



# Citizenship Through International Adoption

Argentina • Australia • Brazil • Canada • China  
Costa Rica • France • Germany • India • Israel • Italy  
Japan • Mexico • Russian Federation • South Africa  
Sweden • Turkey • United Kingdom

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## Report for Congress

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# Comparative Summary

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## I. Introduction

This report surveys acquisition of citizenship through international adoption in 18 countries around the globe. It provides a general overview about the main legislative instruments governing international adoption and acquisition of citizenship in each of the surveyed countries. The report shows that, in most of the surveyed countries, citizenship laws are the main piece of legislation governing the acquisition of citizenship through intercountry adoption. However, adoption laws in Italy regulate the acquisition of citizenship of adopted foreign children.

The report sheds light on the required process and procedures of adoption in the surveyed countries. In Brazil, Canada, Israel, Australia, Sweden, the United Kingdom (UK), Turkey, China, France, and Russia, the adoption process entails the release of the health and criminal records of the adoptive parents as well as their income to determine their eligibility to adopt children.

Some of the surveyed countries obligate the adoptive parents to attain a certain age before they submit their adoption application. For instance, in Germany, Japan, and Israel, the adoptive parents must not be under the age of 25 years old. Canada and Sweden require a person not to be less than 18 years of age to adopt a child. While the prospective adopters in the UK must be over the age of 21, China requires the age of the adoptive parents not to be younger than 30 years old. In Turkey, adoptive parents must not be younger than 30 years old or be married for at least five years. In France, adoptive parents' must not be younger than 28 years of age.

In addition to the age requirement, countries impose other requirements. For example, Israel requires that the adopted child be of the same religion as the adoptive parents. The court will waive this requirement if it is satisfied that the adoption will not have an adverse effect on the child's welfare. Brazil, Israel, and Sweden mandate a social and psychological assessment report of the adoptive parents. Sweden also requires an adoptive parent to register the adoption with the Tax Authority. Turkey stipulates that married couples may adopt if they have been married for at least five years. Russia prohibits adoption by unmarried or same-sex couples.

## II. International Adoption

Australia, Israel, Italy, Brazil, Canada, Costa Rica, Mexico, Sweden, the UK, Germany, Turkey, South Africa, China, India, and France, which are members of the 1961 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), align their domestic laws and procedures with the convention. Other countries, such as Japan, Argentina, and Russia, which are not members of the Hague Adoption Convention, do not adhere to its provisions. Russia has signed the convention but not ratified it.

Surveyed countries that are members of the Hague Adoption Convention are required to designate an entity to be "the Central Adoption Authority" (Central Authority). The main function of the Central Authority is to supervise the intercountry adoption process. In contrast,

countries such as Argentina and Japan that are not members of the Hague Adoption Convention do not have a Central Authority and assign local courts to approve the international adoption process.

Table 1: Hague Convention Countries and Nonmember Countries

<b>Countries with Central Adoption Authority under Hague Convention:</b>	Australia, Brazil, Canada, China, Costa Rica, France, Germany, India, Israel, Italy, Mexico, Sweden, South Africa, Turkey, United Kingdom
<b>Nonmember countries that use local courts to manage adoption procedures:</b>	Argentina, Japan
<b>Nonmember countries that use a government body to manage adoption procedures:</b>	Russia

A variety of government agencies and bodies serve as the Central Authority in the Hague Adoption Convention’s member states. Those government agencies include the following: the Ministry of Labor, Social Affairs, and Social Services (Israel); the Ministry of Equal Opportunity and Family (Italy); the National Council of Adoptions (Costa Rica); the Family Law and Parental Support Authority (Sweden); the Department of Education (UK); the Directorate General of Child Services of the Ministry of Family, Labor, and Social Services (Turkey); the Department of Social Services (South Africa); the Ministry of Civil Affairs (China); the Ministry of Women & Child Development (India); and the Ministry of Foreign and European Affairs (France). Despite the fact that Russia has signed but not ratified the convention, it has assigned the Ministry of Education as the main governmental institution responsible for international adoptions.

In Australia, Brazil, Canada, Mexico, and Germany, the Central Authority could be on both the federal and state levels. For instance, the Australian Department of Social Services performs the duties of the Central Authority on the federal level. There is also a Central Authority for each Australian state and territory, referred to as the State and Territory Central Authorities.

Similarly, on the federal level, the Brazilian Central Federal Administrative Authority manages international adoptions with other countries. On the state level, the State Adoption Judiciary Commission in Brazil manages the adoption process in cooperation with the local district courts in the state. Concerning Canada, in addition to the Federal Central Authority, each Canadian province and territory has its own central adoption authority. In Mexico, two government bodies at the federal level comprise the Mexican Central Authority, and there is an adoption authority in each of the 31 states and Mexico City. In Germany, the Federal Office of Justice acts as the federal central adoption authority. On the state level, the central adoption authorities are the central adoption offices of the youth welfare offices in each of the 16 German states.

Some of the reports on the surveyed countries include information on conditions and restrictions related to international adoption. To illustrate, Costa Rica requires that international adoption take place only in the event that adopted children do not have adoptive Costa Rican citizens to sponsor them. Argentina only allows international adoptions by Argentine nationals of children born abroad. Foreign nationals may adopt Argentine children if they are domiciled in Argentina

for at least five years. The UK restricts the international adoption of children from Cambodia, Ethiopia, Guatemala, Haiti, Nepal, and Nigeria. Furthermore, according to a recent adoption law amendment that will enter into force in April 2021, Germany requires the adoptive parents to file a request for recognition of a foreign adoption decision with the specialized German family court, unless they have a conformity certification according to the Hague Adoption Convention.

### **III. Acquisition of Citizenship by Foreign Adopted Children**

#### **A. Foreign Adopted Children Raised in the Country of an Adoptive Parent**

In Italy, Israel, Costa Rica, Sweden, the UK, Germany, France, Russia and Argentina a foreign child, who was legally adopted by citizens residing in those countries in accordance with the intercountry adoption procedures, acquires the citizenship of the adoptive parents without the need to meet a residency requirement. In contrast, foreign adopted children raised in Brazil, Japan, and Mexico must reside in those countries for a specific period to apply for citizenship.

