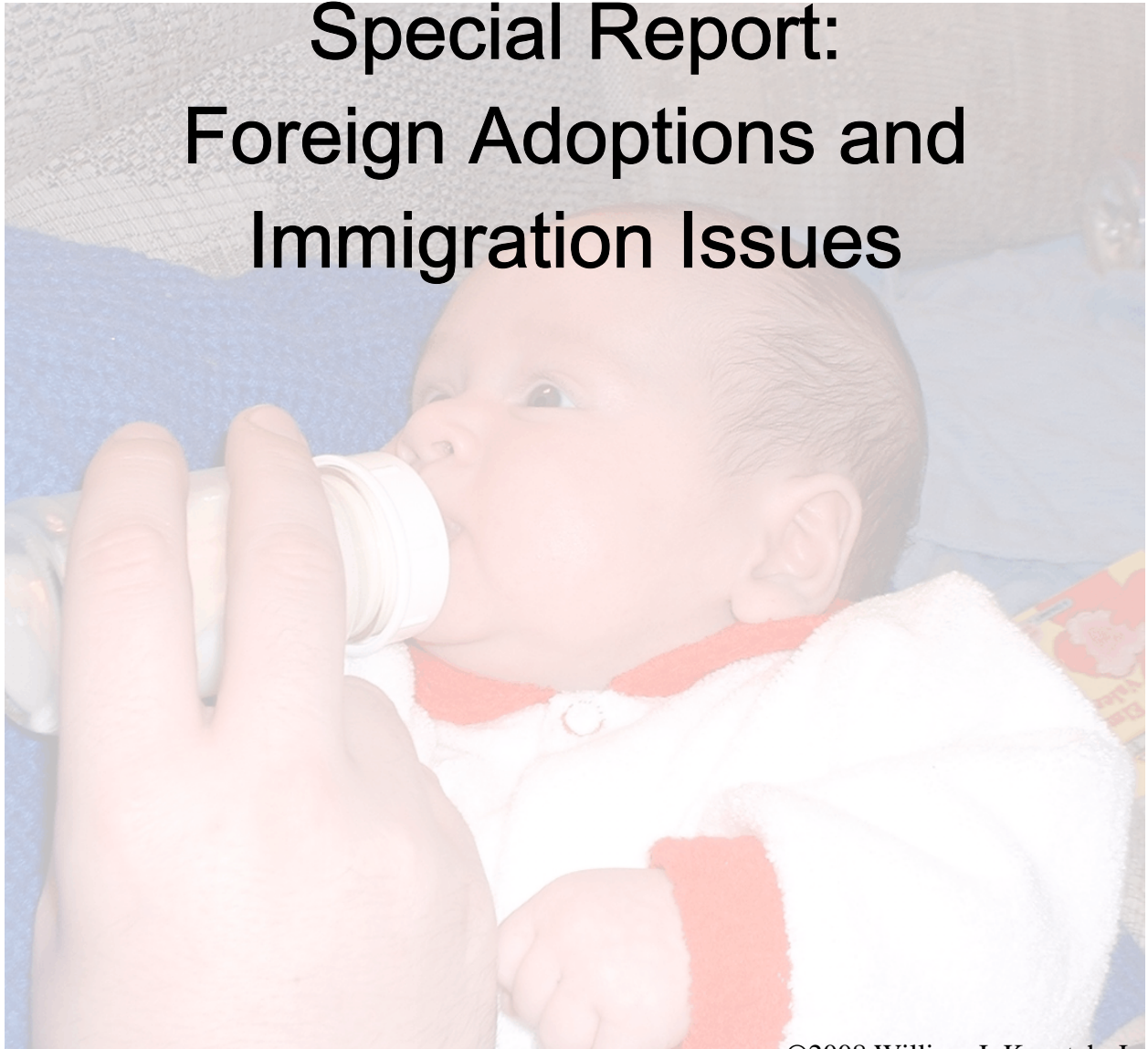


Special Report: Foreign Adoptions and Immigration Issues



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Congratulations! You've made an incredible and life-changing choice to adopt a child from another country. You have a lot of things to do to prepare, and probably a lot of questions. Not the least of which is the question of your child's immigration status once the adoption is complete.

