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*Intercountry Adoption Act of 2000 and International
Adoptions*

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March 29, 2006

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Updated March 29, 2006

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Intercountry Adoption Act of 2000 and International Adoptions

Summary

The Intercountry Adoption Act of 2000 (P.L. 106-279, Oct. 6, 2000, 114 Stat. 825, "Act") provides the domestic legislation to enable the United States to implement the provisions of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ("Convention"). At the same time that Congress passed the implementing legislation, the Senate was reviewing the Convention. Although the Senate approved the ratification of the Convention, the Convention has not been formally ratified and has not entered into force in the United States. The Department of State ("DOS") has not given a definite date for the completion of its duties pursuant to the Act and the Convention, but the DOS has stated that the "Convention is expected to enter into force for the United States in 2007." This report analyzes and summarizes the provisions of the Act. It also examines related issues such as children emigrating from the United States, immigration law amendments, and other issues.

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Intercountry Adoption Act of 2000 and International Adoptions

Introduction

Domestic Legislation

The Intercountry Adoption Act of 2000 (“Act”)¹ was signed into law by President Clinton on October 6, 2000. The Act implements certain requirements of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”). In order to implement the provisions of the Convention, each signatory country must enact domestic legislation in order to fulfill the treaty obligations. To this end, the Act amends U.S. law so as to comply with the requirements of the Convention. To be able to implement this domestic law, federal regulations must be promulgated² and administering bodies must be established.³ The United States Department of State (“DOS”) expects the Convention to enter into force in the United States in 2007.⁴

During Congress’ consideration of the implementing legislation, four bills were considered: H.R. 2909, the Intercountry Adoption Act of 1999;⁵ S. 682, the Intercountry Adoption Implementation Act of 1999;⁶ H.R. 2342, a companion bill to the Senate bill;⁷ and an “administration bill,” called the “Intercountry Adoption Draft.”⁸ Various CRS products examine and compare the provisions of the various pieces of legislation and also provide a detailed legislative history of the Act.

¹ P.L. 106-279, Oct. 6, 2000, 114 Stat. 825.

² See CRS Report RS21671, *Hague Convention on Intercountry Adoption: Status and Recent Developments*, by Douglas Reid Weimer.

³ *Id.* at 4-5.

⁴ See [<http://www.state.gov/r/pa/prs/ps/2006/61274.htm>].

⁵ 106th Cong., 1st Sess. (1999). The bill was popularly known as the “House bill” or the “Gilman” bill.

⁶ 106th Cong., 1st Sess. (1999). The bill was popularly known as the “Senate bill” or the “Helms bill.”

⁷ 106th Cong., 1st Sess. (1999). Little consideration was given to this bill, as it was the companion bill to the Senate bill.

⁸ This bill was drafted by the U.S. State Department and transmitted to President Clinton in June 1998. It was never formally introduced.

The International Convention

The United States became a signatory to the Convention on March 31, 1994. The Convention was transmitted to the Senate for its advice and consent on June 11, 1998.⁹ The purpose of the Convention is to establish uniform standards and procedures for the international adoption of children. Through the establishment of such uniform procedures, the Convention will attempt to protect the rights and the interests of adoptive children, the birth parents, and the adoptive parents involved in intercountry adoptions. The Convention requires that each signatory country establish a national Central Authority. The Central Authority is to oversee the Convention's implementation in the signatory country.¹⁰ The Convention has three chief features. First, it reinforces the protection of children's rights concerning international adoption. Second, it establishes a mechanism for the cooperation of signatory countries in the area of international adoption. Third, it ensures the recognition of adoptions undertaken and certified through the Convention process.

For the Convention to be fully operative in a participating country, there are three basic steps which must be fulfilled. First, the country must sign the Convention. Second, the country must have a domestic ratification, acceptance, approval, or accession procedure. Third, the Convention enters into force in the country "on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43."¹¹

The United States Senate gave its advice and consent to the United States' ratification of the Convention on September 20, 2000, the same day that it passed the implementing legislation.¹² However, the United States has not formally ratified the Convention and the Convention has not entered into force. At the present time, the DOS has not given a definite date for the completion of its duties but has stated on its website that the "Convention is expected to enter into force for the United States in 2007."¹³ Although the implementing legislation was signed into law on October 6, 2000, various implementation procedures must be undertaken by the DOS and the Immigration and Naturalization Service ("INS") before the Convention is formally ratified and subsequently enters into force in the United States.¹⁴

⁹ On June 11, 1998, the Convention was read for the first time in the Senate, and together with the accompanying papers, was transferred to the Senate Committee on Foreign Relations. *See* S. Treaty Doc. 105-51, 105th Cong., 2d Sess. (1998). The Senate did not take action on the Convention in the 105th Congress.