In Turkey, foreign adopted children acquire citizenship effective on the date of a Ministry of Internal Affairs decision to approve the citizenship application submitted by the adoptive parents. In South Africa, in order for the adopted child to get citizenship, the child's birth and adoption must be recorded by the Department of Home Affairs.

Canada has a different system for granting citizenship to foreign adopted children. The adoptive parents may sponsor the adopted child to immigrate to Canada as a permanent resident. Once the child's permanent residence status is granted, the Ministry of Citizenship and Immigration will grant citizenship to the foreign adopted child, provided the child is a minor (under 18 years of age).

In Australia, the process of acquisition of citizenship by a foreign adopted child depends on whether the child is adopted from a country that conducts "full" or "simple" Hague Adoption Convention adoptions. An adoption that is finalized in the child's country of birth is referred to as a "full" convention adoption, while one that is finalized in Australia is a "simple" convention adoption. If there is a full Hague Adoption Convention adoption, the parents may apply for citizenship for the child prior to returning to Australia under specific provisions in the citizenship law. If there is a simple convention adoption, the child can obtain an adoption visa, which is a permanent residence visa, and then automatically acquires citizenship following the issuance of an adoption order by an Australian court. If an adoption is finalized overseas but the child does not obtain citizenship prior to traveling to Australia, the adoptive parents can obtain an adoption visa and then apply for citizenship by conferral once in Australia.

Finally, it appears that there are no specific provisions to grant citizenship to foreign adopted children in China and India. China's Nationality Law allows close relatives of Chinese citizens to be naturalized as Chinese citizens upon approval of their applications, but naturalization in practice is rare. India grants citizenship to minor children of Indian citizens through registration in the Ministry of Home Affairs. However, it is unclear whether this pathway to citizenship applies to foreign adopted children.

## **B. Foreign Adopted Children Raised Abroad**

In Israel, a foreign adopted child raised abroad may be eligible to acquire an adoptive parent's Israeli citizenship with the adoptive parent's consent, if the nonresident Israeli adoptive parent has acquired Israeli citizenship by return, residence in Israel, naturalization, birth in Israel to an Israeli parent, or by adoption. Similar to Israel, Argentina allows adopted children raised abroad to acquire an adoptive parent's citizenship with the adoptive parent's permission.

Canadian law permits children who were born outside Canada and adopted to become citizens without having to immigrate to Canada. Likewise, in Sweden, a foreign adopted child raised abroad will automatically become a Swedish citizen if under the age of 12, whereas consent by the adopted child is required if the child is older than 12. In Costa Rica, the law allows foreign adopted children raised abroad to acquire citizenship. However, foreign adopted children raised abroad may not apply for citizenship if they are over 25 years of age. In Japan, children who are adopted and raised abroad by Japanese citizens must obtain an entry visa to Japan and meet residency requirement to acquire citizenship.

Additionally, in cases where adoptive parents wish to return to the UK, they must apply to the British Embassy for entry clearance for their foreign adopted child raised abroad. An adoptive parent's application for British citizenship for a foreign adopted child raised abroad will typically be refused. However, the Home Secretary has discretion when granting British citizenship.

Germany permits a foreign adopted child raised abroad to acquire citizenship through the adoptive German parents if the child is younger than 18 years of age at the time the application for adoption is submitted. If the application is submitted after the child has turned 18, citizenship can only be acquired by naturalization. The same rule applies to foreign adopted children raised in the country of the adopted parents. Germany does not differentiate based on where the children are raised. Germany imposes additional requirements for the child to acquire citizenship. Those requirements include that the intercountry adoption be valid under German law. Furthermore, the legal effects of the intercountry adoption must be equivalent to the ones for the adoption of minors under German law.

It appears that countries such as Israel, Italy, Costa Rica, Canada, Argentina, Sweden, Germany, Argentina, Turkey, Russia, South Africa, and France do not require a foreign adopted child of a diplomat or military personnel who serve abroad to reside in those countries to acquire citizenship. In contrast, countries such as Japan and Mexico require foreign adopted children by diplomats or military personnel serving abroad to meet a residency requirement to acquire citizenship. While there are provisions in the British Nationality Act that provide UK citizenship for the children of military personnel born to these individuals while serving abroad, there are no specific provisions that provide British citizenship to the adopted children of these individuals.

Table 2: Residency Requirements for Citizenship of Foreign Adopted Children of Diplomats and Military Personnel Raised Abroad

