



**STATE STATUTES**  
CURRENT THROUGH MAY 2019

# Completing Intercountry Adoptions Not Finalized Abroad

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Intercountry adoption refers to the adoption of children in one country by parents who are in a different country and the child, in connection with the adoption, will immigrate to the adoptive parents' country<sup>1</sup>. Intercountry adoptions may be finalized abroad or domestically in accordance with the laws of the child's country of origin or may involve the issuance of a guardianship order by a court in the child's country, followed by a final adoption order in the United States. The adopting individual or couple must comply with the laws of the child's country of origin, U.S. Federal immigration law, and the laws of the adoptive parents' State of residence.

<sup>1</sup> See 22 C.F.R. 96.2

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While many intercountry adoptions are finalized in the child's country of origin before the child immigrates to the United States, there are instances when the adoption is not finalized in the child's country of origin. For example, in some countries of origin, the law does not allow for adoption. When the adoption cannot be completed in the country of origin, a guardianship order is issued for the purpose of an adoption in the United States. In such cases, the child will be issued an IR-4 or an IH-4 visa, be admitted to the United States as a lawful permanent resident (LPR,) and issued a "green card" as evidence of LPR status. The child will not be able to acquire U.S. citizenship until the adoptive parents complete the child's adoption in accordance with the State laws in the parents' legal State of residence. For further information, including discussion of other reasons an adopted child may be issued an IR-4 or IH-4 visa, please see USCIS's publication, *Your New Child's Immigrant Visa*.

This publication specifically addresses situations involving children who enter the United States under a guardianship order for the purpose of an adoption in the United States. Information regarding children whose intercountry adoptions were finalized in a foreign court and who entered the United States on IR-3, IH-3, IR-4 or IH-4 visas is available in the Child Welfare Information Gateway publication *State Recognition of Intercountry Adoptions Finalized Abroad*.

This publication outlines the legal requirements for completing the adoption of a child who enters the United States on an IR-4 or IH-4 visa issued because the adoption

was not finalized abroad, the documentation necessary for completing such an adoption, information on obtaining a birth certificate after the adoption is completed, and more. It includes a summary of State laws for all 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

## **REQUIREMENTS FOR COMPLETING THE ADOPTION**

Prospective adoptive parents should refer to the U.S. Department of State and U.S. Citizenship and Immigration Services (USCIS) websites for more information on the intercountry adoption and immigration processes, including age, citizenship, and other eligibility requirements, before commencing an intercountry adoption. Intercountry adoptions to the United States are subject to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Convention established provisions for conducting intercountry adoptions that are designed to promote the best interests of children, birth families, and adoptive families and to prevent the abduction, sale, and trafficking of children.<sup>2</sup> The Intercountry Adoption Act of 2000 (IAA) implemented the Convention in the United States (effective April 1, 2008). An important requirement under the IAA is that U.S. citizens applying to adopt a child from a country that is also party to the Convention must work with a U.S. accredited or approved adoption service provider (an adoption agency). In July 2014, the Universal Accreditation Act of 2012 extended this requirement to intercountry

<sup>2</sup> For more information about the provisions of the Hague convention, see the U.S. Department of State webpage, "Understanding the Hague Convention," at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>.

adoption from countries not party to the Hague Adoption Convention. Consequently, all intercountry adoptions to the United States must involve an accredited adoption service provider.

Information about the intercountry adoption process is available on the Department of State website, <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html> and on the USCIS website, [www.uscis.gov/adoption](http://www.uscis.gov/adoption).

## **ACQUISITION OF U.S. CITIZENSHIP**

A child who immigrates to the United States as the adopted child of a U.S. citizen will automatically become a U.S. citizen, pursuant to the Child Citizenship Act of 2000, if the adoption is full and final before the child's 18<sup>th</sup> birthday, if the child is admitted to the United States as an LPR before his or her 18<sup>th</sup> birthday, and if he or she is residing in the United States in the U.S. citizen parent's legal and physical custody.<sup>3</sup>

However, when a child enters the United States under a foreign guardianship order and without a full and final adoption, he or she is admitted to the country as an LPR with an IR-4 immigrant visa (if the country of origin is not party to the Convention) or an IH-4 visa (if the country of origin is party to the Convention). Before the child can acquire U.S. citizenship, the child's adoptive parents must complete the adoption in an appropriate State court in their State of residence and meet

other requirements. The person(s) who wish to adopt the child must file a petition with the court having appropriate jurisdiction in their State of residence; State statutes specify the information that must be included in the petition. A hearing will be held to review the petition and examine any witnesses. If the court is satisfied that the adopting parent(s) can provide a suitable home for the child and that the adoption is in the child's best interests, it will grant a final decree of adoption.