¹⁰ *See* S. Treaty Doc. 105-51 at v-sv for a summary of the provisions of the Convention.

¹¹ A full text of the Convention is available at the official Hague Conference website at [http://www.hcch.net/index_en.php?act=conventions.text&cids=69]. *See* Article 46 of the Convention. Other information about the Convention and the various participating countries is available on this website.

¹² 146 Cong. Rec. S8866-8867 (daily ed. Sept. 20, 2000).

¹³ *See* note 4.

¹⁴ *See* note 2.

Some of the rationale underlying the Convention was summarized at the time of the Senate's ratification consideration. "This treaty is important for a very simple reason — it will help facilitate international adoptions and provide important safeguards for children and adoptive parents."¹⁵ The interplay between the Convention and the implementing legislation was discussed. "The Hague Convention and the implementing bill also establish mechanisms for improved governmental oversight for international adoptions — in order to guard against fraud and other problems associated with such adoptions."¹⁶

This report examines the various procedures that the State Department and the INS must undertake before the United States is able to ratify the Convention. Other issues are examined in the report such as children emigrating from the United States, amendments to immigration law, and certain other issues. A brief section in the report examines the operation and the organization of the Hague Conference on Private International Law. The Member and non-Member countries which are participating in the Convention, as of January 20, 2006, are listed.

Summary of the Provisions of the Act

Set out below is a summary of the provisions of the Act along with citations to their location in the U.S. Code.

Section 1 sets out the title and the table of contents of the Act. The Act is to be cited as the "Intercountry Adoption Act of 2000."¹⁷

Section 2 states the congressional recognition of the Convention's international character and the need for international implementation of the Convention in the United States and abroad. The purposes of the legislation are discussed: Convention implementation, protection of the rights of the persons involved in the adoption process, and the improvement of the federal government's ability to assist American citizens adopting abroad and residents of Convention countries seeking to adopt American children.¹⁸

Section 3 provides an extensive definitional section which gives meanings for the various terms used in the Act. Among the terms defined are: accredited agency, accrediting entity, adoption service, agency, approved person, Attorney General, central authority, central authority function, Convention, Convention adoption, Convention record, Convention country, other Convention country, person, person with an ownership or control interest, Secretary, and State.¹⁹

¹⁵ 146 Cong. Rec. at S8866 (statement of Sen. Biden).

¹⁶ *Id.*

¹⁷ 42 U.S.C. § 14901 note.

¹⁸ 42 U.S.C. § 14901.

¹⁹ *Id.* at § 14902.

Title I — United States Central Authority²⁰

Section 101 deals with the designation of the Department of State as the United States central authority and the Secretary of State (“Secretary”) as the head of the central authority. The Secretary is authorized to issue regulations as necessary to carry out the central authority functions on behalf of the United States

Section 102 sets forth the responsibilities of the Secretary which include liaison responsibilities, information exchange, agency accreditation and approval responsibilities, and certain other functions. The Secretary and the Attorney General are to establish an international adoption registry, regardless of whether such adoptions occur under the Convention or not. The Secretary may authorize public or private entities to perform appropriate central authority functions, pursuant to regulations or under agreements published in the Federal Register.

Section 103 deals with the responsibilities of the Attorney General. In addition to the responsibilities conferred upon the Attorney General by the Act, the central authority functions relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence (as specified in Article 14 of the Convention) are to be performed by the Attorney General.

Section 104 sets forth requirements for an annual report on intercountry adoptions, to be prepared by the Secretary, in consultation with the Attorney General and other appropriate agencies. Such a report will describe the activities of the United States central authority during the preceding year. The report is to be made to various Committees of the House and the Senate.²¹ Elements of the report are described: number of adoptions involving immigration to the United States; number of adoptions involving emigration from the United States; number of placements for adoptions in the United States that were disrupted; average time required for a Convention adoption; listing of accredited agencies and approved persons; names of debarred persons or agencies; adoption fees charged with Convention adoptions involving immigration to the United States; and range of fees charged for accreditation of agencies and the approval of persons in the United States providing adoption services under the Convention.

²⁰ *Id.* at § 14911.

