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Immigration: International Child Adoption

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Immigration: International Adoption

Summary

United States citizens adopt more children from abroad than the citizens of all other countries combined, and the number of foreign children adopted annually by U.S. citizens has more than doubled in the last decade from 8,333 to 22,884. Over the previous five years, the largest number of children adopted have come from China (28,690), followed by Russia (24,561), and Guatemala (10,938).

Under statute, international adoption is a two-step process. First, the parents' eligibility to adopt must be verified, and then once the child is identified and the parents have complied with the laws of the sending country, the adoptive parents apply for a visa for the child so that the child can legally immigrate to the United States. The application for the visa triggers an investigation into the child's background to confirm that the child has not been bought or stolen, and meets the definition of orphan under the Immigration and Nationality Act (INA). The Department of Homeland Security's Bureau of Citizenship and Immigration Services (USCIS) verifies the eligibility to adopt while the Department of State (DOS) processes the visa application for the child. Once the prospective parents have been deemed eligible to adopt, USCIS policy states they have 18 months to complete the adoption. If the adoption is not completed in that time, the prospective parents must restart the application process.

In 2000, the Senate approved the ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention) and Congress enacted the International Adoption Act of 2000 (IAA), which is the implementing legislation for the Convention. The purpose of the Convention is to establish uniformity in the standards and procedures for international adoption, and to achieve this goal, the legislation mandates the establishment of a central adoption authority in DOS and an adoption accreditation program. The IAA requires that the child's eligibility to immigrate be determined before adoption or placement for adoption in countries party to the Convention. This is important as there are instances when a child has been adopted in the home country by U.S. citizen parents and yet is unable to immigrate to the United States because the child does not meet the definition of an orphan under the INA.

The Convention seeks to alleviate some of the perceived abuses of the international adoption system. Abuses range from charging exorbitant fees by "facilitators" in some countries to cases of kidnaping and baby selling. There have also been cases where deception is used to get parents to relinquish their children. For example, parents may turn over their children to an orphanage for what they assume is a limited time period, and when they return to claim their child, the child has been adopted internationally. Proposed regulations to implement the IAA were released on September 15, 2003, but DOS has not released the final regulations.

Due to questions about the integrity of adoptions in Cambodia, in December 2001, a moratorium was issued by USCIS on processing adoptions from that country. In addition, Romania has suspended international adoptions except for those by the child's grandparents. This report will be updated to reflect legislative changes.

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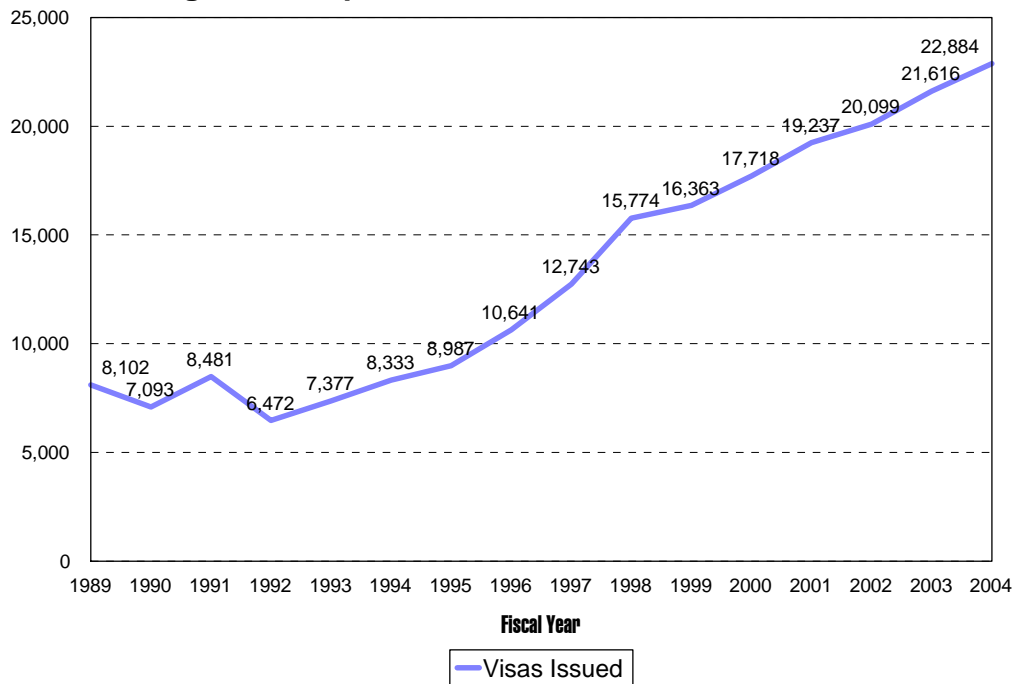
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Immigration: International Child Adoption