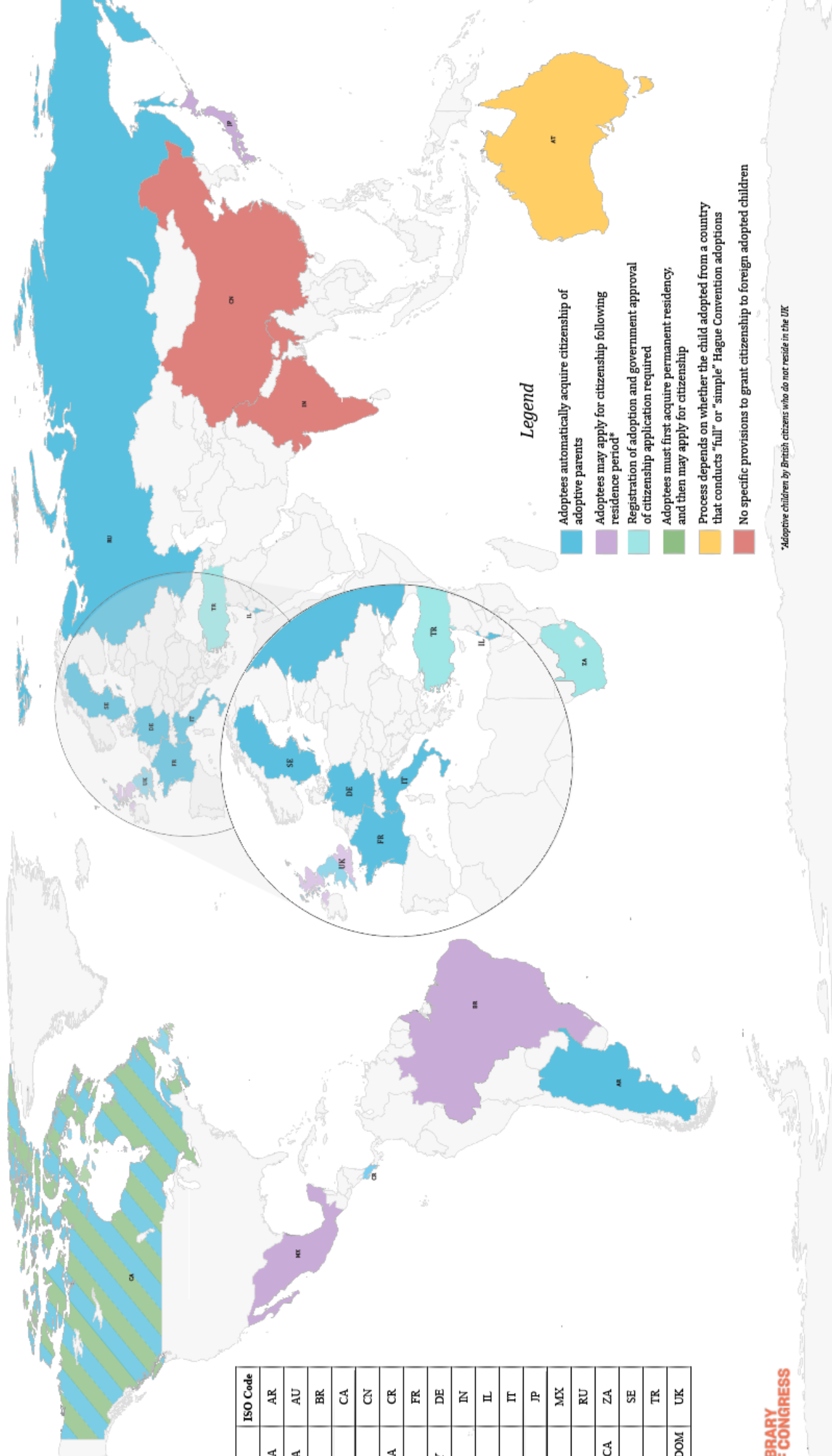
Countries without a residency requirement for a foreign adopted child of a diplomat or military personnel to acquire citizenship:	Argentina, Canada, Costa Rica, France, Germany, Israel, Italy, Russia, South Africa, Sweden, Turkey
Countries with a residency requirement for a foreign adopted child of a diplomat or military personnel to acquire citizenship:	Japan, Mexico
Countries where a foreign adopted child may apply for citizenship after obtaining a residence visa:	Australia

#### IV. Mandatory Documentation and Procedures to Acquire Citizenship

All surveyed countries require adoptive parents to present a number of documents to the immigration authorities for the adoptive child to acquire citizenship. Those documents include the current address of the adoptive parents and the adopted child, proof of the citizenship of the adoptive parents, adoption papers to prove the legality of the adoption, photocopies of the parents' passports, and the birth certificate of the adopted child. Additionally, countries that are members of the Hague Adoption Convention require the submission of a convention adoption compliance certificate.

Some of the surveyed countries require additional documents to be submitted with the citizenship application. For example, Italy obligates the adoptive parents to submit a marriage certificate as proof of the marital relationship. Japan asks the adoptive parents to submit certificates of employment and salary as well as tax documents. Canada requires a form for change of sex or gender identifier. Argentina requests the death certificate of an adoptive parent if one of the adoptive parents is deceased. The UK requires that the adoptive parents furnish a contemporary report from the equivalent of the Social Services Department in the adopted child's country with the child's parentage, history, and the degree of contact with the original parent(s). The UK also requires a background check and criminal record check on children 10 years of age and older when applying for UK citizenship. Russia mandates that the adoptive parents show proof of consent by an adopted child who is between 14 and 18 years of age to apply for Russian citizenship.

# Citizenship Following International Adoption





# Argentina

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**SUMMARY** Argentina follows primarily the principle of *jus soli* (a child's citizenship is determined by place of birth). Argentina also embraces the principle of *jus sanguinis* (a child's citizenship is determined by the citizenship of the parents) by granting Argentine nationality to a child born abroad to an Argentine national, who opts for Argentine nationality. All children, natural or adopted, have the same rights. Argentina is not a party to any of the treaties on international adoption. It does not allow the adoption of Argentine minors by foreign nationals unless they have resided in Argentina for five years. However, it allows the adoption of foreign-born children by Argentine nationals. In this case, the foreign-born children are considered Argentine nationals if they exercise the option to acquire Argentine nationality through their adopting parents.

## I. Introduction

Under the Argentine Constitution,<sup>1</sup> anyone born in Argentina is an Argentine national, regardless of the nationality of the parents.<sup>2</sup> Argentina follows primarily the principle of *jus soli* (a child's citizenship is determined by place of birth).<sup>3</sup> Argentina also embraces the principle of *jus sanguinis* (a child's citizenship is determined by the citizenship of the parents) by granting Argentine nationality to a child born abroad to an Argentine national, who opts for Argentine nationality.<sup>4</sup> The Supreme Court ruled in a 1954 case that an applicant who entered the country as a minor cannot be responsible for noncompliance with immigration norms and, therefore, cannot be denied Argentine nationality on the basis of inability to prove entrance into the country through legal means.<sup>5</sup>

Argentina only allows international adoptions by Argentine nationals of children born abroad.<sup>6</sup> Foreign nationals may only adopt Argentine children if they are domiciled in Argentina for at least five years.<sup>7</sup>

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<sup>1</sup> Constitución Nacional (CN), Boletín Oficial (BO) Aug. 22, 1994, art. 20, <https://perma.cc/H9NT-Q3GF>.

<sup>2</sup> Ley 346 Ley de Ciudadanía Oct. 1, 1869, as amended by Decreto 70/2017 BO Jan. 30, 2017, art. 1.a, <https://perma.cc/HW2U-HR27>.

<sup>3</sup> CN art. 75.12

<sup>4</sup> L. 346 art. 1.2.

<sup>5</sup> Fallos Corte Suprema de Justicia de la Nación (CSJN) 230:244, 1954 Barrios, Manuel s/ Naturalización y Ciudadanía, in Mario Oyarzabal, *La Nacionalidad Argentina* 23–24 (Buenos Aires, 2003).

<sup>6</sup> Luciana Scotti, *La Adopción Internacional a la Luz de las Normas y de la Jurisprudencia Argentinas*, in *Suplemento de Derecho de Derecho Internacional Privado y de la Integración* (Nov. 23, 2012), <https://perma.cc/E5HX-38YP>.

