UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

40th Annual Conference on Immigration and Nationality Law

October 27-28, 2016
Austin, Texas

Adoptions and Immigration Law

Justine M. Daly

Justine M. Daly
Law Offices of Justine M. Daly
709 E. Quincy, San Antonio, TX 78215

justinedaly@grandecom.net
210.475.9306

I. INTRODUCTION

The purpose of this paper is to help the immigration practitioner become aware of the requirements of the Hague Adoption Convention, as well as the different ways that a foreign born child can immigrate to the United States based on an adoption by a US citizen or citizens.

II. THE HAGUE ADOPTION CONVENTION – A BRIEF HISTORY AND BACKGROUND

The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention) is an international agreement to safeguard intercountry adoptions was concluded on May 29, 1993 in The Hague, the Netherlands. The Convention establishes international standards of practices for intercountry adoptions.

The United States signed the Convention on March 31, 1994. In 1998, President Clinton sent the Hague Convention on Intercountry Adoptions to the U.S. Senate for ratification. In 2000, both Houses of Congress passed bills for implementation of the Convention, the Intercountry Adoption Act of 2000 (the IAA), Public Law 106-279. President Clinton signed the IAA into law on October 6, 2000. The United States ratified the Hague Convention on Intercountry Adoption on December 12, 2007 in the Netherlands. The Hague Convention on Intercountry Adoption entered into force for the United States on April 1, 2008. Currently, there are approximately 94 countries which have ratified the treaty. (See attached Appendix 1). Certain countries have been identified by the US Government such that US Citizens are currently prohibited from adopting children from those countries. (See attached Appendix 2).

The International Adoption Simplification Act was signed into law by President Obama on November 30, 2010. Pub. L. No. 111-287, 124 Stat. 3058 (2010). The purpose of this law was to amending the INA definition of "child" to include certain children adopted in a Hague Convention member country or emigrating from such a country for U.S. adoption. This included restoring immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention.

The Hague Adoption Convention applies to all adoptions between the United States and the other counties that have joined it. Adopting a child from a Convention country is similar in many ways to adopting a child from a country not party to the Convention. However, there are some key differences. In particular, those seeking to adopt receive greater protections if they adopt from a Convention country.

The Hague Adoption Convention requires that countries who are party to the Convention establish a Central Authority to be the authoritative source of information and point of contact in that country. The goal of establishing the Central Authorities to deal with adoptions from each contracting State is to ensure cooperation between States. In the United States, the State Department serves as the Central Authority for the Convention.

The Central Authority monitors individual cases and ensures that the adoption laws of the member country are not violated. Both the receiving country and the country of origin must make specific determinations in advance of any adoption. Additionally, any Hague Adoption Convention adoption must be completed by an adoption service provider that is accredited by the

Department of State[1].

One of the primary purposes of this Convention is to prevent the abduction, sale of, or traffic in children. The paramount consideration in all intercountry adoptions is to ensure the best interests of the children.

Each contracting State has agreed to establish safeguards to prevent abduction, sale and trafficking in children for adoption by:

- protecting birth families from exploitation and undue pressure;
- ensuring only children in need of a family are adoptable and adopted;
- preventing improper financial gain and corruption; and,
- regulating agencies and individuals involved in adoptions by accrediting them in accordance with Convention standards.

Primarily, each Contracting State recognizes the principle that a child should be raised by his or her birth family or extended family whenever possible. In the event that this is not possible or practicable, other forms of permanent care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. The Convention recognizes intercountry adoption as a means of offering the advantage of a permanent home to a child when a suitable family has not been found in the child's country of origin.

An intercountry adoption can take place when:

1. The child has been deemed eligible for adoption by the child's country of birth; and,
2. Proper effort has been given to the child's adoption in its country of origin.

The Convention provides a formal international and intergovernmental recognition of intercountry adoption, working to ensure that adoptions under the Convention will generally be recognized and given effect in other party countries. This is one of the major achievements of the Convention, i.e. establishing a system of automatic recognition of adoptions made in accordance with the Convention. Every adoption, whether a simple or full adoption, which is certified to be made in accordance with Convention procedures, is recognized "by operation of law" in all other Contracting States (Article 23). In other words, the Convention gives immediate certainty to the status of the child, and eliminates the need for a procedure for recognition of orders, or re-adoption, in the receiving country.

The full text, comments, explanatory text, sample forms and references for the Hague Adoption Convention can be found at: www.hcch.net. This website should be referenced whenever dealing with an international adoption in order to verify the current list of convention countries.

Another very useful website is the Department of State adoption website found at: http://www.adoption.state.gov.

[1] *42 U.S.C. §14921(a)(1)* (providing that no person may offer or provide an adoption service in connection with a Hague Adoption Convention adoption unless that person "is accredited or approved"). This provision of the Convention has been enacted as §201(a) of the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 114 Stat. 825, 830-831.

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Adoptions and Immigration Law

First appeared as part of the conference materials for the
40th Annual Conference on Immigration and Nationality Law session
"Adoptions and Immigration Law"