

HAGUE CONVENTION PRIMER & ADOPTION 201



**INTERNATIONAL
CHRISTIAN ADOPTIONS**
A Voice of HOPE for Children Worldwide

General Information on HAGUE



- Concluded May 29, 1993 in the Netherlands
- US signed Hague in 1994 – Several steps are needed to formally be a Hague country.
- The Intercountry Adoption Act of 2000 was the necessary US legislation for the US to move forward after signing.
- Department of State was named the US Central Authority.





Hague is a fairly straightforward document.



Hague allows for great flexibility in implementation.



Hague Treaty has 48 “articles” which provide for the basic tenets of the Hague.

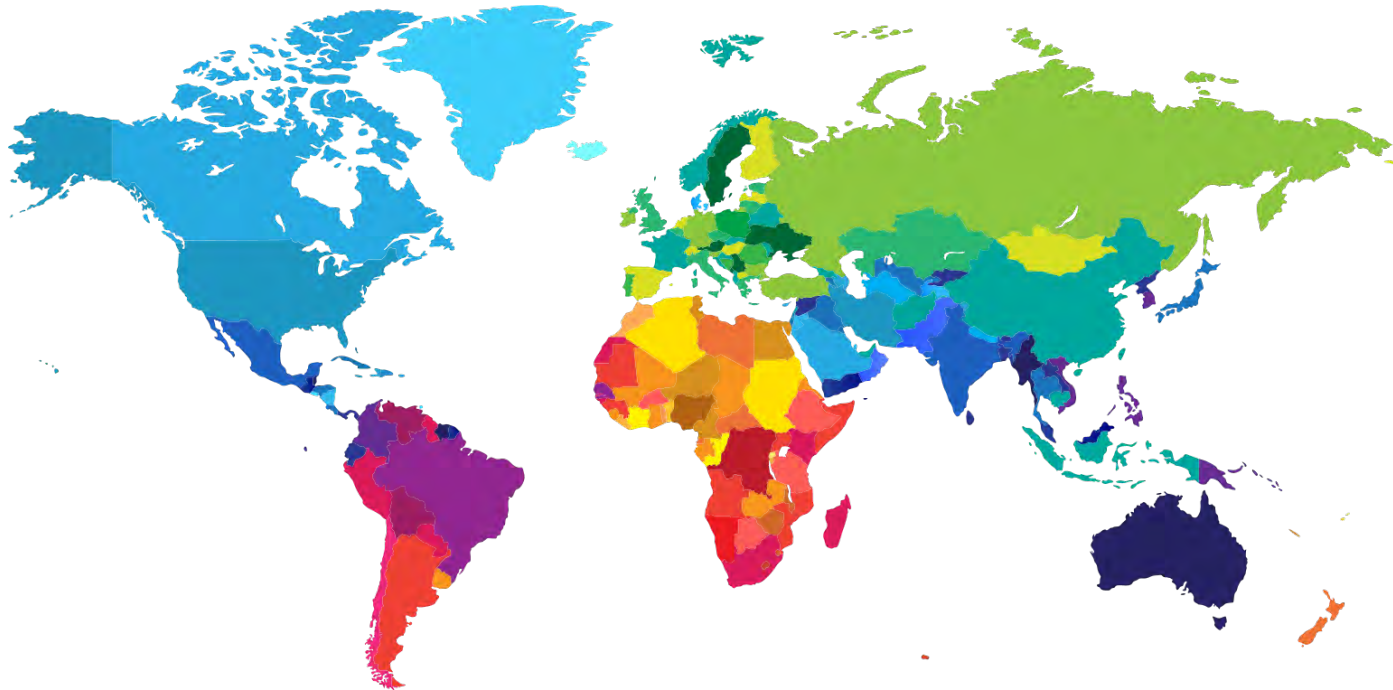


Hague Permanent Bureau in Netherlands has published Guides to Good Practice, which offers technical guidance and clarification.

Intercountry Adoption Act (IAA)



- The Intercountry Adoption Act is the implementing legislation to allow the US to become a Hague country.
- This named the US Department of State as the US Central Authority.