<sup>7</sup> Id.

Natural and adopted children have the same rights under the law, and any discrimination based on the filiation of the child is prohibited.<sup>8</sup> Moreover, the natural or adopted status of the child cannot be entered into the birth certificate issued by the Registro Nacional de las Personas (RENAPER) (Civil Registry).

## II. International Adoption

Argentina is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>9</sup> It is also not a party to the Inter-American Convention on Conflict of Laws in Matters of Adoption of Minors.<sup>10</sup>

In addition, Argentina formulated a reservation to article 21 of the International Convention on the Rights of the Child allowing international adoptions.<sup>11</sup> The reservation states as follows:

A reservation is entered to subparagraphs (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child, declaring that those subparagraphs shall not apply in areas within its jurisdiction because, in its view, before they can be applied a strict mechanism must exist for the legal protection of children in matters of inter-country adoption, in order to prevent trafficking in and the sale of children.<sup>12</sup>

The reason for Argentina's nonparticipation in these international treaties is that allowing international adoptions of Argentine children by foreign nonresident adopters would pose the risk of trafficking of minors.<sup>13</sup> In addition, Argentina considers it materially impossible to develop adequate post-judicial monitoring of international adoptions through specialized bodies, which would guarantee respect for the language and cultural identity of the adopted minor.<sup>14</sup>

The prohibition only applies to the adoption of Argentine children by foreign adopting parents who have not lived in Argentina for at least five years.<sup>15</sup> Argentine nationals are allowed to adopt a child born abroad. In this case, the adoption decree issued abroad will have to meet the requirements of the *exequatur*, which is the recognition of a foreign judicial decision by an Argentine court.<sup>16</sup>

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<sup>8</sup> Código Civil y Comercial de la Nación (CCCN), B.O. Oct. 8, 2014, art. 558, <https://perma.cc/ER5P-HLAL>.

<sup>9</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/8ATW-ZYBE>.

<sup>10</sup> Inter-American Convention on Conflict of Laws in Matters of Adoption of Minors, May 24, 1984, <https://perma.cc/3793-7UR5>.

<sup>11</sup> U.N. Convention on the Rights of the Child, Nov. 20, 1989, art. 21, <https://perma.cc/L5W6-L8ZL>.

<sup>12</sup> Id. Reservations and Declarations, <https://perma.cc/9WKK-C4UT>.

<sup>13</sup> María Victoria Cavagnaro, *La Adopción Internacional a la Luz de los Instrumentos y Mecanismos Internacionales de Protección de los Derechos del Niño*, SAIJ (July 2008), <https://perma.cc/D74V-3J6W>.

<sup>14</sup> Id.

<sup>15</sup> CCCN, art. 660.a.

<sup>16</sup> Código Procesal Civil y Comercial de la Nación, B.O. Nov. 7, 1967, art. 517, <https://perma.cc/G78G-HZUZ>.

### III. Acquisition of Citizenship by Foreign Adopted Children

According to Law 346 on Citizenship, children of Argentine nationals born abroad may opt for Argentine nationality before RENAPER if the child is in Argentina or before the Argentine consular office abroad if the child and parent are abroad.<sup>17</sup>

In the case of a child of a native Argentine father or mother, who is under 18 years old and is in a foreign country, the option for Argentine nationality must be requested by those who exercise parental authority, before the corresponding Argentine consulate.<sup>18</sup> In this case, the consul will register the minor in the Record of Persons of the Consulate, after the verification of the filiation and the Argentine native status of the father, mother, or both, as appropriate.<sup>19</sup>

Those older than 18 years old who are abroad may also exercise their right of option before the corresponding Argentine consul, after accreditation of the filiation and the status of the father, mother, or both as native Argentines, as appropriate.<sup>20</sup>

The Argentine consulate will report the registration of the nationality option within 30 days after its recording in the official records of persons in the consulate.<sup>21</sup>

The nationality option can also be carried out in Argentina at the offices of RENAPER.<sup>22</sup>

### IV. Mandatory Documentation and Procedures to Acquire Citizenship

Children of Argentine nationals born abroad who opt for Argentine nationality must submit the petition before RENAPER or an Argentine consulate abroad. The application has to meet the following requirements: accreditation of the filiation, and accreditation of the native Argentine nationality of the father or mother or both parents.<sup>23</sup>

In the case of minors younger than 18 years old, the desire for Argentine nationality must be expressed by the parents, guardian or legal representative, who must be present during the application process.<sup>24</sup>

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<sup>17</sup> Ley 346, art. 1.2; Decreto Reglamentario 3213/1984, Reglamentación de la Ley de Ciudadanía, B.O. Sept. 28, 1984, art. 2, <https://perma.cc/J7DG-UC66>.

<sup>18</sup> Decreto Reglamentario 3213/1984, art. 2, para. 1.

<sup>19</sup> Id.

<sup>20</sup> Id. art. 2, para 2.

<sup>21</sup> Id. art. 2, para 3.

<sup>22</sup> Id. art. 2, para 4.

<sup>23</sup> Optar por la Nacionalidad Argentina para Hijos de Argentinos Nacidos en el Exterior, Registro Nacional de las Personas, Ministerio del Interior, <https://perma.cc/GR6C-HDP2>.

<sup>24</sup> Id.

## Citizenship Through International Adoption: Argentina

The documents required are as follows:

- Original authenticated birth certificate, apostilled in the country of origin, translated by a national public translator if it is not in Spanish;
- Original birth certificate and Identity document of the native Argentine father or mother. If both are Argentine, only one of them will be necessary;
- Identification document of the non-Argentine father or mother.<sup>25</sup>

In case the applicant is a minor, the following must also be submitted with the application:

- If it is present only one of the parents, the other parent must provide his or her consent, unless parental authority has been assigned to one of them;
- If parental authority is shared by both parents and one of them is deceased, present original death certificate;
- If one of the parents has custody through a court order of divorce, personal separation or judicial agreement exercising exclusive parental authority, a certified copy of the supporting documentation;
- If the minor is represented by a legal guardian, he or she must present specific judicial authorization to exercise the option of nationality; and
- In all cases, the identity documents of the father, mother or legal representative with parental authority.<sup>26</sup>

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<sup>25</sup> Id.