When a U.S. citizen adopts an orphan from another country, the child will automatically become a U.S. citizen as well, provided that the proper paperwork is filled out. The forms can be complicated, and may need supporting documentation. One of the decisions you need to make is whether you will complete the forms and submit them to the U.S. Government yourself, or hire a legal professional familiar with immigration law. You may find that hiring a knowledgeable lawyer to help you through the legal process will give you some relief and comfort.

This report explains some of the immigration issues involved in adopting a child from a foreign country. This report is not meant to be a substitute for talking with a legal professional about your particular situation.

Brief Overview of Family-Based Immigration

U.S. law allows for U.S. citizens and permanent residents to apply for family members to come to the United States. U.S. citizens have an advantage because U.S. law allows family members who are defined as "immediate relatives" to receive a visa immediately. Relatives of permanent residents, and relatives of U.S. citizens who do not qualify as immediate relatives, must wait for a visa to become available under the preference system. Under the preference system, it could take years before a visa becomes available.

Special Issues with Adopted Children

Visa petitions involving adopted children present special issues. The rules that apply to adopted children depend on whether the child was an orphan when adopted, and whether the child resided in a country that sign on to the Hague Convention for Inter-Country Adoptions. The term "orphan" has a special definition under U.S. immigration law.

Orphans

An "orphan," as defined by U.S. immigration law, is a child whose parents:

- died or disappeared
- abandoned or deserted the child, or
- are separated or lost from the child.

If there is only one surviving parent, the child may still be considered an orphan if the surviving parent is unable to provide care to the child, and irrevocably gives up his or her rights to the child so that the child can be adopted and leave the home country.

To qualify for immigration to the United States as an immediate relative, the orphan must be adopted by a U.S. citizen and spouse or an unmarried U.S. citizen who is at least 25 years old. The adoption can take place in the foreign country, or the orphan can come to the United States to be adopted. The adoptive parents must have seen the orphan personally before the adoption proceedings. Finally, the Attorney General must be satisfied that the adoptive parents can give proper care to the adopted orphan. The adoption must take place before the orphan reaches the age of 16.

If the adoptive parents do not personally see the child before the foreign adoption proceedings, the adoptive parents must be willing to re-adopt the child in the United States.

There is a two-part application process for U.S. citizens who adopt a foreign-born orphan. First, the prospective parent or parents must show that the child will have a proper home environment when he or she comes to the United States. This is done through a home study and a fingerprint check. The home study must be less than six months old. The adoptive parents must also show that they comply with any adoption requirements of the state in which they live.

For the home study, all adult members of the adoptive parents' household must be interviewed in person. There must also be a home visit. The home study must assess the adoptive parents' ability to care for the adopted child, and specifically include the following:

- an evaluation of the physical, mental, and emotional capabilities of the adoptive parents and all other adult members of the household
- a detailed description of the finances of the adoptive parents
- a detailed description of the adoptive parents' living conditions
- if applicable, a detailed description of the adoptive parents' ability to provide proper care for a disabled orphan
- a description of counseling provided to the adoptive parents or plans for post-placement counseling
- the number of orphans the adoptive parents may adopt
- any restrictions on the children that should be placed with the adoptive parents

The home study must also include a background check of the adoptive parents and all adult members of the household. This background check must include an inquiry of child abuse records, substance abuse, child or sexual abuse, and domestic violence. The home study must also include a criminal history of every adult household member over the age of 18. The criminal history must disclose any juvenile arrests and any expungement of any convictions.

The adoptive parents must disclose whether they had been previously rejected for an adoption or whether there was ever an unfavorable home study concerning any adult member of the adoptive parents' household. If either situation applies, the adoptive parents must explain the circumstances.