Universal Accreditation Act (UAA)



- The UAA went into effect July 14, 2014 – 18 months after it was signed into law. (There are still transition cases.)
- UAA was designed to address the two-tiered adoption system of Hague standards versus non-Hague standards.
- UAA requires Hague compliance for ALL international adoptions by US citizens.

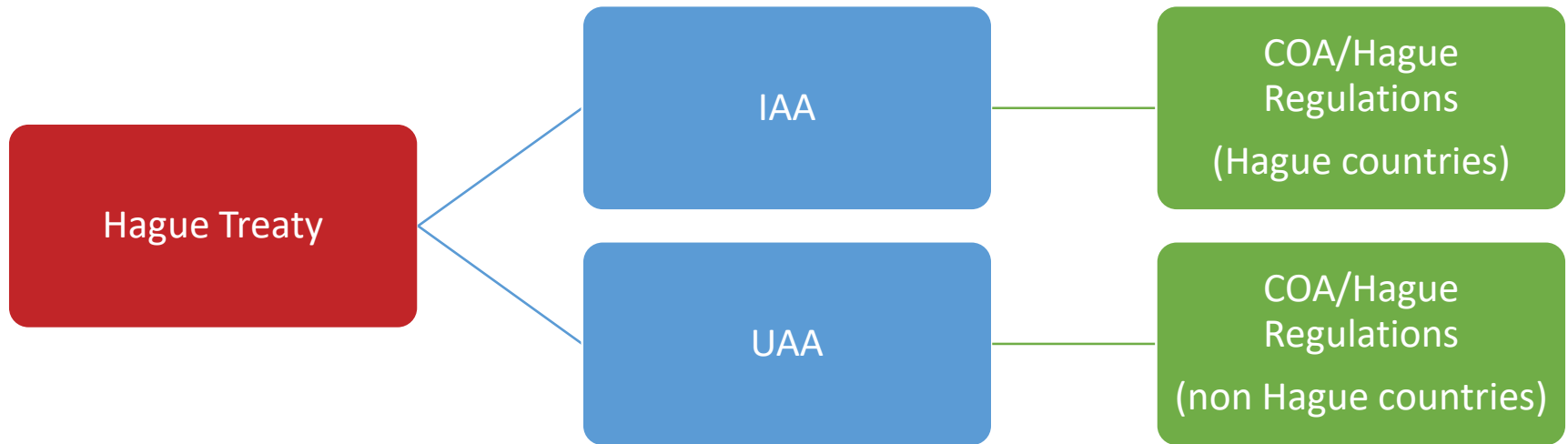
UAA Transitional Rules

- The UAA's transition rule states that the accreditation rules do not apply in two kinds of cases:
 - When the I-600 or the I-600A has been filed before 180 days from the date of signature; the UAA refers to the signature date as enactment; and
 - When prospective adoptive parents have initiated an adoption process in a foreign country by filing an appropriate application (appropriate to be determined by the Department of State), also before 180 days from enactment of the UAA.



- After July 14, 2014, any agency wishing to provide inter-country child-placement programs for ANY country must be accredited or approved for Hague by COA.
- Home Study agencies may still be supervised or exempt, rather than accredited.
- “Independent” adoptions will not be permitted from any country, although parents may still act on their own behalf. (This is very tricky.)

Getting to the Regulations...



6 Adoption Services



The definition of adoption services includes:

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
 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 Definitions.

Types of Providers



Primary



Supervised



Exempt

Responsibilities of Primary Provider



Adoption complies with the laws, regulations, procedures and policies

- Who can adopt?
 - Pre Placement requirements
 - Post Placement Reports
 - Type of Case – Guardianship vs. Full and Final Decree
 - Chronology, motivation of birth parents, how was child located
-

Building a Team

- Primary Provider
- Home Study Provider
 - Exempt or Supervised Provider Agreement
- Foreign Provider – attorney, social worker, boots on the ground
 - Foreign Supervised Provider Agreement

Primary Provider Responsibilities (continued)



Resources

- State Department – Office of Children's Issues, Consulate (www.adoption.state.gov)
- Attorneys
- Library of Congress – Internet
- PAPs

Reality of US Politics

Reality of International Politics

- Fraud
- Child buying/Trafficking



Primary Provider Responsibilities (continued)



Initial Assessment of Child

- How was child brought into care?
- Who has been caring for child?
- Does child satisfy orphan or convention adoptee definition?
- CHILD BUYING IS EXPRESSLY FORBIDDEN
- No money or other consideration should be given to induce the relinquishment of a child for adoption!

