



CIS OMBUDSMAN TELECONFERENCE: ADOPTIONS November 17, 2009

1. What are the differences between Hague Adoptions and Orphan Adoptions? (discuss form differences I-600A/I-800A, I-600/I-800; filing fees; other costs)

USCIS Response: The Hague process applies to adoptions that take place on or after April 1, 2008, if a U.S. citizen habitually residing in the United States adopts a child habitually residing in a country that is a party to the Hague Adoption Convention.

Currently, there are 78 countries recognized by the United States as Hague Convention countries. You can find a list of these countries on the Department of State website: www.adoption.state.gov.

The Orphan process (non-Hague) applies if the child is habitually residing in a country that is not a party to the Hague Adoption Convention.

Prospective adoptive parents interested in the Hague process should file:

- Form I-800A, *Application for Determination of Suitability to Adopt a Child from a Convention Country*, and
- Form I-800, *Petition to Classify Convention Adoptee as an Immediate Relative* (only after the Form I-800A is approved).

Prospective adoptive parents interested in the Orphan process should file:

- Form I-600A, *Application for Advance Processing of Orphan Petition*, and
- Form I-600, *Petition to Classify Orphan as an Immediate Relative*.

The filing fees are the same for both processes.

Additional information about both the Hague and Orphan adoption processes can be found at www.uscis.gov/adoptions.

2. May all U.S. citizens and legal permanent residents use these two methods of intercountry adoption?

USCIS Response: The Hague and Orphan processes are only available to U.S. citizens who meet the specific requirements of those programs.

3. When a child arrives in the United States, what status does s/he hold and why?

USCIS Response: When the child arrives in the United States with an immigrant visa as an Orphan or Hague adoptee, s/he is admitted as a permanent resident. If the child meets all of the requirements of INA section 320(a) (which pertains to citizenship) before the child turns 18, the child automatically becomes a citizen on the date the requirements are met.

For Orphans, an adoption abroad is considered full and final only if the adoptive parents saw the child before or during the adoption proceeding abroad. In this situation, the child receives an IR-3 immigrant visa and generally becomes a U.S. citizen upon admission as a permanent resident.

For some Orphan cases involving an adoption abroad, the child may receive an IR-4 visa, rather than an IR-3 visa, if the adoption was not finalized prior to the child's arrival in the United States. For example, it may be the case that only one of the parents actually adopted the child abroad, or that the parents did not both see the child. In this situation, the parents need to take whatever steps are necessary under state law to obtain recognition of the foreign adoption. A child admitted with an IR-4 immigrant visa will not automatically receive a certificate of citizenship. If the parents complete the adoption in the United States before the child's 18th birthday, the parents may file Form N-600, *Application for Certificate of Citizenship*.

For Hague adoptees, if the adoption was completed abroad, the requirements of section 320 are usually met when the child is admitted for permanent residence on an IH-3 visa. The requirement for Orphan cases that both parents must have seen the child does *not* apply to Hague cases. Children admitted as IH-3 immigrants, in most cases, will receive a certificate of citizenship, rather than a green card.

If the child is coming to be adopted in the United States (IH-4 visa for Hague), then the child does not become a citizen at admission. Rather, the requirements in section 320(a) will be met only if the adoptive parents complete the adoption in the United States before the child's 18th birthday. These IH-4 children, as well as IR-4 children, will receive a green card. If the parents complete the adoption in the United States before the child's 18th birthday, the parents may file Form N-600, *Application for Certificate of Citizenship*.

4. Under what circumstances might prospective adoptive parents choose to adopt and reside abroad for two years and file the I-130, Petition for Immediate Relative?

USCIS Response: The process by which a prospective adoptive parent chooses to adopt and reside abroad for two years and file Form I-130, *Petition for Alien Relative*, depends on the individuals who are adopting and what their particular circumstances are. USCIS is committed to processing intercountry adoption cases according to U.S. law and applicable international standards. Additionally, USCIS feels it is in the best interest of all children and families that adoptions occur under a safe, transparent, and regulated adoption system.

5. We have heard the term “grandfathered cases” in conjunction with Hague cases. Can you please explain what this means?

USCIS Response: U.S. law and regulations allow individuals who began the intercountry adoption process by filing Form I-600A or Form I-600, before April 1, 2008, to continue using these pre-Hague Adoption Convention forms and procedures even if they are adopting a child from a Hague Convention country provided the country does not require a Hague adoption. However, depending on the time that it takes prospective adoptive parents to be matched with a child and file Form I-600, the Form I-600A approval might expire before the prospective adoptive parents are able to file Form I-600. By allowing the filing of one new Form I-600A prior to the expiration of the current approved Form I-600A, USCIS enables prospective adoptive parents who have been grandfathered into the pre-Hague Adoption Convention process to continue to proceed under the Orphan process, provided the child’s home country agrees.

6. Why are Hague cases centrally processed at the National Benefits Center, while Orphan cases are processed at USCIS field offices around the country?

