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### Administrative Directive

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## Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR Part 421	SSL §372-b, 374 and 460-a  42 U.S.C. §§14901-14952  22 CFR Parts 96-99		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSS) and voluntary authorized agencies of the impact of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoptions (Hague Convention). The Hague Convention covers adoptions between countries that become parties to it and sets out for such adoptions certain internationally agreed-upon minimum norms and procedures. The goal of the Hague Convention is to protect the children, birth parents and adoptive parents involved in intercountry adoptions and to prevent abuses. The Hague Convention provides a framework for convention countries to work together to prevent the abduction, sale, or trafficking of children involved in intercountry adoptions. Adoptions that take place between the United States (U.S.) and countries that have not ratified the Hague Convention may have similar steps that take place, but lack the assurances of Hague Convention adoptions. In the U.S., these non-Hague Convention intercountry adoptions may take place under certain circumstances that will be set forth in this ADM.

### II. Background

Over the last decade, the number of intercountry adoptions to the U.S. has more than doubled. The U.S. lacked national standards for adoption practitioners and transparency in the process. In some countries, unscrupulous middlemen were involved. Due to these issues, representatives from more than 65 countries met to develop common safeguards, standards, and practices that would protect internationally adopted children.

The final text of the Hague Convention was approved by 66 nations in May of 1993 at The Hague. This international treaty is the first-ever agreement designed to govern the adoption process and protect children being adopted across national boundaries. The U.S. signed the Hague Convention on March 31, 1994. On September 20, 2000, the Senate ratified the Hague Convention. Also in 2000, Congress passed the Convention's implementing legislation of the Intercountry

Adoption Act of 2000 [P.L. 106-279; 42 U.S.C. §§14901-14952] (the IAA), designating the Department of State as the U.S. Central Authority under the Hague Convention. The Department of State promulgated regulations implementing the Hague Convention and implementing federal legislation in February and November of 2006 (see 22 CFR Parts 96, 97 and 98). In addition the U.S. Department of State deposited the instrument of ratification of the Hague Convention on December 12, 2007. As a result of that action, the Hague Adoption Convention went to effect in the United States on April 1, 2008.

A summary on the provisions of the Convention can be found at:  
<http://www.adoption.state.gov/hague/overview.html>

A fact sheet on the Intercountry Adoption Act of 2000 can be found at:  
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=009a98751de7d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=063807b03d92b010VgnVCM10000045f3d6a1RCRD>

A current list of more than 75 Hague Convention member countries in which the Hague Convention is in force with the U.S. can be accessed through the U.S. Department of State's website:  
<http://adoption.state.gov/hague/overview/countries.html>

Intercountry adoptions sometimes occur between countries that are not currently members of the Hague Convention. When a non-Hague Convention country is involved in an intercountry adoption, the Hague Convention requirements do not need to be followed; however, New York State laws and regulations still apply to the adoption, as well as applicable laws from the foreign country, as do U.S. immigration and naturalization laws and regulations. Though the non-Hague intercountry adoption process does not have the same level of central authorized agency scrutiny, U.S. Citizenship and Immigration Services (USCIS) is involved in approving many aspects of the adoption. There may also be parties, besides the adoption service provider in the other country, that may be involved in the adoption process.

### **III. Program Implications**

The Hague Convention applies to all adoptions, including incoming and outgoing adoptions, between the U.S. and the other countries that have joined the Convention. The Hague Convention adoption process generally involves six primary steps.

- 1) A Hague accredited/approved service provider is chosen;
- 2) Prospective adoptive family applies to be found eligible to adopt;
- 3) Prospective adoptive family is referred for a child;
- 4) An application is completed to determine if the child is eligible to immigrate/emigrate;
- 5) The child is adopted; and
- 6) Any required visas or other travel documents are obtained for the child.