Introduction

United States citizens reportedly account for more than half of all international adoptions,¹ and in the past 10 years the number of children adopted annually from abroad has more than doubled. (See **Figure 1**.) There are many reasons why U.S. citizens adopt children from abroad. One factor that often makes the process complex is that some prospective parents² seek to adopt from countries characterized by extreme poverty and political or social instability.

Figure 1. Orphan Visas Issued FY1989-FY2004



Source: CRS presentation of Department of State data.
[http://travel.state.gov/family/adoption/stats/stats_451.html].

¹ Testimony of Susan Soon-Keum Cox, Holt International Children’s Services, before the House Committee on International Relations in a hearing on “International Adoptions: Problems and Solutions,” May 22, 2002. (Hereafter cited as *Testimony of Susan Soon-Keum Cox*.)

² Although this report uses the term “parents,” single U.S. citizens over the age of 25 are also eligible to adopt.

The laws and policies of international adoption are designed to protect children. They are intended to make sure that all of the children put up for adoption are truly orphans, and not kidnap victims or are being subjected to trafficking, smuggling, or other unsavory activities. Concern about child trafficking led most recently to the suspension of processing of visas for prospective adoptees from Cambodia, pending reforms in the country and investigation into how the children are being treated.³

Other issues about international adoption concern the expense incurred during the adoption process, as well as the possibility of fraud and unscrupulous acts in the adoption field by unregulated facilitators. The fact that adoption facilitators are unregulated makes it difficult for perspective parents to have any recourse if they are over-charged or discover fraud in the adoption process.

One of the functions delegated to the new Department of Homeland Security (DHS) that is not often considered an issue of homeland security is the facilitation of international child adoptions. The DOS' Office of Children's Issues provides country-specific information about international adoptions, U.S. visa requirements, attorneys abroad and how to authenticate documents for use in foreign countries. The DHS's Bureau of Citizenship and Immigration Services (USCIS)⁴ receives and processes applications for international adoption, screens prospective adoptive parents, determines whether birth parents have consented to intercountry adoptions, ensures the child meets the statutory definition of an orphan and has been legally adopted, and processes the immigration and naturalization of the adopted child. The Department of Health and Human Services works with the states in licensing adoption agencies.⁵

Only U.S. citizens (a single citizen over the age of 25 or a married citizen of any age) may petition for the immediate immigration of foreign adopted children.⁶ U.S. immigration law does not allow entry for newly adopted children of legal permanent residents (LPRs) or long-term nonimmigrant visa holders.⁷ This report examines the

³ All adoptions were suspended in Cambodia (no orphan petitions were processed). In addition, adoptions performed by certain facilitators were not processed in Vietnam.

⁴ The Homeland Security Act of 2000 (P.L. 107-296) transfers this function from the Department of Justice's Immigration and Naturalization Service (INS) to the Department of Homeland Security. President Bush's Nov. 25, 2002, DHS Reorganization Plan (available at [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], states that the transfer of all INS functions will occur on Mar. 1, 2003. This report refers to USCIS regardless of whether the events occurred prior to the name change.

⁵ Testimony of Mary Ryan, Department of State, before the House Committee on International Relations in a hearing on "International Adoptions: Problems and Solutions," May 22, 2002. (Hereafter cited as *Testimony of Mary Ryan*.)

⁶ The spouse of the married citizen may be a noncitizen.

⁷ Long term nonimmigrant visa holders and LPRs can bring their spouses or children into the United States with them. The INA defines an adopted child as one who has been adopted before the age of 16 and who has resided with or been in the legal custody of the parent for two years. A newly adopted child would not meet the two-year co-residency requirement, and the INA does not provide a mechanism for the child to enter the U.S. to

process by which American citizens adopt children from other countries, including the procedure for securing a visa so that the newly adopted child can immigrate to the United States.