USCIS Response: Historically, Orphan cases were processed at local field offices. USCIS has reviewed and considered where the best place to process the Orphan cases is and decided not to centralize processing, but will continue to evaluate this decision. When the Hague process began in April 2008, a decision was made to centralize the process because of the new and additional requirements and because the Hague process required more collaboration between the Department of State and USCIS than the traditional Orphan process.

7. **The NBC's Hague Unit receives inquiries both via a toll-free telephone and a dedicated email and inquirers receive responses from the adjudicating officer handling the case. Is there a comparable means for people to communicate with the officer handling an Orphan case?**

USCIS Response: Yes, you can find the adoptions email addresses for local offices on our website, www.uscis.gov by clicking on "find a USCIS office" in the customer tools section of the home page. Some field offices also have a telephone number on their website to call the orphan officer.

8. **What is the current status of adoptions with Vietnam and Guatemala?**

USCIS Response:

Vietnam:

In October 2008, USCIS and the Department of State (DOS) issued a joint statement with the government of Vietnam announcing that the processing of new adoption cases will not resume until both countries sign a new bilateral agreement or Vietnam becomes party to the Hague Adoption Convention.

The governments of the United States and Vietnam took this action jointly because both governments recognized the complexity of issues relating to intercountry adoptions and the importance of developing a transparent adoption system that protects all parties. The United States continues to strongly support the Vietnamese government's efforts to establish an appropriate child adoption system with sound safeguards and protections for children and families. Until a new bilateral agreement is reached or Vietnam becomes a party to the Hague Adoption Convention, USCIS and DOS have concluded it is in the best interest of children and families to not process any post-September 1, 2008 adoption cases. This action does not affect cases where the prospective adoptive parents were officially matched with a child before September 1, 2008, the date the previous bilateral agreement expired.

Guatemala:

Both Guatemala and the United States are parties to the Hague Adoption Convention. On April 1, 2008, USCIS was advised that Department of State consular officers cannot issue the required Hague Adoption Certificate or Hague Custody Declaration at this time due to the agency's determination that Guatemala is not currently meeting its obligations under the Hague Adoption Convention. As a result, USCIS is not able to approve any Form I-800, *Petition to Classify Convention Adoptee as an Immediate Relative*, filed on behalf of a child to be adopted from Guatemala. The Hague Adoption Convention provides important safeguards to protect the welfare of children, birth parent(s) and adoptive parent(s) engaged in intercountry adoptions. USCIS will promptly advise the public when it is able to commence processing of new Hague Convention adoptions in Guatemala.

a. What is happening with adoptions filed before the United States either suspended or failed to renew treaties governing these cases?

USCIS Response:

Vietnam: Until a new bilateral agreement is reached or Vietnam becomes a party to the Hague Adoption Convention, USCIS and DOS concluded it is in the best interest of children and families to not process any post-September 1, 2008 adoption cases. This action does not affect cases where the prospective adoptive parents were officially matched with a child before September 1, 2008, the date the previous bilateral agreement expired.

According to the Vietnamese Ministry of Justice, prospective adoptive parents who received a formal referral (matched with a child) by September 1, 2008, will be allowed to process their adoption to conclusion. Dossiers that were not referred by September 1, 2008, were closed and returned to the appropriate adoption service provider.

Guatemala: USCIS continues to process properly “grandfathered” cases in Guatemala. Guatemala agreed to permit those cases in-process before December 31, 2007, to continue provided all Guatemalan requirements are met. No new cases can be initiated in Guatemala until new Hague procedures are established in Guatemala and approved by the United States government.

b. What are the present options regarding adopting a child from these countries for immigration to the United States?

USCIS Response: If the Hague Adoption Convention does not apply to a particular child’s adoption, and the child meets the definition of a child in the Immigration and Nationality Act (INA), the adoptive parents can petition for an adopted child as an immediate relative.

Under this process, an adopted child is considered, for immigration purposes, to be the child (or adult son or daughter) of the adopting parent if:

- The parent adopted the child before his or her 16th birthday (or before the 18th birthday under certain circumstances)

AND

- The parent had legal and physical custody of the child for at least two years while the child was a minor.

In order for the Hague Adoption Convention not to apply, however, the petitioner has to establish that, either the adoptive parent was not habitually residing in the United States at the time of the adoption or that the child was no longer habitually residing in the Hague Convention country at the time of the adoption. Ordinarily, this may mean

that the parent will have to live with the child abroad during the two-year period. A child from a Hague Convention country generally cannot be adopted in the United States without complying with the Hague Adoption Convention, unless the other country determines that the child is no longer habitually residing in that country.

9. If the Russian Federation has signed the Hague Convention, why are Russian adoptions still being processed as Orphan cases?

USCIS Response: Although the Russian Federation has signed the Hague Adoption Convention, they have yet to provide formal ratification. Formal ratification is required before they are considered to be a party to the Convention. Until this is done, we cannot process Russian adoptions under the Hague Adoption Convention procedures.