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Inter-Country Adoption

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Submitted by admin on Mar 26th 2009

For Children From India

India is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. As per the first article of the newly instated Hague Convention, ?Inter-country adoptions take place in the best interests of the child.? This Convention strengthens protections for children, birthparents, and prospective adoptive parent(s), and establishes internationally agreed upon rules and procedures for inter-country adoptions. Law Offices will work with you and the Agency(s) of your choice to assist you in your adoption processes.

Who May Adopt?

The Hague Adoption Convention governs adoption between the United States and India. Therefore to adopt from India, you must first be found eligible to be an adoptive parent by the U.S. Government through the home study and approval of the I-800A. In addition to these U.S. requirements for prospective adoptive parents, India also has the following eligibility requirements for prospective adoptive parents:

- **Age 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. Single parents up to the age of 45 can adopt. Prospective adoptive parents should be at least 21 years older than the child.
- **Marriage Requirements:** Prospective adoptive parents can be married or single.
- **Income Requirements:** There are no income requirements for inter-country adoptions from India.
- **Other Requirements:** Indian law only allows Hindus, Sikhs, Jains and Buddhists to complete full adoptions of Indian children. However, Under the Guardian and Wards Act of 1890, foreigners may petition an Indian District Court (or Family Court in larger urban areas) for legal custody (guardianship) of a child for the purpose of taking the child abroad to conclude a full and final adoption.

About the Process

Below is a general overview of the inter-country adoption process between India and the United States.

1. Determine initial eligibility with Law Offices based upon Hague Convention Rules and Indian Laws.
 2. Enlist A Foreign Adoption Agency (EFAA) for Preparation Of The Home Study Report:
A home study is merely a report required by adoption officials affirming that you are suitable to be a parent(s) of a child and can provide the stability and home environment that a child needs.
 3. Initial U.S. Immigration Requirements:
As of April 1, 2008, U.S. citizens wishing to adopt in a Convention country must seek to classify the child as a ?Convention Adoptee? and as per INA 101(b)(1)(E). Interested parents should file with USCIS a form I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country, biometrics fee, and the ancillary documentation. Law Offices will assist you with the preparation and completion of this step.
 4. Dossier:
The applicants must also create their dossier with your agency containing the requisite (and properly authenticated) legal documents.
 5. Recognized Indian Placement Agency (RIPA) / Identification of Child/ Clearance by the Adoption Coordinating Agency (ACA):
Under Indian law, foreign prospective adoptive parents are required to use an adoption agency that is ?enlisted? with the Indian Central Adoption Resource Agency (CARA). Upon receipt of your documents, the RIPA will make efforts to match a child with the applicant within three months. Please note, before RIPA proposes to place a child in inter-country adoption, ACA will attempt to find suitable Indian adoptive parents within 30 days and if they are unable to do so ACA will issue clearance certificates for inter country adoption by the 31st day.
EXCEPTION: Certain exceptions exist for Non Resident Indian (NRI) parent(s).
- Please note as the child is matched with the Prospective Adoptive Parents (PAP), a report under Article 16 of the Hague Convention is required from the Central Authority. This report determines that the child is adoptable, provides proof that the necessary consents have been obtained, reasons why the envisaged placement is in the best interests of the child, ensures that the legal custodian has freely consented in writing for the adoption, ensures that any individual other than the legal custodian has consented (if applicable), ensures that the child has freely consented in writing (if applicable), and ensures that no payment of any kind has been given to obtain consent necessary for the adoption to be completed.
6. Issuance of No Objection Certificate by CARA:
After RIPA forwards the complete dossier to CARA. CARA will issue NOC within 15 days from the date of receipt of the adoption dossier if complete in all respects.
 7. Complete Supplemental Immigration Steps (I-800) / Importance of Article 5 Issuance:

File the I-800 (To classify Convention Adoptee as an Immediate Relative) and all ancillary documentation. To qualify, you must have an approved I-800A; the Central Authority must have proposed an adoption and you must have accepted said proposal, but not yet adopted or obtained custody of the child; and no significant changes have occurred since I-800A was approved or extended. The Article 16 report and other ancillary documents must be attached. Law Offices will assist you in the preparation and completion of this step. The petition is provisionally approved in accordance with USCIS regulations and forwarded to the respective post via NVC for further processing. The Form I-800 is forwarded to the Embassy/Consulate. The biographic data form (DS 230) and information on required photographs are then mailed to the Prospective Adoptive Parents or Adoption Service Provider and are to be mailed to the Immigrant Visa Unit of the U.S. Embassy, New Delhi.