Articles

- Requesting special permission – Article 12
- Familiarity with & Securing Article 16
- Securing Article 5
- Securing Article 23 – Convention Adoption Certificate
- Article 29, if needed



Home Studies

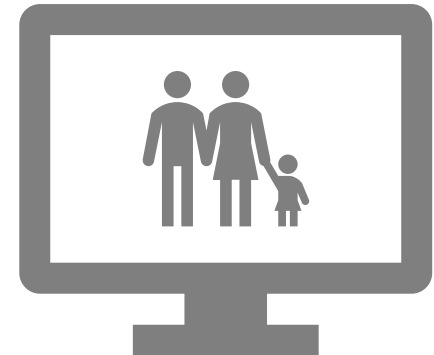


- Agency's Requirements for Accepting a Study
 - Hague or Non Hague?
 - Exempt or Supervised Provider Agreement
 - Building a relationship with the provider
- Cover Letter of Approval
- Duty of Candor – Rapport, confidence of PAPs, Listening
- Breach of Duty of Candor
 - Elements – Intent (did you ask, did PAP understand) + Opportunity to Disclose
 - History with USCIS – PAPs immigration – synchronization
 - Refugees and Asylees – Post Traumatic Stress Disorder
 - Criminal History – in US and abroad – multiple databases
 - Domestic Violence
 - Must completely disclose until a child is coming home!
- Psychological Evaluations
- Success – rapport, listening and declining PAPs
- Requesting case to be expedited
- Congressional Assistance – when and why
- Pay attention to any state pre-adoptive requirements

Home Study Components



- Authority to conduct studies
 - Accredited by COA, accreditation number and expiration
- Include time of visits
- Summary of medical assessment
- State if any outside referrals were made & why they were made. State if no referrals made. If referrals made, must included a copy of these assessments.
- Duty of candor thoroughly covered (FBI databases)
- Specific language
- Approval clearly stated and consistent throughout study.



Home Study Components (continued)