<sup>26</sup> Id.

# Australia

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**SUMMARY** In Australia, intercountry adoption is governed by laws at both the federal and state/territory level, with the roles and responsibilities established through an agreement between the different governments. The laws implement procedures that comply with the Hague Convention on Intercountry Adoption, which came into force in Australia in December 1998. The federal-level central authority is responsible for national policy leadership and relationships with overseas countries, while state and territory central authorities manage and assess adoption applications and other matters related to supporting applicants and implementing adoption laws. Currently, Australia has arrangements with 13 partner countries, including some that are subject to bilateral arrangements that comply with the Hague Convention, from which people who reside in Australia can apply to adopt children.

Immigration and citizenship matters are governed by federal laws. The processes and provisions involved depend on whether a child is adopted from a country that conducts “full” Hague Convention adoptions, with the adoption finalized in that country and an adoption compliance certificate issued, or “simple” Hague Convention adoptions, which are finalized once the child is in Australia. If there is a full Hague Convention adoption, the parents can apply for citizenship for the child prior to returning to Australia under specific provisions on intercountry adoption in the Australian Citizenship Act 2007 (Cth). If there is a simple Hague Convention adoption, the child can obtain an adoption visa, which is a permanent residence visa, and then automatically acquire citizenship following the issuance of an adoption order by an Australian court. If an adoption is finalized overseas but the child does not obtain citizenship prior to traveling to Australia, they can also obtain an adoption visa and then apply for citizenship by conferral once in Australia.

A child adopted overseas under the domestic laws of another country with no involvement from Australian authorities, referred to as an expatriate adoption, can obtain an adoption visa and then apply for citizenship by conferral once in Australia. Citizenship by descent does not appear to be available to children adopted overseas. The adoption visa is only available to children aged under 18 years.

## I. Introduction

Under the Australian Constitution, the Commonwealth (i.e., federal) Parliament has jurisdiction to make laws related to “naturalization and aliens.”<sup>1</sup> The current citizenship legislation is the Australian Citizenship Act 2007 (Cth).<sup>2</sup> The Act provides for “a range of ways” of becoming an

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<sup>1</sup> Australian Constitution s 51(xix), <https://perma.cc/X7VD-FK56>.

<sup>2</sup> Australian Citizenship Act 2007 (Cth), <https://perma.cc/3HBF-RCHK>.

## Citizenship Through International Adoption: Australia

Australian citizen, the most common being automatic citizenship through birth in Australia to one or both parents who are Australian citizens or permanent residents.<sup>3</sup> Automatic acquisition of citizenship under the Act also covers:

- citizenship by being born in Australia and by being ordinarily resident in Australia for the next 10 years;<sup>4</sup>
- citizenship by adoption;<sup>5</sup>
- citizenship for abandoned children;<sup>6</sup> and
- citizenship by incorporation of territory.<sup>7</sup>

Citizenship can also be acquired “by application.” This includes citizenship by descent, which would generally be applied for by a person born outside Australia where his or her parent was an Australian citizen at the time of the birth.<sup>8</sup> The Act also contains specific provisions on citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement.<sup>9</sup> Other types of citizenship by application are “citizenship by conferral,”<sup>10</sup> i.e., naturalization, and resuming citizenship, applicable where a person previously ceased to be an Australian citizen.<sup>11</sup>

The provisions related to citizenship by adoption, conferral, and intercountry adoption are all relevant to this report. Under the Act, citizenship by descent does not appear to be available to adopted children.

This report also provides information on provisions in other federal legislation relevant to international or overseas adoptions and the acquisition of Australian citizenship, including two regulations made under the Family Law Act 1975 (Cth): the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth)<sup>12</sup> and Family Law (Bilateral Arrangements–Intercountry Adoption) Regulations 1998 (Cth);<sup>13</sup> as well as the Immigration (Guardianship of

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<sup>3</sup> Id. ss 2A & 12(1)(a).

<sup>4</sup> Id. s 12(1)(b).

<sup>5</sup> Id. s 13.

<sup>6</sup> Id. s 14.

<sup>7</sup> Id. s 15.

<sup>8</sup> Id. pt 2 div 2 subdiv A.

<sup>9</sup> Id. pt 2 div 2 subdiv AA.

<sup>10</sup> Id. pt 2 div 2 subdiv B.

<sup>11</sup> Id. pt 2 div 2 subdiv C.

<sup>12</sup> Family Law (Hague Convention on Intercountry Adoptions) Regulations 1998 (Cth), <https://perma.cc/UUK4-PGR6>.

<sup>13</sup> Family Law (Bilateral Arrangements–Intercountry Adoption) Regulations 1998 (Cth), <https://perma.cc/E3G8-QEQK>.

Children) Act 1946 (Cth)<sup>14</sup> and the Migration Regulations 1994 (Cth) (made under the Migration Act 1958 (Cth)). In addition to these laws, the roles, rules, and procedures established under state and territory adoption legislation apply with respect to intercountry adoptions of children by persons who reside in the relevant state or territory.<sup>15</sup>

## II. International Adoption

Australia is a party to the Hague Convention on Intercountry Adoption and “only facilitates intercountry adoptions if the principles and standards of the Hague Convention are met in practice, regardless of whether the country has signed the Convention.”<sup>16</sup> The Hague Convention “came into force in Australia in December 1998 and is implemented by the Family Law Act 1975 and its regulations.”<sup>17</sup> The Convention itself is contained in a schedule to the Family Law (Hague Convention on Intercountry Adoptions) Regulations 1998 (Cth).<sup>18</sup>

As noted above, each state and territory has adoption laws that include provisions on intercountry adoption. An agreement between the states and territory governments and the Commonwealth government, the *Commonwealth-State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program*, requires that “Commonwealth and State legislation and administrative procedures relating to intercountry adoption comply with the obligations of the Hague Convention.”<sup>19</sup> The Australian Department of Social Services (DSS) states that these laws “are similar, but not identical.”<sup>20</sup> General information regarding the procedures under these laws is provided below.

### A. Relevant Agencies and Roles

DSS performs the duties of the Australian Central Authority under the Hague Convention and is responsible for

- enabling the performance of Australia’s responsibilities under the Hague Convention
- building strong relationships with overseas countries
- providing national policy leadership on intercountry adoption practices.<sup>21</sup>

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<sup>14</sup> Immigration (Guardianship of Children) Act 1946 (Cth) (IGOC Act), <https://perma.cc/6MRK-9RAP>.

