 98** (2007).

Reporting on Convention and Non-Convention Adoptions of Emigrating Children, **22 CFR Part 99** (2007).

Changes to Consular Officer Procedures In incoming Convention Cases (**22 CFR Part 42**).

Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention, **72 Fed. Reg. 56832** (U.S.C.I.S., Dep't of Homeland Sec. Oct. 4, 2007) (to be codified at **8 CFR Parts 103, 204, 213a, 299, and 322**).

**B. Other laws and regulations that relate to the Hague Adoption Convention (each title provides a link to that document):**

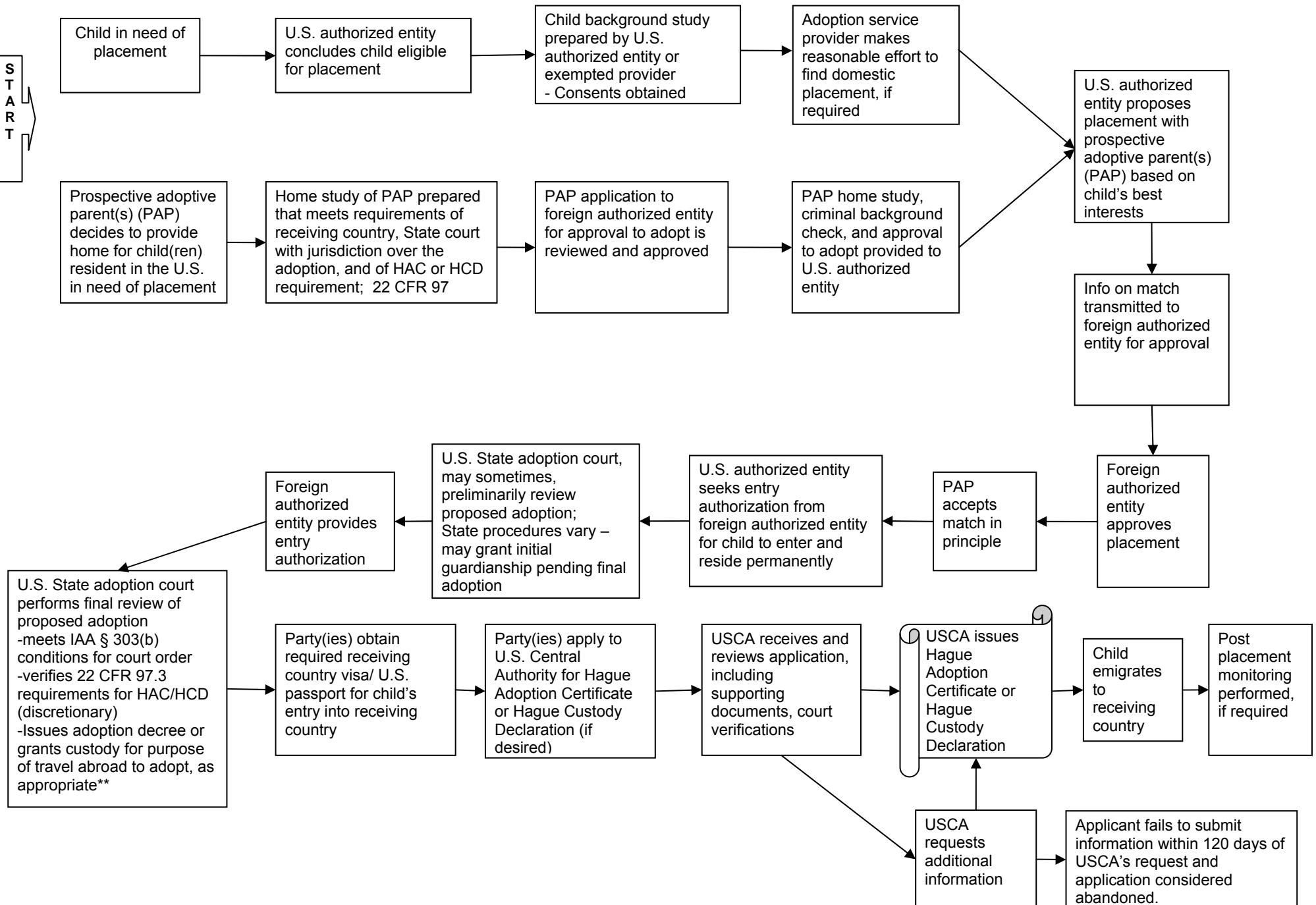
The Immigration and Nationality Act, 8 U.S.C. § 1101, et. seq.

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).

## ATTACHMENT 1: SUMMARY OF STEPS IN AN OUTGOING CASE\*

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\*Every case is different and may involve activity not described. Practices and procedures of receiving countries will vary.

\*\*If PAP(s) are granted guardianship for child to travel to receiving country prior to final U.S. adoption, PAP(s) return to State court for final adoption, if required.

ATTACHMENT 2: [22 CFR PART 97](#)