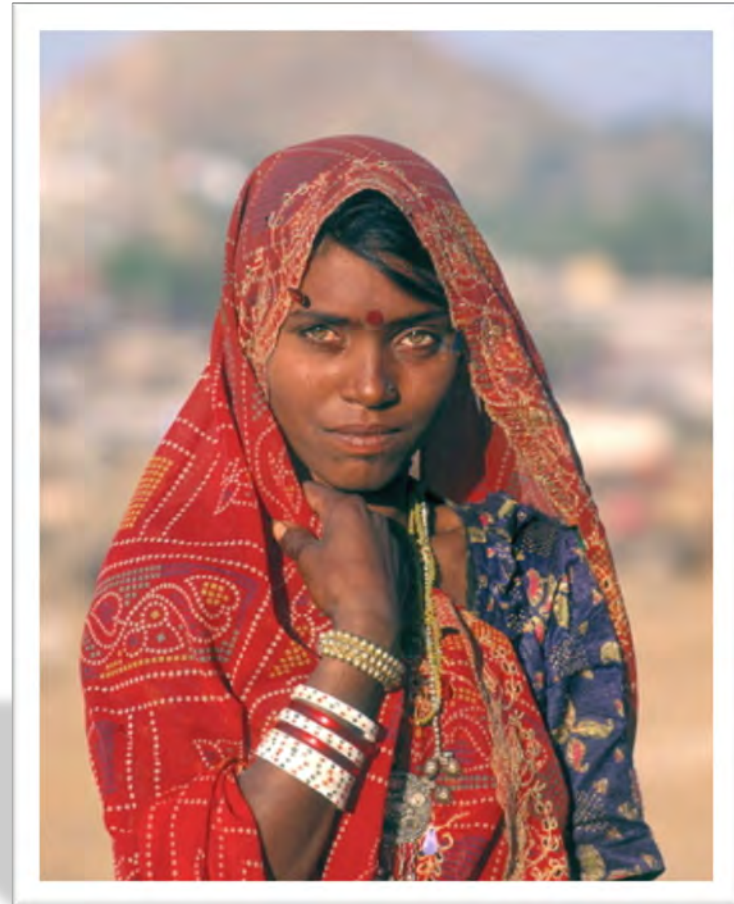


- Filed within 1 year of I-600A / Filed with I-800A
- No older than 6 months old
- Tailored to the particular situation of applicant
- Tailored to the specific country
- Summarize pre-placement preparation and training
- Plans for post placement monitoring
- Child abuse checks since 18th birthday
- Response to specific questions
- Evaluation of criminal history
- Certified copy of disposition and signed statement
- Prior home studies – those involved named & terminations discussed

Filing with USCIS



- I-600A
- I-600, when adoption/guardianship already granted
- Biometrics outside the US (www.uscis.gov/international)
- Biometric reuse
- I-800A
- I-800
- Filing locations – Hague vs. Non Hague
- Supplements
- Common errors
- Being Proactive – Home Study, Laws, Briefs
- Withdrawing from Primary Provider Role
- Expiration of I-600A while I-600 is pending
- Extension of I-600A and I-800A
- Form I-824 or supplement 3
- Changing Countries



Basic Requirements for Initial USCIS Filing



- Petitioner must be a citizen
- Married couples must adopt jointly (separation is not permitted)
- Unmarried – 25 at time of filing I-600
- All adults must be fingerprinted
- Denials – 12 months to refile



I-600A vs. I-800A



I-600A

- Initially filed with check to the lockbox in Texas
 - Forwarded to NBC – Lee's Summit, MO
 - Supplement 1 – Each adult household member must sign and file
 - Good for 18 months/ Fingerprints only good for 15 months
-

I-800A

- Supplement 2 – Consent to Disclose Information
- Supplement 3 – Request for Action on Approved I-800A
 - Fee required except for 1st extension or 1st request to change country.
 - All other changes require fee with filing
 - The fee is \$360
- Good for 15 months

Qualifying Child as an Orphan



- Abandonment
- Desertion
- Disappearance
- Separation or Loss from Family
- Child Buying – Family Assistance – Humanitarian Assistance
- Incapable of Providing Care
- Status of Orphanage
- Fathers' Rights
- DNA Testing
- Chronology
- Procedure of Sending Country



Documenting the Child is an Orphan



Two General Categories (distinct and separate)

1. No parents because of the death or disappearance of, abandonment or desertion by, or separation or loss from its parents; or
2. Sole or surviving parent is unable to provide proper care and has, in writing, irrevocably released the child.

Consideration of Stepparents

- Petitioner is responsible to show that in the sending country a step parent does not have a legal parent-child relationship.
- Must be considered as a parent if stepparent has adopted the child or if under the law a marriage automatically gives parent-child relationship or stepparent has filed for legal custody.

Documenting the Child is an Orphan (continued)



- Age – under 16 or under 18 if the natural sibling of an adopted child in the same family
- Death – death certificate, if available
- Disappearance
 - Unaccountably passed out of child's life
 - Whereabouts unknown
 - No reasonable hope of reappearance
 - Reasonable effort to locate the parent
 - Decree from a court or other authority making the child a ward of the state and unconditionally divesting the parent(s) of all parental rights

Documenting the Child is an Orphan (continued)



- Abandonment

- Parents have willfully forsaken all parental rights, obligations and claims to the child, as well as all control over or possession of the child without intending to transfer their rights to any specific person.
- Not only the intention to surrender, but the act.
- A release by the birth parent to the adoptive parents is NOT abandonment.
- A release to a third party for care in anticipation of an adoption does NOT qualify unless the third party is authorized under the child welfare laws of the state of origin to act in such capacity.
- Temporarily placing a child in orphanage does NOT qualify.
- A declaration by a foreign authority that the parent has abandoned the child is NOT sufficient for immigration purposes.
- Primary evidence is a decree from a court or competent authority that unconditionally divests the parent(s) of parental rights to the child.

