

**International Family Services
Intercountry Adoption Act (2000)
Federal Laws, Regulations and Ethics**

When President Clinton signed the Intercountry Adoption Act (IAA) in the Fall of 2000, the United States embraced legislation that puts into affect the Hague Convention On Protection Of Children And Co-Operation In Respect Of Intercountry Adoption (more briefly called “the Hague Convention” or simply, “the Hague”), concluded in 1993.

The U.S. Department of State (DOS) was designated in the IAA as the Central Authority responsible for the oversight of adoption agencies and adoption cases governed by the Hague Convention. The DOS passed the implementing regulations for the accreditation of adoption agencies in February 2006. Also in 2006, the DOS selected the Council on Accreditation (COA) as the only nationally recognized body that is responsible for accrediting and supervising agencies which perform adoptions covered by the Hague Convention. As of late 2007, the COA is in the process of reviewing over 300 adoption agencies, including International Family Services (IFS), that have applied for accreditation under the Hague Convention.

The DOS will enter into force in respect to the Hague Convention on April 1, 2008, as stated in a notice in the U.S. Federal Register on Dec 18, 2007. In the Notice, the DOS states that the U.S. deposited the articles (‘ratified the Convention’) on December 12, 2007. After April 1, 2008, adoption agencies that wish to conduct adoptions between the U.S. and other countries that have entered into force under the Hague Convention must comply with regulations of the IAA. In addition, all adoption cases between Convention countries must be conducted under the provisions of the IAA. However, cases that were begun prior to April 1, 2008, can be completed under the current law and the IAA will not apply.

Regulatory Overview

The USDOS and the US Department of Homeland Security have issued regulations that implement the IAA. These documents will need to be reviewed by IFS staff in order to meet the training requirements for COA accreditation.

8 CFR Parts 103, 204, 213a et al. – 37 pages, with commentary; regulations proper begin on p. 56853 (15 pages),

These regulations are required by the IAA changes to the Immigration and Nationality Act. They accommodate the provisions related to Hague Convention countries, including the introduction of new application forms (the I-800a, I-800 Supplement 3, and the I-800) for Convention cases and new procedures for approving families and the children in convention cases. These provisions are administered by the US Department of Homeland Security, Citizenship and Immigration Services.

22 CFR Part 42 – 6 pages, with commentary; regulations proper begin on p. 61305 (2 pages)

These regulations outline the Consular Officer procedures when approving an orphan petition. These provisions are administered by the U.S. Department of State.

22 CFR Parts 96, 97 and 98 – 100 pages, with commentary; regulations proper begin on p. 8131 (33 pages)

Part 96 contains the standards for accrediting adoption agencies and supervising their activity by the USDOS under the IAA. This part makes up the bulk of the 100 pages of regulations.

Part 97 describes the USDOS issuance of Convention certificates in outgoing adoption cases. Since IFS will not be conducting outgoing adoptions, these provisions will not affect our operations.

Part 98 outlines the requirements for the Department of Homeland Security and USDOS relative to record preservation. DHS must preserve adoption records (defined as anything DOS or DHS receives relative to a Convention case) for 75 years.

22 CFR Part 99 – 3 pages, with commentary, regulations proper begin on p. 9854 (1 page)

These regulations describe the reporting requirements to the USDOS by an accredited agency which processes an outgoing adoption case. Since IFS will not be conducting outgoing adoptions, these provisions will not affect our operations.

Laws of Convention Countries

Each foreign government issues its own set of laws and regulations relative to intercountry adoption. As of late 2007, India, China and Guatemala have entered into force relative to the Hague Convention. IFS has active programs in these 3 countries. Links to summaries of their laws are posted on the USDOS web site. These documents will need to be reviewed by IFS staff in order to meet the training requirements for COA accreditation.

India –

http://travel.state.gov/family/adoption/country/country_398.html

China –

http://travel.state.gov/family/adoption/country/country_365.html

http://travel.state.gov/family/adoption/intercountry/intercountry_3110.html

Guatemala –

http://travel.state.gov/family/adoption/country/country_389.html

http://travel.state.gov/family/adoption/intercountry/intercountry_3825.html

State Adoption Laws

Each state issues its own adoption laws that regulate adoptions within their jurisdiction. These laws regulate the home study requirements. Some states further regulate adoptions of foreign born children, although the laws of most states focus exclusively on domestic adoptions.

IFS has offices in the following states, here listed with a url pointing to the regulations for each and/or the law citation. IFS social workers who perform services in each state below will need to be familiar with their state's laws in order to meet the COA training standards.

Texas –

https://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/default.asp

Oregon –
ORS 418.205 – 418.325

Arizona –
Arizona Revised Statutes, Chapter 1, Article 1, Sections 8-101 to 8-135; 8-141 to 8-145; 8-161 to 8-166; 8-171 to 8-173
<http://laws.adoption.com/statutes/arizona-laws.2.html>

Pennsylvania --
Pennsylvania Adoption Code
Pennsylvania Consolidated Statutes (1999), Title 23, Sections 2101 to 2910

Kansas –
KSA 65-501 – 65-516

Ethical Considerations

One of the major considerations of the Hague Convention is the pursuit of the best interests of the children, including the prohibition of child trafficking.

The Code of Federal Regulations, in amending the Immigration and Nationality Act regulations, summarizes the Convention as follows.

