

## 36. Adopting Children from Overseas

In Australia, intercountry adoption matters are the responsibility of state and territory welfare authorities.

These authorities manage arrangements for adopting children from overseas, including negotiating agreements with other countries and assessing and approving prospective adoptive parents. If you live in Australia and are considering adopting a child from overseas, contact your state or territory welfare authority.

The eligibility requirements for overseas adoptions are different in each state and territory and may include criteria concerning marital status, age, citizenship and health. Welfare authorities will not normally give approval for Australian residents to adopt a child who is a relative, or a child already known to them.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) cannot help with adoption arrangements. DIMIA's role is to assess and decide applications for visas in accordance with the requirements of the Migration Regulations.

This fact sheet provides an overview of requirements for entry of children adopted overseas, or to be adopted in Australia by Australian citizens, permanent residents or New Zealand citizens. If the child was adopted before the sponsor became an Australian citizen, permanent resident or New Zealand citizen, see Fact Sheet 33 - *Family Stream Migration – Child*.

### Hague Convention

The Hague Convention on the Protection of Children and Cooperation in regard to Intercountry Adoption (known as the Hague Convention) came into force in Australia in December 1998.

The objectives of the Hague Convention are to eliminate abduction, trafficking or sale of children, and to make sure that intercountry adoptions take place in the best interests of the children, and according to consistent law and practices.

State and territory adoption legislation and Australia's immigration laws are designed to uphold the principles of this Convention.

### Adoption visas

To be eligible for an Adoption visa (sub-class 102) the adoption must have the approval of an Australian state or territory welfare authority. There is no provision to grant a visa to a child who has been adopted under private arrangements unless the adoptive parent has been genuinely resident overseas for 12 months at the time of the visa application (see below).

An Adoption visa can only be applied for by children outside Australia. To be granted an Adoption visa, the child must be under 18 at the time of application and the time of the decision. The child must meet health requirements before a visa is granted.

### State and territory supported adoptions

Adoptions arranged by state and territory welfare authorities are known as intercountry adoptions, and fall into three main categories:

- Hague Convention adoptions, between Australia and another country which has ratified the Convention
- bilateral agreement adoptions, from another country which has an agreement with Australia. Welfare authorities negotiate these agreements, and
- specific bilateral agreements prescribed under the Family Law Act. The Australia-China Adoption Agreement is currently the only prescribed agreement.

Adoption and immigration procedures vary depending on the country and the category under which the adoption takes place. The usual procedure is:

- Prospective adoptive parents are allocated a child from the overseas country through their state or territory welfare authority
- If accepted, they may lodge an Adoption visa application for the child and pay the current charge. The application may be lodged at any DIMIA regional office in Australia, and will be forwarded to the relevant DIMIA office overseas for processing. It may be sent directly to the overseas office with evidence that the application fee has been paid
- The child is required to undergo medical checks. If health requirements are not met,

the adoption may not proceed. The visa application charge cannot be refunded or transferred to another child if this occurs

- The adoption is finalised in the overseas country OR the overseas authorities approve the child's departure for adoption in Australia, and
- A visa granting permanent residence to the child is granted and appears in the child's foreign passport.

### **Privately arranged adoptions**

The only circumstance where a visa may be granted to a child adopted privately overseas is where the adoptive parents have been living overseas for more than 12 months at the time of the migration application. They must show that:

- their residence overseas was not contrived to deliberately bypass any requirements concerning entry of adopted children into Australia
- they have lawfully acquired full and permanent parental rights by the child's adoption. This means that the adoption order must sever the legal relationship between the child and its natural parents, and
- the relevant authorities in the overseas country have approved the child's departure to Australia.

The child also needs to meet the standard migration requirements including health criteria.

### **Caution:**

State and territory welfare authorities do not generally support privately arranged adoptions, including of children who are relatives. They will not help sponsors to meet the requirements of the Migration Regulations for granting a visa to an adopted child.

"Full and permanent" adoption does not exist in the laws of some countries; for example, many Islamic countries. An adoption order, which does not grant full parental rights to the adoptive parents, is not acceptable for the grant of a visa.

If you wish to proceed with an adoption, which has not been arranged by your state or territory welfare authority, it is strongly recommended you first seek legal advice both in Australia and in the overseas country.

You need to ensure that the adoption meets the requirements of the Migration Regulations and that the child will be eligible to enter Australia. There is no provision to grant a visa to a child who does not meet the requirements of the

Migration Regulations, even if the adoption has already occurred and is lawful in that country.

### **Guardianship of children**

Overseas adoptions by Australian citizens and permanent residents are not automatically recognised under Australian law. The exceptions are adoptions completed overseas under the Hague Convention or adoptions under the bilateral agreement with China. In the case of other adoptions, adoptive parents can apply to an Australian court to be recognised as parents of the child under Australian law.

Children who enter Australia holding an Adoption visa where the adoption is to be finalised in Australia, or where the adoption is not recognised, are officially under the guardianship of the Minister for Immigration and Multicultural and Indigenous Affairs. This guardianship is delegated to state and territory welfare authorities.

This arrangement is set down in the *Immigration (Guardianship of Children) Act 1946*. The Act provides a framework for state and territory governments to supervise the adoption process in Australia and ensure that arrangements are in the best interests of the children.

You will be advised when a decision is being made on the child's application as to whether the child falls within these guardianship provisions, and what action you should take. The welfare authority in the state or territory in which you usually reside will also be advised of the child's details.

The guardianship arrangements cease to apply once the child obtains Australian citizenship, or in most cases when an Australian adoption order is made for the child.

### **Australian citizenship**

#### **Where an adoption occurs in Australia**

Where an adoption order is made under Australian law after the child arrives in Australia as a permanent resident, and at least one of the adoptive parents is an Australian citizen, the child will automatically acquire Australian citizenship. An application for Australian citizenship is not required, but parents may apply for a Certificate of Evidence of Australian Citizenship (also known as a declaratory certificate).

#### **Where a full adoption occurs overseas**

Where a full adoption occurs and is completed overseas, an application may be made for the grant of Australian citizenship.

To be eligible for the grant of citizenship at least one adoptive parent must be an Australian citizen and the adopted child must hold an adoption visa or any other permanent visa.

### **Other information**

Further information on Australian citizenship is available on the Citizenship enquiry line on 131 880 or at [www.citizenship.gov.au](http://www.citizenship.gov.au)

Adoption visa information and application forms can be downloaded free of charge from the Department's website at: [www.immi.gov.au](http://www.immi.gov.au) or alternatively, the Child Migration Booklet pack (including forms and information) can be purchased for \$AUD10 from any DIMIA office.

**Further information is available on the department web site:**

<http://www.immi.gov.au>

**The department also operates a 24-hour national telephone service inquiry line on 131 881, for the cost of a local call anywhere in Australia.**

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