Documenting the Child is an Orphan (continued)



- **Desertion**

- Willfully forsaken the child and refused to carry out normal parental rights and obligations and as result the child has become a ward of a competent authority.
- Does NOT mean the parents have disappeared, but they refuse to carry out parental duties.
- Differs from abandonment in that parent has not taken steps to divest themselves of parental duties, but parent's inaction has caused local authority to step in and assume custody of child.
- Primary evidence – Decree from court or other competent authority making the child a ward of the state by virtue of such desertion and unconditionally divesting parents of all parental rights.

Documenting the Child is an Orphan (continued)



- Separation

- Involuntary severance of the child from his/her parent(s) by action of a competent authority for good cause.
- Often called termination and often occurs because of child abuse or neglect or authorities determine parent(s) to be unfit.
- Parents must have been properly notified and granted opportunity to contest such action.
- Must be permanent and unconditional.
- Primary evidence – decree from a court or other competent authority and by virtue of such separation unconditionally divests the parent(s) of all parental rights.

Documenting the Child is an Orphan (continued)



- Loss

- Involuntary severance or detachment of the child from the parents in a permanent manner such that as caused by a natural disaster, civil unrest, etc., as verified by competent authority.
- Primary evidence – Decree from a court or competent authority and by virtue of such loss unconditionally divests parent(s) of parental rights.



Documenting the Child as an Orphan (continued)



- Irrevocable Release by Sole or Surviving Parent
 - Incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption in accordance with the sending state's laws.
 - Only circumstance where a child may be released directly by birth parent to adoptive parent(s).
 - Surviving parent – child's living parent when child's other parent has died. Death certificate required.
 - Sole parent is defined as the mother if:
 - Child born out of wedlock
 - Child not legitimated under laws of child's or father's residence
 - Child has not acquired a stepparent
 - The natural father of the child is unknown, has disappeared, abandoned or deserted the child; or has in writing irrevocably released the child for emigration and adoption

Sole or Surviving Parent



- Incapable of Providing Proper Care
 - Unable to provide for the child's basic needs, consistent with the local standards of the sending country.
 - Determination not limited to economic concerns
 - Could be because of extreme poverty, medical, mental or emotional difficulties or long term incarceration.
 - Release must be in writing and in compliance with sending country's laws.
 - Release or relinquishment must be in a language that the parent is capable of reading and signed by the parent.
 - Release must be irrevocable and without stipulations or conditions which would cause custody to revert to the biological parent.
 - May identify the person to whom bio parent is releasing the child, including the adoptive parent(s).
 - If parent is illiterate, but in an interview can establish that he or she had full knowledge of the contents of the document and understood the release, the document may be treated as primary evidence.

Difference Between a Convention Adoptee and an Orphan



- Orphan - if there are two bio parents they must have surrendered the child to an intermediary, and you must prove a single parent is unable to support the child.
- Convention Adoptee - no intermediary is required and you must prove that two bio parents can't support the child. No such proof needed for a sole parent.



Evidence of Adoption



- Documentation from a governmental agency, a court of competent jurisdiction, an adoption agency or an orphanage authorized to act in such a capacity.
- Evidence that petitioners or their agent obtained legal custody.
- A proxy adoption or simple adoption may still serve as legal custody for allowing child to come to US and be adopted.
- If less than a full adoption, however, the custody must be permanent and the rights of any living natural parent have been irrevocably terminated.