“Developed under the auspices of The Hague Conference on Private International Law, the Convention was opened for signature on May 29, 1993. A copy of the Convention is available on the Hague Conference Web site at <http://www.hcch.net>. The text of the Convention is also available on the public docket for this rule at <http://www.regulations.gov>, DHS Docket No. USCIS–2007–0008.

“The Convention provides a framework of safeguards for protecting children and families involved in intercountry adoption. The Hague Conference on Private International Law makes available at <http://www.hcch.net> the current list of countries that have become Parties to the Convention. According to this Web site, 74 States have become Parties to the Convention [as of Fall 2007]. This Convention is one of the most widely-embraced and broadly-accepted conventions developed by the Hague Conference.

“The Convention is the first multilateral international instrument to recognize that intercountry adoption could “offer the advantage of a permanent home to a child for whom a suitable family cannot be found in his or her state of origin.” (S Treaty Doc. 105–51, at 1). Some countries involved in the multilateral negotiations on the Convention sought to prohibit intercountry adoptions even for those children eligible for adoption for whom a permanent family placement in the child’s country of origin could not be arranged. On the other hand, proponents of intercountry adoption at the Hague Conference believed that the best interests of a child would not be served by arbitrarily prohibiting a child in need of a permanent family placement from being matched with an adoptive family simply because the family resided in another country. The Convention reflects a consensus that an intercountry adoption may well be in an individual child’s best interests.

“If the Convention is in force between two countries, then any adoption of a child habitually resident in one country by a person habitually resident in the other country must comply with the requirements of the Convention. The objectives of the Convention are:

- To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child’s fundamental rights as recognized in international law;
- To establish a system of cooperation among contracting States to ensure that those safeguards are respected and thereby prevent the abduction, sale of, or traffic in children; and
- To secure the recognition in contracting states of adoptions made in accordance with the Convention.

“The Convention also requires all parties to act expeditiously in the processing of intercountry adoptions” (8 CFR Parts 103, 204, 213a, 299 and 322 (II)(C)).

As noted in this statement, some advocacy groups wish to prohibit intercountry adoption as a matter of course. Yet, many recognize that intercountry adoption can be in the best interest of children. For example, UNICEF issued the following as part of its statement in support of the Hague Convention.

“For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption” (source: http://www.unicef.org/media/media_41118.html, accessed 11/28/07).

Nonetheless, child trafficking for purposes of labor, reproduction and sexual exploitation still occurs. Additionally, some adoption providers profit excessively for their services in intercountry child placement and are seduced by potential profits into what amounts to the selling of children for adoption.

The Immigration and Naturalization Service (now called Citizenship and Immigration Services) issued regulations in 1994 that required that children be in the custody of the foreign government in order to be qualified for adoption under the U.S. definition of ‘orphan.’ This was an attempt to remove the private profit incentive from the placement of children for adoption. This mirrors the intent of various states’ laws prohibiting private facilitators. For example, in Texas adoption agencies are the only legally recognized entity allowed to arrange for an adoption. An addition, the Interstate Compact for the Placement of Children seeks to regulate child placement across state lines.

Adoption agencies accredited by the USDOS under the Hague treaty must adopt policies and procedures that expressly prohibit child trafficking. For example, one agency standard states, “The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. . . . Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child” (22 CFR 96.36(a)).

Other standards require that an accredited agency’s supervised providers (both in the U.S. and abroad) also abide by this policy via clear statements in required contracts (22 CFR 96.45(b)(2) and 46(b)(3)). The agencies must also monitor their providers for compliance with this prohibition.

Additionally, in order to be accredited, adoption agencies must be organized as a not-for-profit organization under the U.S. Internal Revenue Services rules (501(c)(3)). And they must not compensate their personnel at excessive rates. It states, “The fees, wages, or salaries paid to the directors, officers, employees, and supervised providers of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account. . . .” the context of their services (22 CFR 96.34(d)). Nor shall agencies compensate service personnel on a contingency basis for any child located or placed for adoption (22 CFR 96.34(a)).

IFS is a 501(c)(3) non-profit organization and has adopted specific anti-child trafficking policies as required by the IAA.

These measures, especially if enforced abroad, can significantly reduce the incentives and avenues for child trafficking in adoptions. However, some advocates believe that intercountry adoptions should be restricted further on grounds of social justice or inadequate regulation (see Leslie Doty Hollingsworth, “International Adoption Among Families in the United States: Considerations of Social Justice,” *Social Work*, Vol 48, No 2, April 2003, pp. 209-217; David M. Smolin, “Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children,” *bepress Legal Series*, 2005, Paper 749).

Nonetheless, UNICEF affirms the Hague treaty as a significant means of protecting children.

“Over the past 30 years, the number of families from wealthy countries wanting to adopt children from other countries has grown substantially. At the same time, lack of regulation and oversight, particularly in the countries of origin, coupled with the potential for financial gain, has spurred the growth of an industry around adoption, where profit, rather than the best interests of children, takes centre stage. Abuses include the sale and abduction of children, coercion of parents, and bribery.

“Many countries around the world have recognised these risks, and have ratified the Hague Convention on Inter-Country Adoption. UNICEF strongly supports this international legislation, which is designed to put into action the principles regarding inter-country adoption which are contained in the Convention on the Rights of the Child. These include ensuring that adoption is authorised only by competent authorities, that

inter-country adoption enjoys the same safeguards and standards which positive effect of providing assurance to prospective adoptive parents that their child has not been the subject of illegal and detrimental practices” (source:

http://www.unicef.org/media/media_41118.html, accessed 11/28/07).