After the Consular Officer at the Embassy reviews the application and determines that there are no ineligibilities, the Consular Officer will issue a letter under Article 5 of the Hague Convention to India's Central Authority stating that the Prospective Adoptive Parents have been counseled and are eligible for the adoption and that the child will be authorized to enter and reside in the U.S. The Prospective Adoptive Parents/Adoption Service Provider will be notified by e-mail by the Embassy (New Delhi) regarding the issuance of the Article 5 letter. The adoption/guardianship order must not be obtained until the Embassy (New Delhi) issues an Article 5 letter.

8. File petition (and all ancillary and requisite documents) with Indian District Court to obtain Guardianship/Obtain Visa and Passport for child:
Indian law does not permit foreigners to adopt Indian children in India. Rather, India grants guardianship (custody) allowing the prospective adoptive parents to depart India and to adopt the child in the parents' home country. After grant of custody, consular officers in India will issue a Hague Adoption Certificate (HAC) or Hague Custody Certificate (HCC), and grant a visa in cases where the adoption or grant of custody has met the requirements of the Convention and the U.S. Inter-country Adoption Act. Once the court has granted the order in accordance with Hague requirements, an Indian passport must also be obtained in order for the child to leave India. RIPA will apply in the Regional Passport Office (RPO) for an Indian Passport in favor of the Child. Thereafter the Consulate/Embassy/ High Commission of the concerned country (U.S.) may issue the VISA entry permit for the child. New USCIS visa categories, IH-3 and IH-4, will be used in Convention adoption cases.

9. Child Travels to Adoptive Country:
The adoptive parents must come to India and accompany the child back. As per Convention requirements, the Agency must provide documented post-plans before guardianship is granted to ensure child is fully adopted. The Agencies must follow through with said plans after the child enters the United States.

What Else Should I Know?

- Eligibility Requirements for Parents and Children: Hague Convention mandates its own eligibility requirements but also requires prospective parents to qualify under the laws of the foreign country.
- Hague Convention Requirements: Because India is a Convention country, adoption services must be provided by accredited agencies approved by the State Department, Hague Permanent Bureau, and CARA. Other Hague Convention restrictions apply.
- General Notes Regarding Adopting Children From India: Typically NRI couples (with

OCI) adopting from India will find the process goes much more quickly and smoothly than for a non-NRI couple. NRIs may even be exempted from certain eligibility requirements. In fact, India makes an effort to place all abandoned or relinquished children with an Indian family in India first. If that is not possible, then they prefer that an Indian family abroad be found. Finally, if no Indian family can be found, then the child can be placed with a non-Indian resident family.

Is Adopting a Relative Child Permitted Under the Hague Convention?

Adoptions of relatives by U.S. Citizens 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 must be true for a child to be eligible for the "Convention Adoptee" classification:

1. Generally, the child is under the age of 16 at the time the I-800 is filed on his or her behalf, is unmarried, and lives in a Convention country. But note, **unless there are exceptional circumstances**, if you are adopting a relative from India, the child should be under the age of 6. See Section 2.1 and 2.2 in the following link: <http://www.adoptionindia.nic.in/guidelinefamily.htm> [3]
2. The child will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen, 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.
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 emigration and adoption;
4. If the child has two living birthparents 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 that 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.

* Please note the above description is a mere summary of this very complex and detailed procedure. This summary is not intended to serve as legal advice and the content is subject to change at any time. Please contact our Law Offices for further information.

Intercountry Adoptions: Vietnam

Vietnam has announced its intention to launch new adoption legislation and reform its adoption process by 2011. Consequently, the U.S. State Department has indicated that currently U.S. Citizens cannot register new adoptions in Vietnam and likewise adoption service providers/potential adoptive parents should not obtain or accept adoption referrals from Vietnam.

The U.S. and Vietnam jointly announced that on October 15, 2008, intercountry adoptions were halted. The adoptions are only to continue once Vietnam signs onto the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (or) a new bilateral agreement between both countries is reached. The U.S. and Vietnam chose not to renew the previous bilateral agreement due to Vietnamese and U.S. investigations and reviews which uncovered among other things: child buying, inappropriate cash payments to birth mothers, children being placed in adoption without consent of the birth parents, and forged documents. Investigations pertaining to the aforementioned inter-country adoption fraud are ongoing in Vietnam as of May, 2009. Please note, for any cases that remain pending due to the expiration of the previous bilateral agreement, the U.S. Embassy in Hanoi and Vietnamese officials are working with applicable families.

Both the U.S. and Vietnam have clearly acknowledged that intercountry adoptions from Vietnam to the U.S. may not be initiated once again until major reforms that encourage transparency and the best interest of the children are put forth. The U.S. has acknowledged that it strongly supports Vietnam's efforts to institute a wide-ranging child-welfare system to include intercountry adoption for children when family preservation or domestic options are not possible or available.

Green Card:

Adoption [4]

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Links:

[1] <https://immigration.com/inter-country-adoption>

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

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

[4] <https://immigration.com/greencard/green-card/adoption>