## **Hague Intercountry Adoption Convention Accreditation**

Adoption service providers that provide adoption services in Hague Convention adoption cases must be accredited, temporarily accredited, or approved (unless an organization or individual is operating as an exempt provider or under the supervision of an accredited or approved adoption service provider). This accreditation/approval is in addition to state licensing (approval) requirements relating to adoption programs. **Public domestic authorities do not have to be accredited or approved to provide adoption services in a Convention adoption case, but must comply with the Hague Convention, the IAA and other applicable laws when providing services in Hague Convention cases.**

Neither the Hague Convention nor the IAA supersedes state standards and limitations relating to the licensing or approval of adoption programs in the State of New York. For example, the New York State prohibition against for-profit entities or individuals operating adoption programs applies to international adoptions.<sup>1</sup>

To obtain more information on the accreditation process visit:

<http://www.adoption.state.gov/hague/accreditation.html>

The Department of State maintains a current list of U.S. accredited adoption service providers on the Department's website:

<http://adoption.state.gov/hague/accreditation/agencies.html>

The Department of State tracks any complaints lodged against adoption service providers and maintains a Hague Complaint Registry. Adoptive parents, social workers, state licensing agencies, and others can lodge complaints related to intercountry adoption services through the Registry. Information obtained will be used in reviewing provider performance under the accreditation standards.

## **Incoming Hague Intercountry Adoptions**

An incoming Hague Convention intercountry adoption occurs when a prospective adoptive parent(s) residing in the U.S. seeks to adopt a child resident of a foreign Hague Convention country, when in conjunction with the adoption, the child has moved or will move from the foreign Hague Convention country to the U.S. The U.S. would then be considered the receiving country for the incoming adoption cases. For more information on the incoming intercountry Hague Convention adoption process, see the Department of State website at:

<http://adoption.state.gov/about/how/hague.html>

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<sup>1</sup>22 CFR §96.30

### **Outgoing Hague Intercountry Adoptions**

An outgoing Hague intercountry adoption occurs when a prospective adoptive parent(s) residing in a Hague Convention foreign country seeks to adopt a child who is a resident of the U.S., when, in connection with the adoption, the child has moved or will move from the U.S. to the foreign country. The foreign country would be considered the receiving country. For more information on the outgoing intercountry Hague Convention adoption process, see the Department of State website at:

<http://adoption.state.gov/hague/outgoing/process.html>

### **Non-Hague Convention Intercountry Adoptions**

If the adoption involves a country that is a non-Hague Convention country, the process generally involves the same six primary steps that are found in the Hague Convention process (see page 3), except the adoption service provider in non-Hague Convention countries may not be a Hague accredited/approved agency. Non-Hague Convention adoptions will not necessarily have the approvals from both the U.S. and foreign country. For this reason, it is imperative that the LDSS and the voluntary authorized agency involved carefully assess the placement resource and needs of the child. The following link has more information on the non-Hague intercountry adoption process for incoming cases:

<http://adoption.state.gov/about/how/nonhague.html>

For more information on the differences in the process for Hague and non-Hague Convention intercountry adoptions, please consult the comparison chart from the Department of State website:

[http://adoption.state.gov/pdf/Side\\_by\\_side\\_comparison.pdf](http://adoption.state.gov/pdf/Side_by_side_comparison.pdf)

It is recommended that for outgoing adoptions for non-Hague countries, the LDSS or voluntary authorized agency contact the foreign country's embassy or consulate to get information regarding the adoption laws in that country, and visa or other documentation requirements to enter the other country. The Department of State website also has a link where adoption information for each country can be obtained: <http://adoption.state.gov/countryinformation.html>

### **Placement of a Child by an LDSS or Voluntary Authorized Agency from the United States for Adoption into a Foreign Country**

The remainder of the Program Implications section sets forth OCFS policy and direction to LDSSs and voluntary authorized agencies regarding the placing out for adoption a child by such agency with adoptive parent(s) who reside in a foreign country. Please note that nothing in this directive may be deemed to directly or indirectly mandate either an LDSS or a voluntary authorized agency to place out a child for adoption with a family in another country. Rather, this directive is setting forth the conditions for when such an option may be exercised.