After the adoption is completed, the child acquires U.S. citizenship by operation of law under the provisions of the Child Citizenship Act of 2000.<sup>4</sup> A child born outside of the United States automatically becomes a U.S. citizen when all the following conditions have been fulfilled:

- At least one of the child's parents is a U.S. citizen by birth or naturalization.
- The child is younger than age 18.
- The child is residing in or has resided in the United States in the legal and physical custody of the U.S. citizen parent pursuant to a lawful admission for permanent residence.

The adoptive parent may apply for documentation of their child's U.S. citizenship by applying to USCIS for a Certificate of Citizenship or by obtaining a U.S. passport for the child.

<sup>3</sup> For more information, see <https://www.uscis.gov/adoption/bringing-your-internationally-adopted-child-united-states/after-your-child-enters-united-states>

<sup>4</sup> For more information about the Child Citizenship Act, see the webpage of the U.S. Department of State at [https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt\\_ref/adoption-FAQs/child-citizenship-act-of-2000.html](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html) or the USCIS webpage at <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-4>.

## REQUIRED EVIDENCE/ DOCUMENTATION FOR COMPLETION OF ADOPTION

The specific documents that must be attached to an adoption petition vary from State to State, but some of the documents that may be required include the following:

- A copy of the adoptee's birth certificate, verification of birth, hospital birth registration, or other satisfactory proof of date and place of the child's birth
- Certified copies of all necessary consents to the adoption or court orders terminating the parents' parental rights
- If applicable, a copy of the final decree or order of guardianship from the country of the child's former residence
- Certified English translations of any documents not written in English
- Copies of any available preplacement assessments and postplacement reports
- A copy of any report regarding the health and social background of the child to be adopted

Before it can grant a decree of adoption, the court must be satisfied that the child is legally free for adoption. Under Federal law, a child will not be admitted to the United States with an IR-4 or IH-4 visa unless that determination has been made to the

satisfaction of the foreign court and based on the laws of the child's country of origin.<sup>5</sup> The laws in approximately 28 States,<sup>6</sup> the District of Columbia, Guam, and the Northern Mariana Island allow courts to accept any of the following as consent to the child's adoption:

- A legally executed relinquishment of parental rights
- Judicial decrees terminating parental rights
- A decree or order of guardianship issued by a court in the child's country of birth
- The decisions and orders of foreign courts and government agencies regarding the legal status of the child

## BACKGROUND STUDIES

Federal law requires that a home study of the prospective adoptive parents be completed before a child may be placed with the prospective adoptive parents for adoption, guardianship, or custody. USCIS uses the home study to determine whether the prospective parents are suitable and eligible to adopt a child abroad and bring the child to the United States. Home studies conducted for intercountry adoption cases must comply with U.S. Federal regulations (8 CFR 204.311), which set out specific requirements to assist USCIS in determining the suitability of prospective adoptive parents to provide proper care to an adopted child.<sup>7</sup>

<sup>5</sup> Note: Not all countries of origin terminate parental rights when a parent has given consent to immigration and adoption, and the order by the U.S. State may serve as the termination of parental rights.

<sup>6</sup> The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current only through May 2019. The States that accept the decrees of foreign courts as consent include Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, Washington, and Wisconsin.

<sup>7</sup> For more information on Federal requirements for home studies, see <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/how-to-adopt/home-study-requirements.html> or <https://www.uscis.gov/adoption/home-study-information>.

All States also require the completion of a home study before a child may be placed in an adoptive home. An accredited adoption services provider can assist the parents in completing a home study that will meet both Federal and State requirements.

Adoption home studies are used to assess whether the prospective adoptive parents can provide a stable and nurturing home to an adopted child. The study will include a review of the parents' finances, an inspection of the home, and medical examinations to ensure that the parents are sufficiently healthy to provide appropriate care. The person conducting the study will interview the applicants and all family members, including any children, to assess the applicants' parenting abilities, their attitudes toward adoption, and other social and personal characteristics. Personal references are contacted for further information.<sup>8</sup>

All home studies also include background checks of the adopting parents and adult members of their household. Background checks include fingerprint-based checks of national crime information databases and checks of child abuse and neglect central registries.<sup>9</sup>

## PLACEMENT SUPERVISION AND REPORTING

Many countries require adoptive parents or adoption service providers to report on the child's progress and welfare after a placement has been made and/or an adoption has been finalized. Reports required between placement of a child and a final adoption are generally referred to as postplacement reports, and those required after the full and final adoption are called postadoption reports (PARs). Both generally cover the child's development and progress adjusting to his or her new family and life in a new country. The requirements and frequency of these reports vary from country to country.<sup>10</sup>

Federal regulations (22 CFR 96.50) require the accredited adoption service provider (agency) monitor and supervise the child's placement and conducts home visits as required by State law or the country of origin, whichever is greater. In most States, the placement of a child with an adoptive family will be supervised by a caseworker from the child-placing agency until the adoption is completed and finalized by the court.<sup>11</sup> During this period of supervision, the adoption professional will make regular visits to the home and interview all family members in an effort to determine the level of integration and adjustment of the adoptive child to his or her new family. Based on his or her observations, the caseworker also may

<sup>8</sup> For more information on State requirements for adoption home studies, see Child Welfare Information Gateway's *Home Study Requirements for Prospective Parents in Domestic Adoption* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/homestudyreqs-adoption/>.