The second part of the process looks at whether the child to be adopted is an “orphan” as defined by U.S. immigration law. If the adoptive parents know which child they are going to adopt, they can file Form I-600 with the appropriate fee. The parents can file the petition either before or after the adoption is complete.

If the parents do not know exactly which child they will adopt, they can submit a Form I-600A with the appropriate fee. After they have identified the child to be adopted, they will need to submit the Form I-600, however, the fee need not be paid again.

The I-600 should be filed before the child’s 18th birthday.

Under the Child Citizenship Act, if a U.S. citizen adopts an orphan, has legal and physical custody of the orphan, and that orphan is lawfully admitted to the United States as a permanent resident, the child automatically becomes a U.S. citizen when admitted to the United States. The parents can get proof of citizenship by filing Form N-600 with the appropriate fee.

The Hague Convention

The Hague Convention entered into force for the United States on April 1, 2008. The new procedures that apply when a child resides in a Hague Convention signatory country are similar to those that apply to other orphan adoptions. Prospective parents are now required to fill out Form I-800A, the Application for Determination of Suitability to Adopt a Child from a Convention Country, and submit it with the appropriate fee. All state law requirements must be met, and a home environment study must be completed. Once the application is approved, the parents will then be required to fill-out Form 800, the Petition to Classify Convention Adoptee as an Immediate Relative. There is no fee for this form.

Once the adoption process is complete, the parents file the form N-600 for proof that the adopted child is a U.S. citizen.

As of February 26, 2008, 75 countries have signed on to the Hague Convention.

Non-Orphans

An adopted child, who is not an “orphan” may still qualify as a “child” for the purpose of U.S. immigration law if certain conditions are met. First, the adoption must take place before the child’s 16th birthday. Second, the adopted child must be in the legal custody of the adopted parents and living with them for 2 years.

USCIS will not issue a temporary visa for an adopted child who is not an orphan to reside in the United States for 2 years in order to meet the legal requirements. This means that a least one of the adoptive parents will have to live abroad with the adopted child for 2 years before filing the visa petition. For practical purposes, this means that a permanent resident will not be able to adopt a foreign-born child and bring the child into the United States. This is because if a permanent resident leaves the United States for more than 1 year, USCIS will conclude that the permanent resident has abandoned his or her residency in the United States.

Permanent residents may think that they can adopt a foreign-born niece or nephew in order to bring that child into the United States. U.S. immigration law, however, prevents this as a possibility. To qualify as a child, the adopted child would have to live with the permanent resident overseas for 2 years. This would mean that the permanent resident has abandoned U.S. residency, thus losing his or her immigration status.

The adoptive parents of a foreign-born non-orphan file a Visa Petition, known as Form I-130. In the Visa Petition, the petitioner must prove that the beneficiary is an immediate relative, and that the petitioner is a U.S. citizen. The adopted child must be unmarried and under the age of 21 when the petition is filed. The I-130 should include all required supporting documentation, such as copies of passports, birth certificates, proof of adoption and marriage certificates. The petitioner files the I-130 with the USCIS Service Center appropriate for the petitioner's place of residence.

As with adopted orphans, the Child Citizenship Act provides that if an adopted child of a U.S. citizen is admitted to the United States as a permanent resident, and the U.S. citizen has legal and physical custody of the child, the child automatically becomes a U.S. citizen.

Talking to a Legal Professional

Talking to a legal professional before you start the adoption process may help give you peace of mind. Walking through the adoption process with a legal professional will allow to know what to expect, and what documents you will need to provide. By talking to a legal professional before starting the process, you may be able to concentrate on the more important aspect of the adoption, welcoming your new child into your family.

About the Author

William J. Kovatch, Jr. worked as a staff attorney with the U.S. Government for almost eight years, concentrating on international law related issues. Bill has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization. Prior to his government work, Bill served as a judicial clerk with the District of Columbia Court of Appeals.

Bill earned his law degree from Temple University in 1998, and then his Master of Law degree, with a concentration in Transnational Law, in 2000. He holds a Master of Arts degree in Comparative Politics from the American University, and a Bachelor's degree from the University of Miami.