It may be anticipated that the question of placing a child from the U.S. into a foreign country for adoption may arise in various scenarios. One includes, for example, where an LDSS is considering a relative who resides in a foreign country as a discharge option through adoption of a child in foster care. It may also be anticipated that LDSSs will receive inquiries from prospective adoptive parents who reside in a foreign country regarding foster children who are listed in the New York State Adoption Album as being available for adoption. Finally, it is possible that a voluntary authorized agency may want to operate an adoption program that places children with adoptive families who reside in foreign countries.

The policies outlined below make a distinction between placements between the U.S. and a Hague Convention country as contrasted to placements between the U.S. and a non-Hague Convention country. This distinction is made because the protection made uniformly available between two Hague Convention countries are not available when a child is being placed from the U.S. to a non-Hague Convention country.

### **Outgoing Hague Convention Placements**

An LDSS or a voluntary authorized agency may place a child from the U.S. with adoptive parent(s) who reside in a foreign country when the following are satisfied:

- Federal Hague Convention standards set forth in the IAA
- Applicable federal regulations (22 CFR Parts 96 and 97)
- Applicable New York State statutes and regulations, including those set forth in 18 NYCRR Part 421

The applicable federal standards relating to the placing of a child from the U.S. to a foreign country that is a member of the Hague Convention are set forth in detail in “A Guide to Outgoing Cases from the United States” issued by the Department of State. This guide can be found on the Department of State website at: <http://adoption.state.gov/pdf/OutgoingCasesFAQs.pdf>

Included within the federal standards is the requirement to find a timely domestic placement.<sup>2</sup>

### **Reasonable Efforts to Find a Timely Domestic Placement (Hague Convention)**

Prior to considering placing a U.S. child with a family in a Hague Convention country, an LDSS or voluntary authorized agency must make reasonable efforts to place the child within the U.S. In accordance with sections 303(a)(1)(B) and 303(b)(1)(A) of the IAA, the state court needs to evaluate if an adoption service provider has made “reasonable efforts” to find a domestic placement for the child

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<sup>2</sup> CFR 96.54 (a)

in their country of origin. To demonstrate these “reasonable efforts,” the provisions of 22 CFR 96.54(a)-(b) provides:

- (a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the state court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the U.S. by:
  - (1) Disseminating information on the child and his or her availability for adoption through print, media, and Internet resources designed to communicate with potential prospective adoptive parent(s) in the U.S.;
  - (2) Listing information about the child on a national or state adoption exchange or registry for at least sixty calendar days after the birth of the child;
  - (3) Responding to inquiries about adoption of the child; and
  - (4) Providing a copy of the Child Background Study to potential U.S. prospective adoptive parent(s).
- (b) The agency or person demonstrates to the satisfaction of the state court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the U.S. were made.

Documentation of “reasonable efforts” may include copies of print, media, and Internet information on the child, copies of the adoption exchange or registry listing on the child, written responses to inquiries on the child, and proof that the Child Background Study was sent to potential U.S. prospective adoptive parents.

Federal regulation 22 CFR 96.54(a)(1)-(4) clearly identifies the parent recruiting procedures that will constitute “reasonable efforts” in most cases, with certain delineated exceptions.