Legal Framework

Hague Convention on Intercountry Adoption

On May 29, 1993, 66 countries, including the United States, reached agreement on the Hague Convention on Intercountry Adoption (the Convention), the first formal international mechanism to facilitate the process and protect the integrity of intercountry adoption. The goal is to eliminate confusion and delays caused by differences among the laws and practices of different countries, and to insure transparency in adoptions to prevent trafficking and child stealing, or selling. The Convention requires that:

- Certain determinations, such as adoptability of the child, eligibility to immigrate, parent suitability and counseling, be made before the adoption can proceed.
- Every country establish a national government-level central authority to carry out certain functions that include cooperating with other central authorities, overseeing local implementation of the Convention, and providing access to information on adoption laws. The Convention specifies that case-specific functions, such as adoption counseling, matching children with prospective adoptive parents, preparation of reports on the child and the adoptive parents, and post-placement services may be performed by the central authority or adoption agencies and international adoption service providers.
- A child's welfare be protected throughout the adoption process.
- Certified adoptions are recognized in all other countries that are party to the Convention.
- Every country party to the Convention establish a national government-level process for uniform screening and authorization of adoption service providers.

Under the Convention, a mechanism will be in place to track outgoing adoption cases, providing a level of protection previously unavailable to U.S. children taken abroad for adoption.⁸

⁷ (...continued)

satisfy this requirement. Additionally, LPRs forfeit their status if they reside outside the United States for two years. Long term nonimmigrant visa holders include E1/E2 Treaty Traders, F-1 Students, J-1 Exchange Visitors, L-1 Intra-Company transfers, and R-1 Religious Workers.

⁸ It is not known how many children who are United States citizens are adopted abroad.

Table 1. Number of Children Issued Orphan Visas from the Top 10 Sending Countries: FY2000-FY2005

	FY2000	FY2001	FY2002	FY2003	FY2004	5-Year Total
China	5,053	4,681	5,053	6,859	7,044	28,690
Russia	4,269	4,279	4,939	5,209	5,865	24,561
Guatemala	1,518	1,609	2,219	2,328	3,264	10,938
S. Korea	1,794	1,870	1,779	1,790	1,716	8,949
Ukraine	659	1,246	1,106	702	723	4,436
Kazakhstan	399	672	819	825	826	3,541
Vietnam	724	737	766	382	21	2,690
India	503	543	466	472	406	2,390
Romania	1,122	782	168	200	57	2,329
Colombia	246	266	334	272	287	1,405
Cambodia	402	407	334	124	0	1,267
Haiti	131	192	187	250	356	1,116
Bulgaria	214	297	260	198	110	1,079
Philippines	173	219	221	214	196	1,023
Ethiopia	95	158	105	135	289	782
World Total	17,718	19,237	20,099	21,616	22,884	101,554

Source: CRS presentation of Department of State data, [http://travel.state.gov/orphan_numbers.html].

Note: Although there was a moratorium on adoptions from Cambodia beginning in 2002, orphan visas continued to be processed for orphans whose adoptions had begun before the moratorium was issued. Similarly, although Romania suspended international adoptions in 2001, and Vietnam suspended international adoptions in 2003, both countries allowed the adoptions of some “pipeline” cases (i.e., cases where prospective parents had already been matched with children.)

Of the four primary countries sending children to the United States (see **Table 1**), the Russian Federation and China have signed the Convention, while Guatemala and South Korea have not. In Convention countries the officers who process the orphan petitions will use the certificate of final adoption or custody issued by the foreign countries designated central authority together with the original adoption decree as evidence that the child is eligible to immigrate to the United States. Implementation is not expected until at least the middle of 2006, and will not change how the U.S. processes adoptions from countries that have not signed the Convention.

International Adoption Act of 2000

The International Adoption Act of 2000⁹ (IAA) provides the domestic legislation to implement the Convention. The Senate approved ratification of the Convention on September 20, 2000, the same day that it passed the IAA; however, the United States has not formally ratified the Convention.¹⁰ The proposed rule on the implementation of the IAA was published in the *Federal Register* on September 15, 2003,¹¹ and the comment period ended on December 15, 2003. The final regulations on the IAA have not been published.

The IAA requires the Department of State, through the Secretary of State, to serve as the central adoption authority of the United States, and outlines responsibilities of the Secretary, including liaison, information exchange, accreditation and approval, and other coordination activities relating to the Convention. The IAA requires the Attorney General to be responsible for the filing of applications by prospective adoptive parents to the central authority. The act also requires annual reports from the Secretary to specified congressional committees describing activities of the central authority during the previous year.