Evidence of Adoption (continued)



- Child Adopted Abroad

- Legible, certified copy of final adoption decree (IR-3 or IR-4)
- Evidence that at least one parent saw the child before or during the adoption (IR-3)

- Child to be Adopted in US

- Evidence of legal custody (IR-4)
- Irrevocable release of the orphan for emigration and adoption from the person, organization or competent authority that had the immediately previous legal custody or control.
- Court order or release by previous legal custodian giving the child for adoption to the PAPs with clearly disclosed address of PAPs.
- Pre-adoption requirements
- Re-adoption or judicial recognition

Filing the I-600



- At the NBC or the US Consulate
 - Is there a choice? Is there a preference?
- How to file – Interplay of Sending Countries Laws and Evidence
 - Qualify the PAPs
 - Qualify the Child – under US law
 - Qualifying adoption under the laws of the sending country



Filing the I-600



- I-604 investigation
 - Birth Parent and Adoptees Preparation – orientation to interview at embassy
 - Evidence, Evidence and Evidence
- Incapable of Providing Support
 - World Bank Report of Poverty
 - Medical History of Birth Parents – Physical and Mental Health
 - Photographs, statements, records
- Written statement irrevocably releasing child for emigration and adoption abroad.

I-604 Investigation



- Applicable only for orphan cases
- Consular official completes unless I-600 is properly filed at a USCIS overseas location, which would entail USCIS employee completing I-604.
- Must be denied if compensation or inducement has been or will be paid for releasing the child.
- Giving cash to a biological mother may be permissible if it is for legitimate expenses, such as pre-natal, neo natal care, transportation, lodging or living expenses.
- Most expenses can be explained as reasonable payments. Investigation of child buying focus on concrete evidence or admission of guilt.

Filing the I-800



- NBC
- How to File
 - PAPs qualified based on I-800A and homestudy
 - Qualifying the Child
- Article 16
- Provisional Approval
- Article 5



Consular Processing



- Original and Post Adoption Birth Certificate
- Change of Name and Child's Post Adoption Passport
- IR-3 and IR-4; IH-3 and IH-4



Negative Decisions



- Request for Evidence (RFE's)
- Notice of Intent to Deny (NOID) and Notice of Intent to Revoke (NOIT)
- Denial – Appeal to Administrative Appeals Office
- Appeal to Federal Court
- The Fight
 - New Investigation
 - Strong Evidence



Top Reasons for RFE's (2008)



- About 70% of cases get an RFE
 - Authority to conduct studies
 - History of abuse or violence as an offender
 - Criminal history (make sure to address living abroad – this is separate from child abuse registry)
 - Health assessment (formal assessment by preparer of physical, mental and emotional health)
 - Prior home study (not just unfavorable; must include if they have begun a HS process for adoption or foster care, etc)



Universal Accreditation Act (UAA)



- Hague requirements for all countries now
- All adoptions must have a Primary Provider
- Family still able to act on their own behalf, but it must be reviewed and supervised by a Primary Provider
- Grandfathered cases
- Qualification for an IR-3 visa (Consolidated Appropriations Act 2014)



6 Adoption Services Regulated



- Identifying a child for adoption and arranging an adoptions;
- Securing the necessary consent to TPR and to adoption;
- Performing a background study on a child or a HS on PAP's and reporting on such a study;
- Making non-judicial determination of the best interests of a child and the appropriateness of an adoptive placement for the child;
- Monitoring a case after a child has been placed with PAP's until final adoption;
- 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.

Post Placement/ Post Adoption



2014 fiscal year Annual Report on Intercountry Adoption – 3
“reported” disruptions; Reported by HHS 79 instances of
disruptions/dissolutions involving 91 children that entered state
custody



Changing Birth Dates Post Adoption



- Accuracy for Adoptees Act – January 16, 2014
- USCIS must recognize a changed date of birth for an international adoptee after changed by a state court
- After a Certificate of Citizenship – Form N-565 – Application for Replacement Naturalization/Citizenship
- While Pending H-600 – submit state court order with corrected birth date to USCIS field office

Quality Improvement Program



- Surveys
- Post Travel Reports
- Regular Meetings
- How are you using the information gathered to improve services?



Board Responsibilities (Hague Regs.)