- If the birth parent(s) have identified prospective adoptive parent(s) without the assistance of the adoption service provider, or its agents, the exception to the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4) would apply. This provision does not prohibit birth parent(s), who might choose to identify prospective parents, from independently receiving general counseling from adoption service providers. However, if the adoption service provider assists the birth parent(s) in identifying prospective adoptive parents, the exception for demonstrating reasonable efforts of parent recruiting procedures for birth parent identification does not apply.
- If, even after counseling by an adoption service provider, birth parent(s) identify adoptive parents in another Convention country through their own efforts and without assistance from an adoption service provider or its agent in that identification, birth parent(s) may continue to work with an adoption service provider to complete the adoption process, and such

adoption service provider may provide the full range of other adoption services without following the 22 CFR 96.54(a)(1)-(4) recruiting procedures.<sup>3</sup>

### **Outgoing Non-Hague Convention Placements**

Because of the absence in non-Hague Convention adoptions of uniform controls and protections afforded by the Hague Convention, OCFS will only approve adoption programs that administer its adoption program with respect to international adoptions in a manner as set forth in this paragraph. Approval will be limited to only placements of U.S children with relative(s) who reside in a foreign country that is not a Hague Convention country.

Before an LDSS or voluntary authorized agency makes an intercountry adoption plan for a U.S. child with a relative, reasonable efforts to place the child in an adoptive home within the U.S. must be made (see *Reasonable Efforts to Find a Timely Domestic Placement* section above). The LDSS or voluntary authorized agency needs to follow all New York State statutes and regulations pertaining to adoption placements including the need to determine best interests in relation to the placement (see the section titled *Best Interests Determination* below). In addition to these statutes and regulations, the following paragraphs discuss special considerations for non-Hague intercountry adoptions of U.S children.

### **Child Background Study**

For non-Hague outgoing intercountry placements, a Child Background Study must be prepared by the LDSS that has jurisdiction over the child or voluntary authorized agency that has case planning responsibilities. The background study must include information about the child's identity, adoptability, background, social environment, family history, medical history, and any special needs of the child. The child study is sent to the agency working with the prospective adoptive family in the foreign receiving country.

### **Home Study of Prospective Adoptive Parent(s)**

For non-Hague intercounty placements, the foreign agency working with the prospective adoptive parent(s) will send a home study that meets the requirements of the country in which they reside. This home study should include information about the prospective adoptive parent's identity, eligibility, and suitability to adopt; background, family and medical history; ability to financially support the child; social environment; reasons for adoption; ability to undertake an intercountry adoption; and characteristics of the children for whom they would be qualified to care. The home study preparer must complete a check of the prospective adoptive parent(s) and each additional adult household member with

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<sup>3</sup> The Hague Convention on Intercountry Adoption: A Guide to Outgoing Cases from the United States, Department of State Website.



any available child abuse registries in any foreign country in which the applicant or any adult member of the household has resided in since the person's 18<sup>th</sup> birthday. The home study must include results of the checks conducted. These checks may include the following results:

- No record was found to exist;
- The foreign country will not release information to the home study preparer or anyone in the household; or
- The foreign country does not have a child abuse registry.

For a list of countries that do not have a child abuse registry use the following link to the USCIS website at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=cb1f040faa930210VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

The home study must also include the results of any criminal background checks available in the receiving country.

The home study submitted must either be in English or a translation to English of the home study must be provided.

### **All Outgoing Intercountry Adoptions- Hague Convention and non-Hague**

The following paragraphs discuss requirements that pertain to both Hague Convention and non-Hague outgoing intercountry adoptive placements.

#### **Best Interests Determination**

As with any New York State adoption, LDSS and voluntary authorized agencies must make intercountry placement decisions on the basis of best interests of the child consistent with the OCFS regulatory standards set forth in 18 NYCRR 421.18(d). These determinations are made by considering many different factors, including, but not limited to, the age of the child in relation to the age of the adoptive parent; the physical and emotional needs of the child in relation to the characteristics, capacities, strengths, and weaknesses of the adoptive parent; and the requirement to place minor siblings or half-siblings together, unless it has been determined that such placement would be detrimental to the best interests of one or more of the children. Intercountry adoptions pose unique factors that must be assessed on a case-by-case basis. Special consideration must be given in regards to the impact that residing in another country will have on the child, such as potential language issues, distance from other family members, cultural differences, and services available in the other country to meet the child's needs. In particular, older children may have more difficulty adjusting to a foreign country, and therefore, their opinion should be considered regarding a potential intercountry placement.