In addition, the law requires the certification of individuals and entities involved in international adoptions. It also amended the Immigration and Nationality Act to include (1) under its definition of “child,” a child adopted through the Convention; and (2) under those eligible for approval to immigrate, a child for whom the Secretary has certified that a U.S. citizen has effected final adoption under the rules of the Convention. The IAA requires that the child’s eligibility to immigrate to the United States be determined before adoption or placement for adoption from countries party to the Convention. This is important as there are instances when a child has been adopted in the home country by U.S. citizen parents and yet is unable to immigrate to the United States because the child does not meet the definition of an orphan under the INA, or it can not be proven that the child meets the definition. Thus, under the laws of the sending country, the parents are legally responsible for the child, but the child is unable to legally immigrate to the United States.

Finally, the IAA authorizes the Attorney General to consider whether there is a petition pending to confer immigrant status on one or both of such natural parents, when determining whether the purpose of a particular adoption under the act is to form a bona fide parent-child relationship.

In response to concerns about the lack of regulation of international adoption agencies, the IAA requires the establishment of federal standards for the accreditation of adoption service providers in the United States who provide adoption services in

⁹ P.L. 106-279 (H.R. 2909), signed into law on Oct. 6, 2000.

¹⁰ Various implementation procedures must be undertaken by DOS and DHS before the Convention is formally ratified and subsequently enters into force in the United States. For more information on the Hague Convention and the IAA, see CRS Report RL30979, *Intercountry Adoption Act of 2000 and International Adoptions*, by (name redacted).

¹¹ *Federal Register* vol. 68, no. 178, pp. 54064-54119.

connection with any country that is party to the Convention. There is no uniformity in state licensing of adoption agencies, and most states lack specific standards covering international adoptions. It is possible for agencies and individuals to provide international adoption services without being licensed in any state since the provider may be located overseas. In addition, it is difficult to hold adoption agencies and individuals accountable if problems arise because many of the agencies are located in states other than where the adopting parents reside. Moreover, agencies cannot be held responsible for the actions of their agents and facilitators abroad who may be untrained or unlicensed.¹²

Additionally, international adoption has developed into a lucrative and largely unregulated business. The expense of adopting a child can range from a few thousand dollars to more than \$30,000.¹³ Some are concerned that although there are legitimate expenses associated with adoptions that the large expenses may give the appearance of child trafficking.¹⁴

Current Law and Procedure

International adoption begins essentially as a legal matter between a private individual(s) and a foreign court. The foreign country must permit adoptions by foreign nationals, and the prospective parents must comply with the adoption rules of that country.¹⁵ U.S. authorities cannot intervene on behalf of prospective parents with the courts in the country where the adoption takes place. No United States government agency is directly involved in the adoption process in another country or locates children to be adopted. Nonetheless, the prospective parents must meet the U.S. legal requirements as defined in the Immigration and Nationality Act (INA) to bring a child adopted abroad into the United States. Under U.S. law, petitioning for an orphan requires two distinctive determinations: (1) the ability of the prospective adoptive parents to care for the child; and (2) whether the child meets the definition of orphan under the INA.

Advanced Processing Application. Parents who wish to adopt a foreign-born orphan and have not located a child to adopt can complete the advanced processing application (Form I-600A, Application for Advanced Processing of

¹² See *Testimony of Mary Ryan*.

¹³ See *Testimony Susan Soon-Keum Cox*. Additionally, at the same hearing, Cindy Freidmutter conservatively estimated an average cost of \$10,000 for a finalized adoption for services provided. (This cost excludes orphanage “contributions,” travel, and home studies.) Testimony of Cindy Freidmutter, Executive Director of the Evan B. Donaldson Adoption Institute before the House Committee on International Relations in a hearing on “International Adoptions: Problems and Solutions,” May 22, 2002.

¹⁴ See *Testimony Susan Soon-Keum Cox*.

¹⁵ There are instances where countries have prohibited adoption by foreign nationals. For example, recently Romania stopped allowing foreign adoptions for fear of “losing a generation.” Also, in the 1980s Guatemala restricted foreign adoptions due to rumors that adopted Guatemalan children were being killed for their organs.