<sup>9</sup> For more information on the process of obtaining background checks, see Information Gateway's *Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/background/>.

<sup>10</sup> For more information, see the U.S. Department of State webpages "Post-Adoption Reporting Overview," at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/post-adoption/post-adoption-reporting.html>, or "What to Expect After Adoption," at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/post-adoption/what-to-expect-after-adoption.html>.

<sup>11</sup> No specific provision for postplacement supervision was found in Arizona, Arkansas, Connecticut, Kentucky, Massachusetts, Puerto Rico, or the Virgin Islands.



recommend services to assist the family in meeting the specific needs of the adopted child. A report of the family's progress must be made to the court before the adoption can be finalized. The report may include any updates to the family's situation since the completion of the preplacement assessment and provide a recommendation on whether the adoption should be finalized.

The court's oversight of the family usually will end within 6 months to 1 year, at which time the adoption is finalized. Georgia, however, requires the adoption petitioner to provide documentation that all conditions of the foreign guardianship order have been met before the adoption decree can be granted.

Typically, the same report can be used to satisfy both foreign and State requirements for postplacement supervision.

## **EFFECT OF ADOPTION DECREE ON PARENTAL RIGHTS**

Under Federal law, upon finalization of the adoption the parents may apply for either a Certificate of Citizenship or a U.S. passport to obtain evidence of the child's U.S. citizenship. Under the laws of all States, a final decree of adoption creates a legal parent-child relationship between the adopting parents and the child who has been adopted, with all rights and obligations as if they were natural parents. The decree also permanently severs the legal parent-child relationship between

the child and his or her former parents if a prior action by a foreign court had not already terminated parental rights.

## **OBTAINING A U.S. BIRTH CERTIFICATE**

When an adoption is finalized, the clerk of the court shall issue an adoption decree and submit a report of the adoption to the appropriate State registrar of vital statistics. The report shall include a certified copy of the final adoption decree and the child's original certificate of birth or, if the original certificate is unobtainable, the State court's findings of fact as to the date and place of the child's birth.<sup>12</sup> In all States, American Samoa, Guam, and the Northern Mariana Islands, the court, the adoptive parents, or the adopted person who is age 18 or older may request that the State registrar create a new birth certificate for the adopted person.<sup>13</sup>

The birth certificate issued by the State registrar lists the new name of the adopted child, if requested by the adoptive parents, and the names of the adoptive parents as the child's legal parents. The certificate will show the country and date of the child's birth, as determined by the court that granted the adoption decree. In 17 States, the District of Columbia, and Guam, it will include a notation that it is a certificate of foreign birth.<sup>14</sup> In 21 States and Guam, a notation is made on the certificate that it is not evidence of U.S.

<sup>12</sup> "Findings of fact" are court determinations about questions vital to a legal proceeding, such as facts about an adopted child that are necessary for completing an adoption in the State court of a child who was born outside the United States. In some cases, the child's date and place of birth are unknown or seem incorrect. In those cases, a State court must determine the true date and place of birth because this information is necessary to conduct the adoption proceedings; to issue a U.S. birth certificate; and to fill out all future forms relating to health, education, and work for the adopted child.

<sup>13</sup> Puerto Rico and the Virgin Islands make no provision for issuing birth certificates for adopted children born outside the United States.

<sup>14</sup> Alabama, Alaska, Arkansas, California, Colorado, Florida, Georgia, Maryland, Montana, New Jersey, Oklahoma, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia

citizenship for the child.<sup>15</sup> In five States, that notation will be removed when proof of the child's U.S. citizenship is submitted to the registrar.<sup>16</sup>

For more general information about the intercountry adoption process, see the Information Gateway factsheet *Intercountry Adoption: What Do I Need to Know?* at <https://www.childwelfare.gov/pubs/factsheets-families-intercountry/>.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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<sup>15</sup> Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Idaho, Iowa, Louisiana, Maine, Maryland, Minnesota, Montana, New Mexico, North Dakota, Pennsylvania, South Carolina, Vermont, Virginia, and West Virginia

<sup>16</sup> Alaska, Louisiana, New Jersey, Pennsylvania, and Virginia



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