## **Visitation**

Visitation is an important step in the adoption process that enables the child and family to get to know one another and determine if they are compatible. With intercountry adoptions, visitation can be difficult to arrange due to the travel costs and arrangements. Travel by the child outside of the U.S. prior to the finalization of the adoption raises potential legal and liability issues. Prior to an intercountry adoptive placement of a U.S. child, there needs to be at least one visit between the foreign family and the child in the U.S. In some circumstances, a foreign adoptive family may travel to the U.S. for a period of time prior to an adoptive placement to have a series of visits with the child. This may be a more cost-effective way to allow the family and child to acclimate to one another. If the family cannot stay in the U.S. for a period of time, at least one visit must be arranged.

## **Adoption Placement**

When a child is going to be adopted in the State of New York and the placement involves an LDSS or a voluntary authorized agency, section 112 of the Domestic Relations Law requires a three-month placement period with a pre-adoptive family prior to the completion of an order of adoption. However, this section also states that a judge may dispense with this requirement in his/her discretion. Programmatically and clinically, the general rule that provides for a three-month pre-finalization placement period would not be feasible for an intercountry adoption. This is an issue the prospective adoptive parent(s) would need to be prepared to address with the court.

Prior to the adoption of the child, the adoptive family will need to obtain any visa required by the receiving foreign country for entrance and a U.S. passport for the child's departure from the U.S. Information regarding what is needed for successful entrance into the foreign country should be obtained from the embassy or consulate of the foreign country.

For outgoing intercountry adoptions into Hague Conventions countries, the prospective adoptive parent(s) must petition the Family Court or the Surrogate's Court with jurisdiction over the case to adopt the child, and must present all supporting evidence required by New York law. The court will review the information presented in the family home study and Child Background Study. The court must verify that the adoption agency with jurisdiction of the child has made reasonable efforts to place the child within the U.S. and has been unable to do so. In addition, the court must make a determination whether the adoptive placement is in the best interests of the child. For Hague Convention adoptions, there are additional requirements that must be reviewed by the court. As previously noted, these requirements are set forth in the "A Guide to Outgoing Cases from the United States" issued by Department of State that can be found at: <http://adoption.state.gov/pdf/OutgoingCasesFAQs.pdf>

For outgoing intercountry adoptions into non-Hague Convention countries, it would be expected that the adoption would also be finalized in the State of New York, subject to the adoption finalization procedures and standard set forth in the Domestic Relations Law.

For both Hague and non-Hague Convention cases, if the adoption is granted, the family will need the order of adoption, U.S. passport and visa or other documentation needed to enter the foreign country.

### **Adoption Subsidy**

U.S. children adopted through an intercountry adoption are eligible for an adoption subsidy if they otherwise meet all applicable eligibility standards set forth in Title 9 of Article 6 of the Social Service Law (§§450- 458) and 18 NYCRR 421.24. The application process would be the same as a U.S. domestic adoption, and they would also be eligible to apply for a subsidy upgrade under certain circumstances. The Adoption Subsidy Agreement needs to be completed and submitted to New York State Adoption Service (NYSAS) prior to the child being placed or adopted by the foreign family. As with other adoption subsidy cases, the adoption subsidy agreement must be approved and in place prior to the adoption of the child. When making an adoption placement plan, the worker should consider the amount of time needed for NYSAS to review and make a decision regarding the adoption subsidy application, which can be up to 30 days. The child's IV-E eligibility remains the same regardless of the country they move to after the adoption. If the LDSS is one that calculates subsidy payments based on the adoptive parent's income in relation to the state income standards, there will need to be a conversion of the foreign adoptive parent's assets into U.S. dollars.