Orphan Petition),¹⁶ which is adjudicated by USCIS, and is used to determine the suitability of the parents to adopt a child.¹⁷ Importantly, the documentation supporting the petition (e.g., the home studies and background checks¹⁸) must come from state social services entities and law enforcement agencies. Once the advanced processing application is approved, the parents may then travel to the country from which they wish to adopt a child.¹⁹

Orphan Petition. When the child is located and guardianship has been transferred by the foreign country,²⁰ the parents file an orphan petition (Form I-600: Petition to Classify Orphan As Immediate Relative) at a DHS office in the country or at an American Consulate or Embassy if there is no DHS office in the country. If prospective parents locate a child to adopt and have not filed an advanced processing petition (I-600A), the parents can simply file an orphan petition (I-600), and at that time complete all the requirements (such as finger printing and a home study) required for the I-600A. An orphan cannot be brought to the United States without a visa, which is based upon a DHS approved orphan petition, and issued by DOS.

The orphan petition must be filed before the child's 16th birthday. The only exception is when a child is adopted by the same adoptive parents as a sibling under the age of 16. In this case, the petition must be filed before the child's 18th birthday.²¹

A petition to classify an alien as an orphan may not be filed for a child who is already in the United States unless that child is in parole status and has not been adopted in the United States. An adopted child who has been in the legal custody of and has resided with the adopting parents for at least two years is eligible to immigrate to the United States. The two-year legal custody and residence requirements may take place before or after the adoption is final. If the child has been residing with the parents for two years the parents would file a petition for an

¹⁶ USCIS encourages advance processing and contends that the procedure is the fastest way to complete the paper work.

¹⁷ The application includes a home study completed by a home study preparer who is authorized to prepare home studies for adoptions under the laws of the state where the child will reside. If the home study is done abroad, the home study preparer must be licensed in any state in the United States or by the foreign country. USCIS will not accept a home study that is more than six months old.

¹⁸ As part of any adoption (international or national), the prospective parents are required to undergo a criminal background check as well as a home study. Home studies which are often performed by social workers may include an evaluation of the prospective parents' ability to care for an adopted child as well as the environment and physical safety of their home.

¹⁹ When the I-600A is approved, the applicant(s) is sent form I-171H (*Notice of Favorable Determination Concerning Advanced Processing for an Orphan Petition*).

²⁰ In most cases the adoption is finalized in the foreign country. However, some countries allow for a transfer of guardianship and the adoption is finalized in the United States.

²¹ The age that a sibling could be considered a child was changed from 16 years to 18 years by P.L. 106-139 signed into law on Dec. 7, 1999.

alien relative (Form I-130), not an orphan petition, to gain immigration benefits (i.e., so that the child could immigrate) for the child.²²

Approval of the advanced processing application does not guarantee approval of the orphan petition. Regulations require that all foreign adoptions undergo an investigation (called an orphan investigation) to guarantee compliance with the laws of both the U.S. and the child's birth country.²³ Orphan investigations are performed by the DHS office (or the American Consulate or Embassy if there is no DHS office in the country). This investigation may cause delays in the adjudication of the case. Not all children adopted abroad fit the definition of orphan under the INA.²⁴ The DHS or consular office must complete the Report on Overseas Orphan Investigation (I-604), which consists of a review of the facts and documents to verify that the child qualifies as an orphan. The documentation that is required to prove that a child has not been obtained illegally may be hard to come by in some countries, especially those with political or social upheaval. If the orphan petition is approved, the child is immediately eligible for an immigrant visa without being placed on a visa waiting list; however, the child must still qualify for the immigrant visa.²⁵ For example, the child may be inadmissible if he or she has a communicable disease that is a threat to public health.²⁶ Final authority to enter the United States rests with the immigration inspectors at the port of entry.²⁷

Orphan First Processing Pilot Program. In June 2003, USCIS began a pilot program that permits prospective parents to obtain a preliminary determination of whether a child meets the definition of an orphan under the INA (i.e., whether the child will be eligible to immigrate as an orphan) before the parents travel abroad, and undergo the adoption process in the foreign country. As discussed above, there have

²² 8 C.F.R. §204.2(d)(vii).

²³ 8 C.F.R. §204.3(k).

²⁴ The INA §101(b)(1)(F) defines a child as an “orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.” According to this definition, parents cannot release the child to a specific person for adoption as this would not meet the definition of abandonment. Once the child has been irrevocably released by the natural parents, the parents can never gain immigration benefits through the child (i.e., the child would not be able to petition for the natural parents to immigrate to the United States under the family preference system).

²⁵ Regulations for petitions on behalf of orphans can be found in 8 C.F.R. §204.3.

²⁶ To receive a visa, children are required to undergo a medical examination by a physician approved by the U.S. embassy or consulate. For the rules of inadmissibility, see INA §212.