- Budget Review and Approval annually
 - This should be done at the end of the fiscal year for the new year
- Review Policies and Procedures annually
- Review of Strategic Planning Process
- Risk Management Review
- Fees Review and Changes Approved
- Evaluation of Executive Director
- Annual Internal Financial Review
 - This can be done through review of an audit. Audits are at minimum required every 4 years per Hague

Risk Management



- Assessing the risks to your people, property, goodwill and income
- Can be done with an insurance agent if desired
- Risk Management Worksheet



Highlight of Important Articles



While recognizing that all the articles are important to the convention as a whole, some articles are referred to more frequently with regard to required documentation.

The most frequently cited articles will be summarized and details offered of how these articles are referred to in the official US Hague process.

Article 4 Summary



Article 4 requires that the State of origin (sending country) of the child has established that:

- A. The child is adoptable;
- B. Placement within the country of origin has been duly considered and ICA is in the child's best interests.

Article 4 deals extensively with CONSENTS (when utilized) for adoption and requires the following:

- A. All applicable parties whose consent is required have been counseled on the impact of their consent, specifically addressing whether or not an adoption will result in the legal termination of the relationship between the child and the family of origin. (More information on simple vs. full adoption will be given later in presentation.)
- B. Consents have been freely given, in the required legal form, and evidenced in writing
- C. Consents have NOT been induced by payment or other compensation
- D. Consents have not been withdrawn
- E. Consent of a mother is only given AFTER the birth of the child

Article 4 Summary (continued)



Article 4 further delineates that depending on the age and maturity of the child the following is required:

- A. The child has been counseled and informed of the effect of adoption.
- B. Consideration is given to the child's wishes and opinions.
- C. The child's consent to the adoption, where such consent is required, has been given freely, in required legal form and evidenced in writing.
- D. Such consent has not been induced by payment or compensation of any kind.



Practicalities of Article 4



- CA of country of origin determines Article 4 compliance.
- Article 4 requirements are covered in the “Article 16 Report” issued by the CA of the country of origin specific to the child.
- Article 16 will be covered!



Article 5 Summary



Article 5 requires that the receiving country's CA has determined the following:

- A. The prospective adoptive parents are eligible and suited to adopt.
- B. The prospective adoptive parents have been educated appropriately.
- C. The child is or will be authorized to enter and reside permanently in the receiving country.

Article 5 Practicalities



- Adoptive parents may NOT proceed with an adoption or guardianship order until after Article 5 is issued.
- The I-800A is the USCIS required application to pre-approve the parents as eligible for a Hague adoption.
- The I-800 is filed with USCIS after official referral and acceptance. The I-800 is child-specific and must be accompanied by the applicable supporting documents.
- USCIS issues a PROVISIONAL APPROVAL if they determine that the child appears to meet the definition of a “convention adoptee”.
- The family’s approval and the child’s provisional approval are reviewed by the US consular official and if approved an ARTICLE 5 letter is submitted to the sending country’s CA.
- Please Note, final visa approval is not guaranteed at this point.
- The adoption or request for guardianship with intent to adopt may proceed following Article 5 letter.

Article 16 Summary



An Article 16 Report is issued if the CA of the country of origin is satisfied that the child is adoptable.

The Article 16 Reports includes the following:

- A. Information about the child's identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- B. Gives due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- C. Ensures that consents are compliant with Article 4
- D. Determines, based on the reports relating to the child and the prospective adoptive parents, whether the proposed placement is in the best interests of the child.

The report shall be submitted to the receiving state CA (often through the accredited entity), along with proof of consents & the reasons for the determination.

Article 16 Practicalities



- Article 16 must be issued by the sending state's CA before the prospective adoptive family can submit the I-800.
- Article 16 is intended to be comprehensive in nature; however, the quality of the information and accuracy varies.



Article 17 Summary



For a sending country to move forward with an adoption, the following must have occurred:

- A. The adoptive family agrees to the prospective adoption.
- B. The Central Authority of the receiving State has approved the decision.
- C. The CA's of both States have agreed that the adoption may proceed.
- D. It has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible & suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 17 Practicalities



- Article 17 is issued by the sending country CA or the receiving country dependent on the countries involved.
- Article 17 must be issued BEFORE an adoption proceeds or the Hague adoption process is not in compliance.