<sup>15</sup> For a full list of relevant Commonwealth, state, and territory intercountry adoption legislation, including links, see *Intercountry Adoption Legislation*, Australian Department of Social Services (DSS), <https://perma.cc/BU42-YEWK>.

<sup>16</sup> *Intercountry Adoption*, DSS, <https://perma.cc/CB33-8JDS>.

<sup>17</sup> *Id.*

<sup>18</sup> Family Law (Hague Convention on Intercountry Adoptions) Regulations 1998 (Cth) sch 1.

<sup>19</sup> Commonwealth-State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program pt 2 ¶ 2, <https://perma.cc/7VMD-Q6QH>.

<sup>20</sup> *Intercountry Adoption*, *supra* note 16.

<sup>21</sup> *The Department of Social Services is the Australian Central Authority for Intercountry Adoption*, DSS, <https://perma.cc/8VB6-HT5B>. See also Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth) regs 5 & 6.

There is “also a central authority for each state and territory,” referred to as State and Territory Central Authorities (STCA), with responsibility for

- managing and assessing adoption applications
- preparing families for, and supporting them through, the intercountry adoption process
- providing advice and assistance to families regarding specific overseas country requirements
- monitoring progress of individual applications with the relevant agency in the overseas country
- providing support and supervision of families after the placement of adopted children.<sup>22</sup>

The respective roles and responsibilities of the central authorities at the two levels are set out in detail in the *Commonwealth-State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program*.<sup>23</sup> The Australian government, through DSS, has established a centralized referral service and website, Intercountry Adoption Australia (IAA), which provides information on the adoption process.<sup>24</sup>

## B. Partner Countries

Currently, Australians can apply to their STCA to adopt from 13 partner countries with which Australia has intercountry adoption arrangements: Bulgaria, Chile, China, Colombia, Hong Kong, India, Latvia, Poland, South Africa, South Korea, Sri Lanka, Taiwan, and Thailand.<sup>25</sup> A further arrangement with the Philippines is currently on hold.<sup>26</sup> IAA notes that “each partner country has its own specific adoption requirements,” and details are listed on the website, including who is eligible to adopt; characteristics of children available for adoption; waiting times, costs, and finalization and post-adoption processes; and immigration and citizenship arrangements for an adopted child.<sup>27</sup>

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<sup>22</sup> *The Department of Social Services is the Australian Central Authority for Intercountry Adoption*, supra note 21. See also *About*, Intercountry Adoption Australia (IAA), <https://perma.cc/7RKA-X2TD>; *State and Territory Central Authorities*, IAA, <https://perma.cc/LV8Z-MW7H>; Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth) regs 8 & 9 (designation of state/territory central authorities).

<sup>23</sup> *Commonwealth-State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program* pt 3.

<sup>24</sup> *About*, supra note 22.

<sup>25</sup> *Partner Countries*, IAA, <https://perma.cc/C3BN-3DLZ>; *Country Programs*, DSS, <https://perma.cc/GP5Q-5JP5>.

<sup>26</sup> *Philippines*, IAA, <https://perma.cc/WQ3P-CGA8>.

<sup>27</sup> *Partner Countries*, supra note 25.



### C. Process

IAA summarizes the intercountry adoption process as including the following steps:<sup>28</sup>

- Initial inquiry: IAA can answer general questions, then, if a person decides they want to adopt from overseas, they need to contact their STCA.
- Attend seminars run by the relevant STCA and make a formal application.
- Await adoption assessment and decision by the STCA, which may involve undergoing health, police, and referee checks, and interviews with an adoption assessor. Prospective adoptive parents must meet the eligibility criteria of the state or territory in which they live, and the eligibility criteria of the partner country.<sup>29</sup>
- If approved, the application is sent to the country chosen by the applicant for approval by the central authority. If approved, the application joins the overseas country's waiting list until a placement is made.
- A placement proposal issued by the overseas authority, which matches the applicant with a child or list of children, is sent to the STCA. The STCA contacts the applicant about accepting the proposal.
- The applicant needs to begin the immigration application process for the child. The IAA explains that

[t]he ability of an adopted child to enter Australia depends on immigration requirements being met. The process varies depending on the country. You usually need to begin the immigration application process before you bring your child home.

The Australian Department of Home Affairs assess and decide applications for visas and citizenship. They will be able to tell you about the specific visa and citizenship requirements that apply to your child's circumstances.<sup>30</sup>

- Once a placement has been accepted and visas organized, the person needs to travel to the child's birth country to complete the overseas adoption.
- The person would then bring the child back to Australia and adhere to any reporting requirements of the child's birth country.
- In terms of the legal process, IAA states as follows:

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<sup>28</sup> *Adoption Process*, IAA, <https://perma.cc/WT4A-48LM>.

<sup>29</sup> *Partner Countries*, supra note 25. See *Adopting a Child from Overseas*, Australian Capital Territory Community Services, <https://perma.cc/M9DZ-32RL>; *Adopting from Overseas*, New South Wales Communities & Justice, <https://perma.cc/AT8Z-6A7E>; *Adopting a Child from Overseas*, Queensland Government, <https://perma.cc/7JC3-MEUX>; *Adopting An Overseas Child*, South Australia Department for Child Protection, <https://perma.cc/LT3P-6PDA>; *Adopting a Child from Overseas*, Department of Communities Tasmania, <https://perma.cc/34QW-CC8R>; *Adopt a Child from Overseas*, Victoria Department of Justice and Community, <https://perma.cc/USD3-DLVQ>; *Intercountry Adoption*, Western Australia Department of Communities, Child Protection and Family Support, <https://perma.cc/EJ7U-MNQ5>.

<sup>30</sup> *Adoption Process*, supra note 28.

## Citizenship Through International Adoption: Australia

When your adoption is finalised you are legally the parent/s of your child. How your adoption is finalised depends on the birth country of your child and the processes followed by your STCA.

For some adoptions, the country of birth makes the final decision or adoption order. In this case, the adoption order may be recognised under Australian law.

For other intercountry adoptions, the adoption is not finalised in the country of birth. Instead, the adoption needs to be finalised in an Australian court after your child arrives in Australia.