²⁷ In rare circumstances, children deemed ineligible for admission to the United States may qualify for “humanitarian parole” and gain entry. Only the Attorney General has the authority to grant parole. (Although it is assumed that this authority will be transferred to the Secretary of DHS). “Parole” is a term in immigration law that means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to adjust to a lawful status in the United States.

been instances where under the laws of the sending country, the parents are legally responsible for the child, but the child is unable to legally immigrate to the United States because the child does not meet the definition of an orphan under the INA. Currently, this program is only available if the child is from Haiti, Honduras, the Philippines, Poland, or Sierra Leone.

Adoptions in the United States. There are circumstances under which the foreign child must be adopted/re-adopted in the United States. These situations include children from countries which allow simple adoptions where the parents are given guardianship of the child, and countries which allow adoptive parents to adopt through a third party without traveling to the country. Additionally, the INA specifies that both adoptive parents must personally see the child prior to the adoption.²⁸ If the petitioner and his or her spouse, or unmarried petitioner in cases where a single person is adopting, did not observe the child prior to adoption abroad, the petitioner (and spouse if married) must submit a statement showing the petitioner's willingness and intent to readopt the child in the United States.²⁹ Proof of compliance with the preadoption requirements of the state of residence must also be submitted. A child paroled into the United States who meets the definition of orphan under the INA is also eligible for adoption. Additionally, although formal adoption of a child in a foreign court is legally acceptable in the United States, state courts are not required to automatically recognize a foreign adoption decree.³⁰

Procedural Issues

The laws and policies of international adoption are designed to protect children. They are intended to make sure that all of the children put up for adoption are truly orphans, and are not kidnap victims or being subjected to trafficking, smuggling, or other unsavory activities. The laws are also designed to insure that the adoptive parents can adequately care for their new child, which is the reason why advanced processing petitions are only valid for 18 months. Additionally, concern about child trafficking led most recently to the suspension of processing of visas for prospective adoptees from Cambodia, pending reforms in the country and investigation into how the children are being treated.

18-Month Limit for Advanced Processing Applications

An orphan petition must be filed within 18 months of the approval of the advanced processing application. The orphan petition may also be filed while the

²⁸ INA §101(b)(1)(F)(i).

²⁹ Children whose adoptions are finalized abroad are issued IR-3 visas, while those who need to be readopted in the United States are issued IR-4 visas. In 2000, DOS issued 13,195 IR-3 visas, and 5,282 IR-4 visas.

³⁰ Some adoption agencies recommend that all children adopted abroad be readopted in the United States since U.S. adoption documents are more easily replaced and more easily recognized than foreign documents.

advanced processing application is pending.³¹ There is nothing in statute that specifies the length of validity of an advanced processing petition. The time limit was established in regulation by USCIS.³² Some contend that the 18-month time limit is too short since finding a child to adopt and going through the adoption process may take longer than 18 months. This has especially been a problem with people adopting from China, since processing in China's centralized adoption system can take longer than 18 months. However, USCIS contends that a time limit is necessary to protect both the adoptive child and the parents and that 18 months is a long time during which the circumstances of the adoptive parents could change.³³ USCIS officials also state that China is the only country in which it tends to take longer than 18 months for the adoption to be completed and that as of now there are no plans to change the policy.³⁴ Others argue that since China is the primary sending country of children for adoption and approximately one-fourth of international adoptions have been from China (see **Table 1**), the time-limit should be reevaluated.

Cambodian Adoptions — The U.S. Moratorium

In FY2002, there were allegations of baby trafficking in Cambodia, and as a result, USCIS placed a moratorium on adoptions from Cambodia. USCIS also created a special Adoptions Task Force to review adoption cases in Cambodia and to undertake a comprehensive review of the existing USCIS structure for dealing with International adoptions.³⁵ DOS and DHS have continued to monitor the situation in Cambodia. In March 2004, these officials visited Cambodia to gather information on the country's state of adoptions. The focus of the visit was to ascertain whether the Cambodian government had made sufficient efforts to establish laws and procedures to provide safeguards during the adoption process to protect the interests of children, birth parents and adoptive parents, and eliminate opportunities for fraud and other abuses. After the visit, the officials did not make any recommendations regarding the suspension on adoptions.³⁶

James Ziglar, Commissioner of USCIS when the moratorium was enacted, argued that the obligation to ensure that children are not taken from their birth parents through fraud, duress, or sale is paramount, and it takes precedence over the government's responsibility to help U.S. citizens complete international adoptions. Nonetheless, some advocates of international adoption are concerned about the decision to halt processing adoptions from Cambodia. They claim that the

³¹ In other words, an I-171H (approval of advanced processing form) is only valid for 18 months.