²¹ *Id.* The report is to be submitted to the Committee on International Relations, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives; and the Committee on Foreign Relations, the Committee on Finance, and the Committee on the Judiciary of the Senate.

Title II — Provisions Relating to Accreditation and Approval

Section 201 sets out requirements for the accreditation or approval of agencies or persons providing adoption services in cases which are subject to the Convention.²² Adoption services in connection with a Convention adoption may only be offered by persons accredited in accordance with the provisions of the bill. Limited exceptions are made for certain background studies and home studies, child welfare services, legal services, and prospective adoptive parents acting on their own behalf.

Section 202 deals with the process for accreditation and approval and the role of the accrediting entities.²³ This section outlines the process of designating accrediting entities, the duties of such accrediting entities, and remedies for adverse actions taken by accrediting entities. Fees assessed by accrediting entities are subject to the approval of the Secretary.

Section 203 sets out the standards and procedures for regulations governing the accreditation of agencies or the approval of persons to provide adoption services in the United States in Convention adoptions.²⁴ The Secretary shall consider the views of persons knowledgeable of international adoptions and family social services. Minimum requirements for accreditation are set forth which include specific requirements;²⁵ the capacity to provide adoption services; the use of social service professionals; records, reports and information matters; liability insurance; compliance with applicable rules; and nonprofit organizations providing adoption services. Standards for the approval and for the renewal of accreditation of adoption providers are given. Provision is made for the temporary registration of community-based agencies. Various criteria for registration are provided.²⁶

²² *Id.* § 14921.

²³ *Id.* § 14922.

²⁴ *Id.* § 14923.

²⁵ The accreditation of any agency may not be provided or continued unless the agency has met the following specific requirements: 1) adoption agency provides adoptive parents the child's medical records (in English translation) prior to adoption; 2) agency ensures that background report (home study) on prospective adoptive parent(s) is completed in accordance with applicable requirements and transmitted to the Attorney General with respect to each Convention adoption; 3) agency provides prospective adoptive parents a training program that includes counseling and guidance for a successful adoption; 4) agency employs personnel providing intercountry adoption services on a fee for service basis, rather than on a contingent fee basis; and 5) agency fully discloses its policies and practices, disruption rates of intercountry placements, and all fees charged by such agency for intercountry adoptions.

²⁶ See Hague Country on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons, 71 Fed. Reg. 8064 to 8161 (Feb. 15, 2006)(to be codified at 22 C.F.R. pt. 96)(effective March 17, 2006).

Section 204 provides for the Secretarial oversight of the accreditation and approval procedures.²⁷ Provision is made for the suspension or the cancellation of accreditation or approval for noncompliance. Persons/agencies who have been subject to the suspension or cancellation provisions may correct their deficiencies and re-apply for accreditation or approval. In addition to suspension or cancellation, the Secretary is authorized to temporarily or permanently debar an agency from accreditation or a person from approval. An appeals procedure for the debarred person/entity is provided. The section provides for situations where a complete home study is not undertaken prior to adoption.

Section 205 amends Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) to provide that States report certain requirements regarding international adoption, as part of their state plan under the Federal Child Welfare Services Program. A requirement is made for the collection and reporting of information on children who are adopted from other countries and who enter into State custody as a result of the disruption of an adoption placement or the dissolution of an adoption, and related statistics.

Title III — Recognition of Convention Adoptions in the United States

Section 301 governs the legal aspects of children immigrating to the United States. The section deals with the issuance and the legal effect of certain certificates which are to be issued by the Secretary with respect to each Convention adoption, and the legal effect of a Convention adoption finalized in another Convention country. The certificate issued by the Secretary is a condition precedent for the finalization of a Convention adoption by a State court.

Section 302 concerns Immigration and Nationality Act amendments relating to children adopted from Convention countries. Specifically, the definition of child under the Immigration and Nationality Act (“Act”)(8 U.S.C. 1101(b)(1)), is amended to take into account Convention adoptions. The section also amends the Act concerning the approval of adoption petitions (8 U.S.C. 1154(d) and the definition of parent (8 U.S.C. 1101(b)(2)).

Section 303 concerns the adoption of children emigrating from the United States. Set forth are the duties of the accredited agency or the approved person, the conditions on State court orders, the duties of the Secretary, and filing requirements concerning non-Convention adoptions with the adoption registry.

