

Fact Sheet:

ADOPTION IN U.S. COURTS OF CHILDREN FROM HAGUE ADOPTION CONVENTION COUNTRIES

Information for State Court Judges, Child Welfare Professionals, and Adoptive Families

Foreign-born children in the United States who are adopted in a U.S. court may face immigration-related implications. Adoption alone does not give a child lawful immigration status. This fact sheet reviews the immigration implications for children from Hague Adoption Convention (“Convention” or “Hague”) countries who did not immigrate to the United States through the U.S. Convention process and are undergoing U.S. adoption proceedings.

When does the Hague Adoption Convention apply?

The Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) establishes a required process for intercountry adoptions between Convention party countries. Generally, an adoption must follow the Hague process if:

- An adoptive parent is a U.S. citizen;
- The adoptive U.S. citizen parent is habitually resident in the United States;
- The child the adoptive parent seeks to adopt is habitually resident in another Convention country. (A child is generally considered habitually resident in their country of citizenship); and
- The adoption occurs on or after the Convention entered into force in the United States (April 1, 2008) and in the other country.

To view a list of countries the United States recognizes as Convention countries, visit the [Hague countries list](#). To determine when the Convention entered into force for a specific country, see the [Hague status table](#).

What is the immigration process of a child from a Hague Adoption Country?

If the Hague Adoption Convention applies, the prospective adoptive parent must follow the Hague process in a specific order. Specifically, a prospective adoptive parent should not adopt or obtain legal custody of a child for purposes of emigration and adoption before completing certain steps in the Hague process. See our [Hague Process page](#) for more information. Once the adoption or legal custody is finalized and the U.S. Department of State (DOS) issues a Hague Adoption Certificate or Hague Custody Certificate to certify compliance with the Convention, and the process is complete, the adoptive parent generally brings the child to the United States with an immigrant visa. The adoptive parent may then finalize the adoption or readopt in a U.S. court if needed. However, a child from a Convention country who did not go through the Convention process may already be in the United States and become the subject of adoption proceedings in a U.S. court.



What happens if the Hague process was not followed?

When a U.S. citizen adopts a foreign-born child in the United States without properly considering U.S. immigration law and the Convention (when applicable), this may delay, prevent, or complicate the child's ability to obtain lawful U.S. immigration status or to become a U.S. citizen. A U.S. citizen generally cannot bypass the requirements of the Convention by identifying a foreign-born child from a Convention country who is already in the United States and then completing an adoption in the United States. U.S. state courts generally must not enter an order finalizing an adoption in a case subject to the Convention unless DOS has certified compliance with the Convention procedures by issuing a Hague Adoption Certificate or Hague Custody Certificate. There are generally two options:

Option 1: Follow the Hague Process from the United States - The option to follow the Hague process may be available if the Convention country and DOS allow the Hague process to be completed from the United States.

Option 2: Establish the Convention Does Not Apply - In limited circumstances, USCIS may determine that the Convention does not apply to the adoption of a child from a Convention country and approve an immigration petition based on a U.S. adoption.

How to establish that the Convention does not apply (Option 2)?

For USCIS to determine that the Convention may not apply, the adoptive parent must provide:

- A U.S. adoption order (or amended order) that incorporates a statement from the Central Authority of the child's country of origin (COO) stating the child is not habitually resident in the COO; or
- Evidence that:
 - They tried to obtain a habitual residence statement

from the COO's Central Authority but could not obtain one within 120 days, or the COO has a policy of not issuing such statements, as confirmed by DOS; and

- They meet USCIS criteria for specific intent of the child's entry to the United States, actual residence in the United States, and notice to the COO's Central Authority.

See [USCIS Policy Manual Volume 5, Part E, Chapter 3, Hague Restrictions on Family-Based Petitions](#) for more information.

What information is helpful to include in the U.S. court order?

COO Statement - Language confirming that the COO's Central Authority advised the U.S. court with jurisdiction over the adoption that it is aware of the child's presence in the United States and of the proposed adoption and has determined that the child is not habitually resident in the COO (if such statement is obtainable).

Child's Circumstances - Findings of any of the following that may apply:

- The child did not enter the United States for the purpose of adoption;
- The child was a ward of a U.S. state court before the adoption; or
- The child has resided in the United States for a substantial period of time or has compelling ties in the United States before the adoption.

Birth Parents' Consent - The court's determination regarding consent, whether the court dispensed with consent of one or both of the child's birth parents, and on what basis.

Adoption Process and Factors - A description of the adoption process and the factors the court considered in granting the adoption.

Resources

- **Hague Adoption Convention**
hccch.net/en/instruments/conventions/full-text/?cid=69
- **Inter-country Adoption Act**
govinfo.gov/content/pkg/PLAW-106publ279/pdf/PLAW-106publ279.pdf
- **Hague countries list**
travel.state.gov/content/travel/en/Inter-country-Adoption/adoption-Process/understanding-the-hague-convention/convention-countries.html
- **Hague status table**
hccch.net/en/instruments/conventions/status-table/?cid=69
- **Hague process page**
uscis.gov/adoption/immigration-through-adoption/hague-process
- **DHS regulations at 8 CFR Subpart C**
ecfr.gov/current/title-8/chapter-I/subchapter-B/part-204/subpart-C?toc=1
- **USCIS Policy Manual Adoptions Volume 5**
uscis.gov/policy-manual/volume-5
- **USCIS adoption webpage**
uscis.gov/adoption
- **U.S. Department of State intercountry adoption webpage**
adoption.state.gov