An intercountry adoption is also eligible for non-recurring adoption expenses reimbursement if the expenses meet the reimbursement criteria.

## **IV. Required Action**

Intercountry adoptive placements with Hague Convention member countries must meet all requirements set forth in the Hague Convention, New York State law and OCFS regulations, which have been summarized in this ADM.

Requests to adoptively place children from other Hague Convention member countries will need to be processed through the appropriate LDSS or accredited or temporarily accredited agency. The LDSS or accredited/approved agency should use the materials from the Department of State website at <http://adoption.state.gov/about/how/hague.html> as a guide for intercountry adoptions of a child from another Hague Convention member country with a U.S. adoptive family. Part of this process is an assessment of the adoptive family's ability to meet the child's needs and whether the placement would be in the

child's best interests. LDSSs and voluntary authorized agencies are not required to approve all requests for an intercountry placement, and may, after consideration, determine that a particular intercountry adoptive placement is not appropriate for a child.

When an LDSS or voluntary authorized agency has a child from New York for which they will be making an intercountry adoptive placement with an adoptive family from another Hague Convention member country, the LDSS or voluntary authorized agency should use "A Guide to Outgoing Cases from the United States" issued by the Department of State. This guide can be found on the Department of State website at:

<http://adoption.state.gov/pdf/OutgoingCasesFAQs.pdf>

Prior to considering an intercountry adoption (both Hague Convention or non-Hague) of a New York child, the LDSS or voluntary authorized agency must make efforts to recruit a U.S. adoptive family for the child, including but not limited to, listing the child on the national photolisting website AdoptUsKids. This website can be found at <http://www.adoptuskids.org/>. Other efforts such as listing the child on the New York State Adoption Photolisting website *The Adoption Album* found at <http://www.ocfs.state.ny.us/adopt/>, presenting the child at adoption exchanges, and having the child participate in other adoption matching activities should also be explored to demonstrate that reasonable efforts were made to find a timely domestic placement for the child, as required under 22 CFR 96.54.

Outgoing Hague Convention placements may be appropriate for children with relatives that reside in another country, for example, if they do not have other significant familial connections within the U.S. It should be noted that there is not a federal definition of the term relative. In the case of a Hague Convention adoption by a relative, the recruitment requirements do not apply. However, in these circumstances, as with any intercountry adoptive placement, serious consideration must be given as to whether or not the placement in the other country would be in the child's best interests. As with any adoption of a New York child, all Indian Child Welfare Act (ICWA)<sup>4</sup> and sibling placement<sup>5</sup> requirements must be followed.

Intercountry placements between the U.S. and a non-Hague country need to be given careful consideration, especially related to the child's best interests. An outgoing non-Hague placement may only be considered when the foreign family is a relative of the New York child. Non-Hague intercountry adoptions do not have the same protections built in that Hague adoptions do, therefore, it is very important that the LDSS worker diligently monitor the case and be sure that all documentation has been received from the foreign country. The LDSS or voluntary authorized agency should use the section under program implications

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<sup>4</sup> 18 NYCRR 431.18

<sup>5</sup> 18 NYCRR 431.10

titled *Outgoing Non-Hague Convention Placements* for outgoing non-Hague placements and the Department of State website document found at <http://adoption.state.gov/about/how/nonhague.html> for incoming non-Hague placements.

### **LDSS Adoption Forms/Process**

Intercountry adoptions of a New York State child need to follow the same internal processes that domestic adoptions follow. All adoption forms and casework documentation needs to be completed and kept in the child's case file. This documentation includes the Application to Adopt, Adoptive Placement Agreement, and Adoption Subsidy Agreement (if applicable).