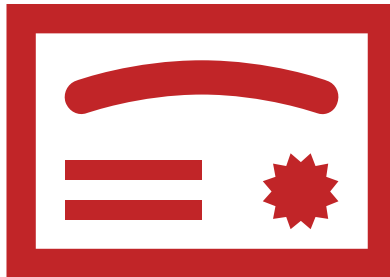


Article 23 Summary



Article 23 requires that an adoption made in accordance with the convention be recognized in other countries also party to the Hague.

A Certificate of the adoption shall be given by the sending country's competent authorities, whose identity and function have been disclosed to the Hague Permanent Bureau.



Article 29 Summary



Article 29 prohibits contact between prospective adoptive parents and the child's biological parents or any other person who has care of the child until after Articles 4 & 5 are met. The only exception to this provision is with regard to relative adoptions or “unless the contact is in compliance with the conditions established by the competent authority of the State of origin”.



Article 29 - Practicalities



- In non-relative cases where contact between the child's caregivers and prospective adoptive parents have occurred prior to Articles 4 & 5 this is not problematic IF this is routinely permitted by the sending country's laws/regulations. (No additional statements to this effect are likely to be requested by the US.)
- If, however, the contact rests outside the norm (as is most often the case) the US will most likely request an Article 29 letter from the sending country's CA.

Article 29 Risks



- ASP's are often approached about children from Hague countries whom families have met on overseas missions, etc.
- Unless considered normal and permitted these cases do not meet Article 29's prohibition against contact on the whole, but can be approved if the CA will in writing express that the contact was permissible.
- Any family wishing to pursue such an adoption must be clearly warned of the risks posed by the contact and the ASP should be prepared to petition for the approval of the particular contact.
- The ASP must be confident that the contact did not include inducements – monetary or otherwise.



Summary: Hague Adoption Process



- ✓ Family chooses an Accredited Adoption Service Provider as their Primary Provider.
- ✓ Primary Provider approves home study agency as either Supervised or Exempt Provider and an agreement is signed.
- ✓ Hague compliant home study is completed.
- ✓ Family files I-800A, along with supporting documents & payment, with the NBC.
- ✓ Once I-800A is approved, family's documents are submitted to the CA in the desired country.

Summary: Hague Adoption Process (continued)



- ✓ Once I-800A is approved, family's documents are submitted to the CA in the desired country.
- ✓ If sending country approves of family, they may offer a child referral – this may be in the form of Article 16 initially or Article 16 may be issued following family's written acceptance of referral.
- ✓ I-800, along with supporting documentation, is filed with the NBC. (Article 29 letter may be required at this time.)
- ✓ Provisional approval of I-800 is offered.

Summary: Hague Adoption Process (continued)



- ✓ Visa application form, DS-230, is filed with the US Embassy or consulate, along with supporting documents (including provisional I-800 approval).
- ✓ The consular affairs division approves the prospective child/adoption and issues Article 5 letter.
- ✓ Sending country CA issues Article 17 letter.
- ✓ The adoption (or guardianship with intent to adopt) may proceed.
- ✓ Article 23 – Certificate of Hague Adoption is issued.

Summary: Hague Adoption Process (continued)



- ✓ Application for child's new birth certificate is made, as appropriate.
- ✓ Application for child's passport (from country of origin) is made.
- ✓ Physician's medical panel is completed if not already submitted.
- ✓ By this point, prospective adoptive family should be well in touch with the US Embassy or consulate consular officer who will review the I-800 and DS-230 applications, along with the supporting documents to make a final evaluation for visa approval.
- ✓ Child enters the US on either an IH-3 or IH-4 visa.

Visa Types for Hague Adoptions



- **IH-3 Visa:** Issued for children with full and final adoptions from a Hague Convention country.
- **IH-4 Visa:** Issued when a child is coming to the United States from a Hague Convention country to be adopted.

Please Note: IH-3 visas differ from IR-3 visas in that they are determined by a “full and final adoption” as defined by the sending country, rather than the US.

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