³² 8 C.F.R. §204.3(b).

³³ The petitions were only valid for 12 months until Aug. 1, 1994.

³⁴ Personal conversation with Woody Olmstead, USCIS Legislative Relations, Apr. 24, 2002.

³⁵ Testimony of James W. Ziglar, Commissioner of USCIS before the House Committee on International Relations in a hearing on "International Adoptions: Problems and Solutions," May 22, 2002.

³⁶ Available at [http://travel.state.gov/family/adoption/notices/notices_479.html].

moratorium was an extreme and hasty reaction to non-specific allegations involving just a tiny percentage of cases, and as a result children continue to languish in dangerous situations such as over-crowded, dirty, disease-ridden orphanages.³⁷

Issues in Select Other Countries

Since international adoptions begin as a legal matter between a private individual(s) and a foreign court, many issues surrounding international adoptions are country specific. The most up-to-date information on international adoptions from specific countries can be found on DOS' website.³⁸ Although the United States has only placed a moratorium on adoptions from Cambodia, other countries have enacted policies and laws that prohibit or limit international adoptions of their child citizens.

Romania. On June 21, 2001, the Romanian government announced a one-year moratorium on intercountry adoptions, formalizing the suspension of international adoptions which began in December 2000. The moratorium has been extended several times, so that the Romanian government has time to pass and implement new legislation to eliminate corruption in the adoption system. On June 22, 2004, a law was enacted in Romania that limits international adoption to a child's grandparents. The U.S. government expressed concern about the new law, stating that the law imposes serious obstacles to adoption and creates a system in which children are forced to remain in orphanages without parents.³⁹ In addition, the United States has continued to pressure the Romanian government to allow the adoption of children who had been matched with parents prior to the moratorium.⁴⁰

Vietnam. In July 2002, the government of Vietnam imposed the requirement, effective January 2, 2003, that in order for nationals from a foreign country to adopt a Vietnamese child, the foreign country must enter into an agreement with Vietnam. This requirement essentially placed a moratorium on U.S. citizens adopting from Vietnam.⁴¹ On June 21, 2005, the United States and Vietnam signed an agreement on international adoptions, once again allowing U.S. citizens to adopt Vietnamese children.⁴²

³⁷ Sen. Mary L. Landrieu, "Landrieu Calls for Immediate Change In International Adoption Policies," press release, Apr. 23, 2002. Statement of Congressman Joseph R. Pitts at the House Committee on International Relations in a hearing on "International Adoptions: Problems and Solutions," May 22, 2002.

³⁸ See [http://travel.state.gov/family/adoption/notices/notices_482.html] and [http://travel.state.gov/family/adoption/country/country_369.html#].

³⁹ See [http://travel.state.gov/family/adoption/notices/notices_475.html].

⁴⁰ See [<http://www.jcics.org/Romania.htm>] and [http://travel.state.gov/family/adoption/country/country_440.html].

⁴¹ When the new rule went into effect, only France had an international adoption agreement with Vietnam.

⁴² See [http://travel.state.gov/family/adoption/notices/notices_2542.html] and [http://travel.state.gov/family/adoption/notices/testimony_2546.html].

Related Laws and Policies

Adoption Subsidies for International Adoptions

In most cases children adopted internationally do not meet the eligibility requirements to receive regular adoption assistance payments under the Adoption Assistance Program authorized by Title IV-E of the Social Security Act. The federal Child Welfare Policy Manual states:

The Federal adoption assistance program under Title IV-E was intended to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance to the families who adopt them. As a result, the statutory requirements for Title IV-E adoption assistance eligibility are geared to needy children in public child welfare systems and are difficult, if not impossible, to apply to children who are adopted from abroad. Therefore, although the statute does not categorically exclude these children ..., it is highly improbable that [they] ... will meet the criteria ... for Title IV-E adoption assistance eligibility.

One of the eligibility requirements for adoption assistance payments under the Adoption Assistance Program is that the child was removed from a family who are eligible for Aid to Families with Dependent Children (AFDC) as the program existed on July 16, 1996.⁴³ Noncitizen families residing outside the United States are not able to meet this eligibility requirement.

