

Adoption-Based Immigration

Adoption should be a time of great joy but the experience rarely occurs without some degree of frustration and anxiety. Most families would not think of embarking on such a journey without hiring an adoption agency to guide them. Even so, as an attorney who specializes in adoption-based immigration, I meet with adoptive parents who are stunned to learn that the child for whom they have long waited and sometimes already adopted abroad, cannot join their family here in the U.S. It is from this perspective that I offer this summary of the adoption-based immigration process. Understanding the immigration process and its key requirements before beginning the adoption process will facilitate a less stressful and more successful experience.

In addition to completing a home study and preparing a dossier with their accredited adoption agency, each adoptive family must complete a multi-step immigration process with U.S. Citizenship and Immigration Services (“USCIS”) and the U.S. Consulate (“DOS”) in the adopted child’s birth country. This process is required to allow a newly adopted child to legally enter the U.S. via an Orphan Petition.

Due to child trafficking concerns, adoption based immigration cases are closely scrutinized, both by USCIS and DOS. As a result, the process required to bring an adopted child home is complex, with stringent requirements. Some Orphan Petition requirements extend beyond agency and birth country requirements. Most notably:

- At least one of the adoptive parents must be a U.S. citizen;
- The family must meet certain income requirements;
- USCIS must allow orphan adoption from the birth country; and
- The child must meet the U.S. government’s definition of “orphan”.

In addition to completing a home study, families must file an application with USCIS to assess their suitability to adopt an orphan from abroad. The forms to be submitted to USCIS vary, depending on whether the birth country has signed the Hague Adoption Convention. In addition to biographical forms and supporting documents, adult household members must complete biometrics at a USCIS facility. Moreover, each adoptive family must provide evidence of their ability to financially support the adopted child. The minimum required household income is based on annual Federal Poverty Guidelines and varies according to family size. The relevant 2012 chart can be found here: <http://www.uscis.gov/i-864p>.

Most adoption agencies correctly require adoptive families to secure USCIS approval before formally referring a specific orphan to a family. Even if an agency allows pre-approval referrals, it is advisable to postpone the acceptance of a referral until a family receives USCIS approval.

After USCIS approval and formal acceptance of a referral, the family must wait for the birth country’s governmental bodies to complete the adoption process. Eventually, parents travel to the birth country to finish the adoption and immigration processes, including the adjudication by DOS of the Orphan Petition and the child’s immigrant visa application. After the child’s immigrant visa is issued, the family can return to the U.S. with their adopted child.

If both adoptive parents met the child before the adoption and the birth country granted an adoption, rather than guardianship, the child automatically becomes a U.S. citizen upon entry into the U.S. In such

cases, parents may apply for a U.S. passport as proof of their child's status as a U.S. citizen. Parents also may apply for a Certificate of Citizenship for their child.

If only one parent met the child before the adoption and/or the birth country only granted guardianship, parents must adopt their child in their home state. Once the American adoption is completed, parents can then apply for their child's citizenship and a U.S. passport.

It is critical to note that there are countries from which the U.S. currently does not allow immigration via the Orphan Petition process. This prohibition relates to USCIS' determination that the country does not have a highly regimented and transparent manner by which children are surrendered by their birth parents.

Prior to committing to adoption from a specific country, families should confirm the current eligibility of American citizens to adopt orphans from the selected country. The adoption process widely varies from birth country to birth country and can suddenly change, altering orphan adoption eligibility temporarily and sometimes long-term. Information about the current status of orphan adoption by Americans from specific countries can be found at:

- http://adoption.state.gov/country_information.php
- <http://www.jointcouncil.org/news-info/>

Additionally, a family that adopts a child who does not meet USCIS' strict definition of "orphan" cannot bring their adopted child to the U.S. via an Orphan Petition. Instead, after receiving legal custody of the child, one of the adoptive parents must accrue and document two full years of actual physical co-habitation with the child. The two years of co-habitation may be gradually accrued. However, absent a serious medical condition, the two years normally cannot accrue in the U.S. because the adopted child has no interim status under which to temporarily enter the U.S. This means that the adoptive parent either must move abroad to live with the adopted child for two years or travel back and forth until time together totaling two years has accrued.

As with other aspects of the international adoption process, adoptive parents must patiently complete the required immigration process. A clear understanding of the process and its key requirements is necessary to ensure success. Given the complexities of adoption-based immigration, we recommend that parents seek legal advice from a law firm that regularly handles such immigration matters.

Andrea Vag has three children adopted from abroad. She is a Principal of Vag & Grodman, LLP and based in Hyde Park. Her nationwide practice is limited to adoption, family and work based U.S. immigration law. The preceding summary is for informational purposes only and is not intended to serve as legal advice. For advice pertaining to your own case, please contact Andrea at: questions@vag-grodman.com; www.vag-grodman.com.