²⁷ 42 U.S.C. § 14923

Title IV — Administration and Enforcement

Section 401 is concerned with the access to Convention records. Issues dealt with in this section include the preservation of Convention records, the access to Convention records, and the access to non-Convention records.²⁸

Section 402 states that documents originating in any other Convention country and relating to a Convention adoption will not require authentication to be admissible in a Federal, State, or local court in the United States, unless a claim is made that the documents are false, altered, or unreliable.

Section 403 deals with the authorization of appropriations and the collection of fees. The section provides for the authorization of appropriations to federal agencies implementing the Convention and this legislation. The Secretary is authorized to assess a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of the law concerning Convention adoptions. None of these fees are to be made available to an accrediting entity to carry out the purposes of the legislation.

Section 404 governs enforcement of the Act. Civil penalties are provided concerning fraud, false statements, and other wrongful acts. Persons subject to such penalties may be subject, in addition to any other penalty prescribed by law, to a civil money penalty of not more than \$50,000 for a first violation, and not more than \$100,000 for each subsequent violation. Criminal penalties are also imposed. Persons in violation of the Act's provisions shall be subject to a fine of not more than \$250,000, imprisonment for not more than five years, or both.

Title V — General Provisions

Section 501 concerns the recognition of Convention Adoptions between two other Convention countries that become final before the date of entry into force of the Convention for the United States. Such adoptions shall be recognized in the United States and be given full effect.

Section 502 provides for special rules for certain cases involving the adoption of children. The Secretary is authorized to establish alternative procedures for the adoption of children by relatives. Under specific circumstances the Secretary is authorized to waive certain requirements of the Act or the regulation in the interest of justice or to prevent grave physical harm to the child.

Section 503 concerns the relationship of the Act with other laws. The Convention and the implementing legislation shall not preempt any provision of State or local law, or prevent a State or local authority from enacting any provision of the law with respect to the subject matter of the Convention or this legislation, except to

²⁸ See Intercountry Adoption — Preservation of Convention Records, 71 Fed. Reg. 8161 to 8164 (effective March 17, 2006).

the extent that such provision of State law is inconsistent with the Convention or this legislation, and then only to the extent of the inconsistency. The Convention and the Act shall not affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*).

Section 504 provides that the Convention and this Act shall not create a private right of action to seek administrative or judicial relief, except as provided by the Act.²⁹

Section 505 concerns the effective date of the legislation. Certain provisions become effective upon the date of enactment and other provisions take effect upon entry into force of the Convention for the United States.³⁰ Certain transitional rules apply in certain circumstances.

Status of Hague Convention Implementation in the United States

Although the Senate gave its advice and consent to the ratification of the Convention on September 20, 2000, the Convention has not been formally ratified by the United States. While the implementing legislation was signed into law by the President on October 6, 2000, various implementation procedures must be undertaken by the DOS and the Immigration and Naturalization Service before the Convention can be formally ratified and enter into force in the United States.

The DOS has summarized the steps that are necessary for the United States to ratify the Convention, including the following:

- 1) establishment and staffing of the United States Central Authority (i.e., the U.S. Department of State, Office of Consular Affairs, Office of Children's Issues);
- 2) establishment of a computerized case-tracking system for U.S. intercountry adoptions, jointly with the INS;
- 3) designation of one or more entities to accredit U.S. adoption agencies for Convention adoptions and to approve other bodies and persons wishing to provide adoption services covered by the Convention;
- 4) promulgation of regulations establishing accreditation/approval standards and criteria and procedures for seeking such accreditation/approval;
- 5) processing applications received for accreditation or approval;
- 6) establishment of a program to share information with adoption service providers, State courts and authorities, the U.S. adoption community and future adoptive parents concerning their role in U.S. compliance with the requirements

²⁹ See 42 U.S.C. § 14924(d).

³⁰ Article 46 of the Convention provides that the Convention enters into force on the first day of the month following the expiration of three months after deposit of the third instrument of ratification, acceptance or approval referred to in Article 43 of the Convention. See discussion, p. 2.

and safeguards of the Convention, its implementing legislation, and related federal regulations.³¹

Children Emigrating from the United States

Traditionally, the individual States have had the responsibility for regulating adoptions in the United States and there has not been a federal oversight entity. In addition, there is no specific control on the departure of persons from the United States. Hence, an accurate count of children leaving the United States for adoption abroad is not currently available and does not seem readily able to be determined.