### **Reporting Requirements**

Federal regulation 22 CFR Part 99 outlines new reporting requirements for outgoing intercountry Hague and non-Hague cases. In summary, the reporting provider (typically the primary provider in Convention cases or the provider responsible) reports the following to the Department of State's Office of Children's Issues for each outgoing case:

- 1) Name, date of birth of child, and place of birth of child;
- 2) The U.S. State from which the child is emigrating;
- 3) The country to which the child is immigrating;
- 4) The U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and
- 5) The provider's name, address, phone number, and other contact information.

This report is required within 30 days of learning that the adoption case involves emigration of a child from the U.S. to a foreign country. This report form can be found at:

[http://travel.state.gov/pdf/22CFR\\_992\\_Report\\_on\\_Outgoing\\_Adoption.pdf](http://travel.state.gov/pdf/22CFR_992_Report_on_Outgoing_Adoption.pdf)

### **Post-Adoption Reports**

Some foreign countries have laws that require adoptive parents to report on the health and welfare of children they have adopted, sometimes years after the adoption takes place. In general, post-adoption reports are normally designed to track the child's development and progress in adjusting to his or her new family and life in a new country. They also provide assurance to political leaders and adoption officials in the country that children they place in permanent families through intercountry adoption are receiving appropriate care and protection. The requirements and duration of these reports vary from country to country, and some countries expect the reports to be prepared by a social worker.

Instead of post-adoption reports, a few countries grant provisional approval of an adoption pending residence for several months with the adoptive family in their country. Based on periodic post-placement reports, the country of origin evaluates whether the child and parents are bonding and how well the child is settling into the new culture and family environment. If a provisional adoption disrupts, the process listed below regarding adoption disruptions should be followed.

### **Adoption Disruption/Dissolution**

For Hague Convention cases, if an adoptive placement disrupts after the child is placed in the receiving country, but prior to the final adoption, there are steps that need to be taken. When a placement for adoption is in crisis in the post-placement phase, the adoption service provider must make an effort to provide or arrange for counseling to assist the family and keep the placement together. If counseling does not succeed in resolving the crisis, and the placement is disrupted, the adoption service provider assumes responsibility to find another placement for the child. The agency must act promptly and follow any applicable legal requirements to remove the child when the placement may no longer be in the child's best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Department of State, to inform the Central Authority of the child's country of origin about any new prospective adoptive parent(s). As a last resort, the agency may return the child to the country of origin, if his or her interests so require, and the Central Authority of the country of origin and Department of State have approved the return in writing. The child will be consulted, to the degree that is appropriate based on his or her age and maturity, and, where appropriate, his or her consent should be obtained in relation to the disruption plan. The adoption service provider that has responsibility for monitoring the pre-finalization adoptive placement includes in the adoption services contract a plan describing the agency's or person's responsibilities if a placement for adoption disrupts. This plan will state who will have legal and financial responsibility for the transfer of custody, as well as be responsible for the care of the child, in an emergency or in the case of impending disruption.<sup>6</sup>

If a disruption occurs with a non-Hague adoption case, the process outlined above should be followed except there would not be a Central Authority assigned in the foreign country; therefore, the embassy or consulate of that country should be consulted regarding the plan for the child.

If an adoption dissolves after the adoption finalization, the child would remain in the receiving country, and the agency or authority that was given custody of the child would have the responsibility for any permanency planning, as is the case with any adoption dissolution.

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<sup>6</sup> 22 CFR 96.50

The IAA requires both adoption agencies and states to report certain information on unsuccessful overseas adoptions. In particular, section 422(b)(12) of the Social Security Act, among other things, requires that states collect and report certain information to the Administration for Children & Families (ACF) on children who enter foster care because the adoption placement disrupted or the adoption dissolved. The state must report the specific agency that handled the adoptive placement, the reasons for the disruption or dissolution, and the plans for the child in its Annual Progress and Services Report.

**V. Systems Implications**

No Systems implications.

**VI. Effective Date**

This Administrative Directive is effective immediately.

*/s/ Nancy W. Martinez*

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**Issued By:**

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Title: Director

Division/Office: Strategic Planning and Policy Development