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Adoption from India

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Submitted by Chief Editor on Mar 3rd 2009

ANSWER:

I am sharing with you a response to a frequently asked question about adopting a child from India. Our inquirer also wanted to know if she could adopt her niece. Here is the info:

Adoptions of children from India to the US are covered under the Hague Convention on Inter-country Adoption. Adoptions of relatives are permitted under the Hague Convention so long as the adoption proceeds in the same manner as other Convention adoptions. Significantly, the relative child must still meet the definition of a "Convention Adoptee". Please see the following US State Dept. Website for more details:

<http://adoption.state.gov/about/who/relatives.html> ^[2]. In addition to other applicable requirements, all of the following Hague requirements must be true for a child to be eligible for the "Convention Adoptee" classification:

1. The child is under the age of 16 at the time the I-800 petition is filed (with the USCIS) on his or her behalf, is unmarried, and lives in a Convention country (India is a Convention Country); But note, unless there are exceptional circumstances, India only permits relative adoptions for children under the age of six. This may be problematic for you and should be clearly discussed with your State Dept Approved Agency before proceeding.
2. The child will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, habitually resident in the United States, whom USCIS has found suitable and eligible to adopt (Form I-800A approval) with the intent of creating a legal parent-child relationship. Note that at this stage the child must not have been adopted yet. However, India makes the following additional requirements: Prospective adoptive parents can't be less than 30 or more than 55 years of age. Married couples must have a combined age of 90 or less. Prospective adoptive parents should be at least 21 years older than the child. Single parents up to the age of 45 can adopt.
3. The child's birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child's immigration and adoption;

4. If the child has two living birth-parents who were the last legal custodian who signed the irrevocable consent to adoption, they are determined to be incapable of providing proper care for the child; and

5. The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in the Hague Adoption Convention and the IAA, including that proper accredited adoption service providers were used where required, and there is no indication of improper inducement, fraud, misrepresentation, or prohibited contact associated with the case.

Please note for adopting a relative, item #3 is critical. However, even if the surviving parent provides the written consent of relinquishment, the Indian Government has the right to deny this case based on the sole parent's income, occupation, and reasons for relinquishment. Please see the following Indian Government site which provides guidelines for adoptions of relatives abroad:

<http://www.adoptionindia.nic.in/guidelinefamily.htm> [3]. If the surviving parent's income, occupation or reason for relinquishment bar classifying the child as a Convention Adoptee, then there is one more possibility. If the child has resided with the United States citizen in legal custody for at least two years, then the U.S. citizen may also file an immigrant visa petition for the child.

If you choose to proceed with the adoption, our firm would work on the immigration petitions (I-800, I-800a) and the State Dept approved agency would be in contact with the Indian Government to arrange for adoption (or legal guardianship) in India of your niece as required by the Hague Convention.

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [4] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [5]

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[2] <http://adoption.state.gov/about/who/relatives.html>

[3] <http://www.adoptionindia.nic.in/guidelinefamily.htm>

[4] <http://www.immigration.com/law-offices-rajiv-s-khanna-pc>

[5] <http://www.immigration.com>

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