You will also need to complete all post-adoption reporting requirements for both the birth country and your STCA.<sup>31</sup>

An adoption that is finalized in the child's country of birth may be referred to as a "full" Hague Convention or bilateral arrangement adoption, while one that is finalized in Australia is a "simple" Hague Convention or bilateral arrangement adoption.<sup>32</sup> In full adoptions, the central authority in the relevant foreign country issues an "adoption compliance certificate," in accordance with article 23 of the Convention.

### D. Federal Laws

The Family Law Act 1975 (Cth) provides that regulations made under the Act may "make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit" under the Hague Convention on Intercountry Adoption,<sup>33</sup> and to give effect to any bilateral arrangement on the adoption of children.<sup>34</sup> The Act also provides that the regulations may confer jurisdiction on federal, territory, or state courts.<sup>35</sup>

The Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth) provides for the designation of the Commonwealth and state central authorities, and sets out the functions of the Commonwealth central authority.<sup>36</sup> It also contains provisions on the adoption of an Australian child to a Convention country, and the adoption of a child from a Convention country to Australia.<sup>37</sup> The latter provisions include:

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<sup>31</sup> Id.

<sup>32</sup> See *Become an Australian Citizen (By Adoption): Child Adopted Outside Australia by an Australia Citizen – Eligibility*, Department of Home Affairs, <https://perma.cc/Y2G8-NAJZ>.

<sup>33</sup> Family Law Act 1975 (Cth) (vol 2) s 111C(1), <https://perma.cc/88SZ-A6S6>.

<sup>34</sup> Id. s 111C(3).

<sup>35</sup> Id. s 111C(5).

<sup>36</sup> Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth) pt 2.

<sup>37</sup> Id. pt 4.

## Citizenship Through International Adoption: Australia

- procedures and forms for adoptions of children from Convention countries where the adoption is to be granted in Australia;<sup>38</sup>
- the recognition in Australia of adoptions granted in the foreign Convention country where an adoption compliance certificate issued in that country is in force for the adoption;<sup>39</sup>
- the recognition of adoptions from one Convention country to another;<sup>40</sup>
- the ability to apply for an order in Australia to terminate the legal relationship between the child and the child's birth parents, where the law of the Convention country does not provide for such termination;<sup>41</sup> and
- the recognition of decisions to convert an adoption under the Convention.<sup>42</sup>

The Regulations also provide for the jurisdiction of the Family Court of Australia (a federal court), appellate courts, and state and territory courts.<sup>43</sup> In terms of the application of the above provisions, the Regulations provide that they do not apply to a state or territory "in which there is in force a law (an intercountry adoption law) having the same effect as, or comparable effect to, that which the provision would, except for this regulation, have for the" state or territory.<sup>44</sup>

The Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 (Cth) "applies to an adoption of a child in a prescribed overseas jurisdiction" by a person habitually resident in an Australian state or territory, where the competent authority of that state or territory has agreed the adoption may proceed, and where an adoption compliance certificate was issued by the competent authority in the overseas jurisdiction.<sup>45</sup> It recognizes such adoptions as effective in Australia.<sup>46</sup> The prescribed countries under the Regulations are Ethiopia, South Korea, and Taiwan.<sup>47</sup>

Where an adoption is not finalized in the country of origin, or is not recognized under Australian law, the Australian Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs assumes guardianship of the child (aged under 18 years) under the Immigration (Guardianship of Children) Act 1946 (Cth) (IGOC Act).<sup>48</sup> Such guardianship remains in effect until a final adoption order is issued by an Australian court. The Minister can delegate some of

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<sup>38</sup> Id. reg 15.

<sup>39</sup> Id. reg 16 & 22.

<sup>40</sup> Id. reg 17.

<sup>41</sup> Id. reg 20.

<sup>42</sup> Id. reg 21.

<sup>43</sup> Id. pt 5.

<sup>44</sup> Id. reg 34.

<sup>45</sup> Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 (Cth) reg 5(1).

<sup>46</sup> Id. regs 5(2) & 6.

<sup>47</sup> Id. sch 1.

<sup>48</sup> IGOC Act ss 4AA & 6.

their functions under the Act to STCAs.<sup>49</sup> IAA explains that the Minister, through an STCA as delegate, “can appoint an appropriate and willing person to be the custodian of an IGOC minor for day-to-day care arrangements. If the IGOC minor is a child who has entered Australia following an intercountry adoption, then the custodians will usually be the adoptive parents.”<sup>50</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

#### A. Foreign Adopted Children Raised in the Country of Adoptive Parent

There are different avenues for obtaining citizenship for a child adopted under the intercountry adoption arrangements depending on the processes for the country concerned and whether these result in a “full” or “simple” Hague Convention or bilateral arrangement adoption. The IAA website does not provide immigration and citizenship information with respect to children adopted in South Africa, stating that to date there have been no matches of Australian adoptive parents with children in South Africa.<sup>51</sup> Similarly, the information on the Bulgaria program notes that “[a]s this program evolves, more information will become available regarding finalisation, post adoption, immigration and citizenship.”<sup>52</sup>

##### 1. Applying for Citizenship Prior to Traveling to Australia

A child adopted from one of the several partner countries that conduct full Hague Convention or bilateral arrangement adoptions, where an adoption compliance certificate (or documents that together equal such a certificate) is issued and the adoption is recognized by Australian law, may be granted Australian citizenship before traveling to Australia.<sup>53</sup> In such cases, the intercountry adoption provisions in the Australian Citizenship Act apply to applications for citizenship for an adopted child, and a child granted citizenship would not need to obtain a visa to travel to Australia.<sup>54</sup> The IAA information regarding certain partner countries states that the application for citizenship in these circumstances “usually takes 10 days to process.”<sup>55</sup>

The Australian Citizenship Act provides the following summary of the relevant subpart on intercountry adoptions:

You may be eligible to become an Australian citizen under this Subdivision if you are adopted outside Australia by at least one Australian citizen in accordance with:

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<sup>49</sup> Id. s 5.

<sup>50</sup> *Immigration, Citizenship and Passports*, IAA, <https://perma.cc/QT2X-YB2Y>. See also IGOC Act s 7.

<sup>51</sup> *South Africa*, IAA, <https://perma.cc/T5EJ-32GA>.

