

International Family Services Intercountry Adoption Act (2000) Federal Regulations Overview

This document summarizes the key elements of the federal regulations relative to the IAA.

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.

U.S. Citizenship and Immigration Services

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-800a 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.

Key Elements

- I. Forms and Fees (p. 56834)
 - a. **I-800a**, Application to Determine Suitability as Adoptive Parent(s) for a Convention Adoptee
 - i. Purpose is to determine suitability of parent(s) to adopt a child from a Convention country
 - ii. Fee is -- \$670 (fingerprinting is \$80 per adult household member); same as I-600a
 - iii. Approved home study by an approved preparer must be included
 - iv. Approval validity period is 15 months from the date of the FBI background clearance
 - b. I-800a, Supplement 1
 - i. Purpose is to identify additional adult member of the prospective adoptive parent(s) (PAP) household
 - ii. There is no fee
 - c. I-800a, Supplement 2
 - i. Purpose is to allow CIS to disclose information about the prospective adoptive parent(s) case to the adoption service provider
 - ii. There is no fee
 - d. **I-800a, Supplement 3**, Request for Action on Approved Form I-800a –
 - i. Purpose is to extend the validity period of an approved I-800a
 - ii. Fee is \$340 except in cases where
 1. an I-800 has not been filed
 2. the extension request is the first request
 - e. **I-800** Petition to Classify Convention adoptee as Immediate Relative
 - i. Purpose is to determine the qualification of a child as an orphan under U.S. law (Intercountry Adoption Act)
 - ii. Fee is \$670 for each child except where
 1. it is the 1st (first) filing on an approved I-800a
 2. the children are biological siblings
- II. Approval Process (pp. 56836f)
 - a. The I-800a must be filed and approved prior to the filing of the I-800.
 - i. CIS is granted the authority to approve the PAP, not the home study preparer.
 - ii. Home study must comply with all the elements of the IAA regulations.
 - iii. If CIS denies the application, it will notify the PAP concerning reasons for denial along with the appeals process.
 - b. The PAP will obtain from the Central Authority (CA) for the child's country a report stating the factors that make the child eligible for adoption.

- c. The PAP will file the I-800 with CIS once they decide to proceed with the adoption of the child.
 - i. The I-800 may be filed in the U.S. before the PAP travels, or abroad after travel.
 - ii. Wherever filed, the adoption cannot proceed until this has been filed.
 - iii. Proof of completion of pre-adoption counseling will be provided, if needed.
- d. CIS or DOS will provisionally approve the adoption.
- e. DOS will notify the CA of the child's country that the adoption can proceed.
- f. PAP completes the adoption or custody hearing and submits documents to the DOS.
- g. DOS will perform a final verification of compliance with IAA.
- h. Upon final verification, DOS will
 - i. affix to the adoption or custody order a certification of compliance,
 - ii. grant final I-800 approval
 - iii. issue a visa for the child
- i. PAP immigrate child to U.S.

III. NOTES

- a. PAP must be 'habitually resident' in the U.S. (cf. 56840)
- b. The US definition of 'adoption' differs from 'adoptions' granted from other countries; only Islamic countries and Burma are cited (p. 56838f).
- c. The definition of 'adult household member' has been clarified to include 18 year old college students and non-resident nannies (p. 56838).
- d. An adoption agency cannot 'represent' a family to CIS. An agency may only assist "in the completion of blank spaces on printed [USCIS] forms" (p. 56839).
- e. Age of a single application for a Convention case (I-800a) is 25 years of age. This is different from the age for submitting an I-600a for non-Convention cases, 24 years (p. 56841).

U.S. Department of State

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.

Key Elements

The I-800 orphan petition process for a Convention case is in large part similar to the I-600 approval process. However, a significant change involves the requirement that DOS confirm prior to a child's adoption or custody hearing abroad that the child will be eligible to enter and reside permanently in the U.S.

These steps are also referenced in the INA regulations, 8 CFR Parts 103, 204, 213a et al., discussed above.

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

Key Elements

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. Additionally, these provisions comprise the bulk of the changes in adoption practice required by the IAA.

The key elements of Part 96 are more completely described in the following two documents published by the USDOS and annotated by IFS.

Hague PAP Guide IFS Oct07.pdf
HG Social Worker Guide.pdf

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 that processes an outgoing adoption case. Since IFS will not be conducting outgoing adoptions, these provisions will not affect our operations.