Although internationally adopted children do not typically qualify for adoption assistance payments through Title IV-E, they may qualify, at state option, for reimbursement (up to \$2000) of nonrecurring expenses. Nonrecurring expenses include “reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs.”⁴⁴ According to the North American Council on Adoptable Children (NACAC), 19 states pay nonrecurring adoption expenses for internationally adopted children, while in 15 states international adoptees are not eligible for reimbursement. The other 17 states are silent on the issue.⁴⁵

Adoption Tax Credit

Adoptive parents of both domestic and international children are eligible to take a tax credit of up to \$10,000 for qualifying expenses⁴⁶ paid to adopt a child. The

⁴³ AFDC was the predecessor of Temporary Assistance to Needy Families (TANF). The law creating TANF was enacted on August 22, 1996 (P.L. 104-193).

⁴⁴ See Section 473(b)(6)(A) of the Social Security Act. “Special needs” are defined by the state and generally include factors thought to make a child more difficult to adopt such as race or ethnicity, age, a medical condition or physical, emotional, mental disabilities.

⁴⁵ See [<http://www.nacac.org/subsidyfactsheets/internationaladoption.html>].

⁴⁶ Qualifying expenses are reasonable and necessary adoption fees, court costs, attorney (continued...)

credit is not refundable. In 2003, the maximum credit increased to \$10,160. This amount is allowed for the adoption of a special needs child regardless of whether the taxpayer has qualifying expenses. The credit is subject to a dollar limit (\$10,000 for each child adopted) and an income limit (those with total family incomes over \$190,000 per year will not receive the tax credit).⁴⁷ Additionally, up to \$10,000 paid or reimbursed by the adoptive parent's employer under an adoption assistance program⁴⁸ may be excludable from the parent's gross income. Parents may claim both a credit and an exclusion for expenses of adopting an eligible child. If the child is not a U.S. citizen or resident, the adoption credit and exclusion can only be taken after the adoption is final; however, those adopting children who are U.S. citizens or residents can take the adoption credit and exclusion as expenses are incurred and even if the adoption never becomes final.⁴⁹

Child Citizenship Act of 2000

In 2000, Congress passed the Child Citizenship Act,⁵⁰ which eliminated the need for adoptive families to apply to naturalize their newly adopted children. The act grants automatic citizenship to all foreign-born children who are under the age of 18; who are legal permanent residents; and who are in the legal and physical custody of at least one parent who is a U.S. citizen. To qualify for automatic citizenship, the adoption must have been finalized before the child enters the United States.⁵¹ Prior to this act, parents needed to submit an application to have their children naturalized. Upon the effective date of the act, more than 150,000 children who had previously been adopted and brought to the United States automatically became United States citizens. The impetus for this act was a number of cases of adopted children who committed crimes and were subjected to mandatory deportation under the INA. These children often had no connection to their birth countries and would be permanently separated from their adopted families in the United States.⁵²

New Entrant Program (Automatic Issuance of Certificates of Citizenship). On January 1, 2004, USCIS implemented a program in which children whose final adoptions were completed abroad (i.e., those entering on IR-3

⁴⁶ (...continued)

fees, traveling expenses, and other expenses directly related to the legal adoption of a child.

⁴⁷ Those with incomes between \$150,001 and \$189,999 will receive a reduced credit.

⁴⁸ An adoption assistance program is a separate written plan established by an employer to provide adoption assistance to their employees.

⁴⁹ Department of Treasury, Internal Revenue Service Publication 968, "Tax Benefits for Adoption."

⁵⁰ P.L. 106-395 (H.R. 2883) signed into law Oct. 30, 2000.

⁵¹ The act confers automatic citizenship upon orphans with IR-3 visas upon their admittance to the U.S., but not on orphans with IR-4 visas. [<http://travel.state.gov/state105804.html>].

⁵² The original bill, introduced by Rep. Delahunt would have permitted children over 18 to avoid deportation by applying to naturalize. This provision was not included in the final version of the bill, but the legislation did provide relief from deportation for those who believed they were citizens and unlawfully voted in U.S. elections.

visas) automatically received Certificates of Citizenship instead of within 45 days of their entry into the country. Prior to this program, although the child entering the country automatically became a citizen, the child was issued a Permanent Resident Card (PRC). The parents had to file an application for a Certificate of Citizenship with USCIS, and pay the application fee. Processing of these certificates were seen as low priority by USCIS. There were reports of parents waiting more than a year and a half for the application to be processed, which affected the parent's ability to get a Social Security card for their child. Often it was faster for the parents to apply for a passport for their child from DOS

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