After the Convention is ratified and has entered into force in the United States, the individual State, territory, or commonwealth of residence of the adoptive child will be required to make certain determinations concerning the adoptability of the child, that intercountry adoption is in the child's best interests, and that the proper persons, authorities, and institutions have agreed to the adoption. These requirements are set out in Article 4 of Article 17 of the Convention. These requirements must be met before a Convention adoption can proceed. The reporting obligations and requirements pose new responsibilities and will necessitate cooperation between the federal and the individual State governments.³²

Amendments to Immigration Law³³

The Act provides amendments to the Immigration and Nationality Act ("INA"). As the Convention provides extensive protection for the adopted children and for the birth and adoptive parents, children immigrating to the United States whose adoption or whose placement for adoption is covered under the Convention will not need to qualify as eligible orphans under the INA so as to be eligible to receive immigrant visas.

³¹ See DOS website at "Preparations for U.S. Implementation of the Hague Convention," [http://travel.state.gov/family/adopton/convention/convention_2332.html].

³² *Id.*

³³ The 106th Congress approved two other laws related to immigration and citizenship status of foreign-born children adopted by U.S. citizens. See CRS Report RS20836, *Immigration Legislation in 106th Congress*, by Ruth Ellen Wasem.

Administrative Fees

An administrative fee is imposed to pay for additional services that will be provided to guarantee that there are adequate human and support resources available to carry out the Act in an effective manner and to comply with the requirements of the Act and the Convention. The State Department has stated that neither the federal government nor the adoption community and its clients wish the Convention and its implementation to slow down adoption because of a lack of resources in the United States to monitor and to process individual intercountry adoptions.

Countries Participating in the Convention

The Hague Conference on Private International Law has established thirty-five international conventions since the 1950's. The topics of some of these conventions include such subjects as civil procedure, the international sale of goods, and other issues of international interest. The Convention on Protection of Children and Cooperation in respect of Intercountry Adoption is Convention No. 33.³⁴ Participating countries, known as Member States, are countries which have participated in one or more of the early Sessions of the Conference and may become Members of the Organization by accepting the organic statute of the Hague Conference.³⁵ As of January 20, 2006, there are forty-eight Members States to the Hague Conference.³⁶

Both Member and non-Member countries may participate in the various international Conventions. Following is a list of Member States which are signatories³⁷ to Convention No. 33. Not all of these countries have completed the ratification/accession process and hence the Convention is not in force in those countries. A report concerning the status of the signature/ratification process of individual countries is available at the Hague Convention website.³⁸

Albania
Australia
Austria
Belarus
Belgium
Brazil
Bulgaria
Canada

³⁴ See the Hague Conventions' website at [http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69].

³⁵ *Id.* at "Hague Conference-Member States."

³⁶ *Id.*

³⁷ Strictly speaking, a few of the listed countries are not "signatories," as they have not signed the Convention; rather, some countries have acceded to the Convention without being formal "signatories."

³⁸ See [http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69].

Chile
China, People's Republic of
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Hungary
Iceland
Ireland
Israel
Italy
Latvia
Lithuania
Luxembourg
Malta
Mexico
Monaco
Netherlands
New Zealand
Norway
Panama
Paraguay
Peru
Poland
Portugal
Romania
Russian Federation
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Turkey
United Kingdom
United States
Uruguay
Venezuela³⁹

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³⁹ *Id.* As of January 20, 2006, three Member States have not completed ratification of the Convention: Ireland, the Russian Federation, and the United States.

Various Non-Member States are signatories to Convention No. 33.⁴⁰ The precise status of individual states in the ratification process is available at the Hague Convention website.⁴¹

Andorra
Azerbaijan
Belize
Bolivia
Burkina Faso
Burundi
Colombia
Costa Rica
Ecuador
El Salvador
Guatemala
Guinea
India
Madagascar
Mauritius
Moldova
Mongolia
Philippines
San Marino
Thailand⁴²

Conclusion

The Intercountry Adoption Act of 2000 (P.L. 106-279, Oct. 6, 2000, 114 Stat. 825, “Act”) provides the domestic legislation to enable the United States to implement the provisions of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”). At the same time that Congress passed the implementing legislation, the Senate was reviewing the Convention. The Senate gave its consent and approval to the ratification of the Convention on September 20, 2000. Although the Senate approved the ratification of the Convention, the United States has not formally ratified the Convention. Three months after ratification, the Convention formally goes into effect. While the implementing legislation has been enacted, there are substantial administrative responsibilities which must be fulfilled before the United States has fully complied with the Convention requirements and is ready to ratify the Convention. The Department of State expects the Convention to enter into force for the United States in 2007.

⁴⁰ See note 39.

⁴¹ *Id.*

⁴² *Id.*