<sup>52</sup> *Bulgaria*, IAA, <https://perma.cc/NP2R-TKVJ>.

<sup>53</sup> *Immigration, Citizenship and Passports*, supra note 50.

<sup>54</sup> *Become an Australian Citizen (by Adoption): Child Adopted Outside Australia by an Australia Citizen – Eligibility*, supra note 32.

<sup>55</sup> See *South Korea*, IAA, <https://perma.cc/QC29-JZCS>; *Sri Lanka*, IAA, <https://perma.cc/6PPD-H8JN>; *Taiwan*, IAA, <https://perma.cc/6VMU-XYCT>.

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- (a) the Hague Convention on Intercountry Adoption; or
- (b) a bilateral arrangement.

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 19D(4); or
- national security: see subsections 19D(5) to (7A); or
- cessation of citizenship: see subsection 19D(8).

You will be registered if the Minister approves you becoming an Australian citizen.<sup>56</sup>

Section 19C lists the eligibility criteria for persons applying for citizenship under the subpart:

- (2) A person (the applicant) is eligible to become an Australian citizen if:
  - (a) the applicant is adopted in a Convention country or a prescribed overseas jurisdiction by:
    - (i) a person (the adopter) who is an Australian citizen at time of the adoption; or
    - (ii) 2 persons jointly, only one of whom (the adopter) is an Australian citizen at the time of the adoption; or
    - (iii) 2 persons jointly, both of whom (the adopters) are Australian citizens at the time of the adoption; and
  - (b) an adoption compliance certificate issued in that country is in force for the adoption; and
  - (c) under the Intercountry Adoption regulations or the Bilateral Arrangements regulations, as applicable, the adoption is recognised and effective for the laws of the Commonwealth and each State and Territory; and
  - (d) the legal relationship between the applicant and the individuals who were, immediately before the adoption, the applicant's parents has been terminated; and
  - (e) if subparagraph (a)(i) or (ii) applies and the adopter is an Australian citizen under Subdivision A [on citizenship by descent] or this Subdivision at the time of the adoption—the adopter satisfies subsection (3); and
  - (f) if subparagraph (a)(iii) applies and each adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—either or both of the adopters satisfy subsection (3); and
  - (g) if the applicant is aged 18 or over at the time the applicant made the application—the Minister is satisfied that the applicant is of good character at the time of the Minister's decision on the application.
- (3) An adopter satisfies this subsection if the adopter has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the applicant made the application.

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<sup>56</sup> Australian Citizenship Act 2007 (Cth) s 19B.

For example, “[a]ll adoptions completed in Chile are recognised when coming back to Australia.”<sup>57</sup> Once a person has an adoption compliance certificate issued by the Chilean central authority, the child “is eligible to apply for Australian citizenship,” and subsequently an Australian passport, which can be used for traveling back to Australia (the child would leave Chile on their Chilean passport, and enter Australia on their Australian passport).<sup>58</sup> It appears that this is also possible for children whose adoptions are finalized in China,<sup>59</sup> Colombia,<sup>60</sup> India,<sup>61</sup> Latvia (adoptions being finalized following a six-month bonding period, which can be completed in Australia or Latvia),<sup>62</sup> Poland,<sup>63</sup> South Korea,<sup>64</sup> Sri Lanka,<sup>65</sup> and Taiwan.<sup>66</sup>

## 2. *Citizenship by Conferral after Child Enters Australia*

Where citizenship is not obtained by a child adopted in one of the “full” adoption countries before traveling to Australia, the child may instead obtain an adoption visa (subclass 102 visa), which is a permanent residence visa, in order to enter Australia. In such cases, after entering Australia, the adoptive parents would need to apply for “citizenship by conferral” “as soon as possible.”<sup>67</sup> Further information on the subclass 102 visa is provided below under subheading 4.

The Australian Citizenship Act sets out separate eligibility criteria for citizenship by conferral for permanent residents aged 18 years or over and those aged under 18 years. In particular, a person “is eligible to become an Australian citizen if the Minister is satisfied that the person”:

- (a) is aged under 18 at the time the person made the application; and
- (b) is a permanent resident:
  - (i) at the time the person made the application; and
  - (ii) at the time of the Minister’s decision on the application.<sup>68</sup>

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<sup>57</sup> *Chile*, IAA, <https://perma.cc/68BJ-E8R2>.

<sup>58</sup> *Id.*

<sup>59</sup> *China*, IAA, <https://perma.cc/C5GS-7AG6> (stating that “all adoptions completed in China are recognised when coming back to Australia”).

<sup>60</sup> *Colombia*, IAA, <https://perma.cc/XA2U-KLFJ>.

<sup>61</sup> *India*, IAA, <https://perma.cc/474P-ZYG8>.

<sup>62</sup> *Latvia*, IAA, <https://perma.cc/UFP8-9XFQ>.

<sup>63</sup> *Poland*, IAA, <https://perma.cc/U5Z7-YF9Z>.

<sup>64</sup> *South Korea*, *supra* note 55.

<sup>65</sup> *Sri Lanka*, *supra* note 55.

<sup>66</sup> *Taiwan*, *supra* note 55.

<sup>67</sup> See *Chile*, *supra* note 57.

<sup>68</sup> Australian Citizenship Act 2007 (Cth) s 21(5).

Children aged under 16 years do not need to satisfy the residence requirement<sup>69</sup> that applies to most other applicants for citizenship by conferral, or to meet other requirements related to, for example, English language competency, character, and the likelihood of continuing to reside in Australia.<sup>70</sup>

### 3. *Automatic Acquisition of Citizenship Where Adoption Finalized in Australia*

Where a child has been adopted in a country that offers “simple” Hague Convention or bilateral arrangements adoptions, including Hong Kong,<sup>71</sup> Thailand,<sup>72</sup> and the Philippines<sup>73</sup> (should the program again become operational), the child needs to travel to Australia on a subclass 102 visa. Australian citizenship is then “automatically acquired when the adoption is finalised under Australian law, providing the child is present in Australia as a permanent resident and at least one adoptive parent is an Australian citizen.”<sup>74</sup> That is, the provision in the Australian Citizenship Act related to automatic acquisition of citizenship by adoption applies. The relevant section in the Act applies to persons who are

- (a) adopted under a law in force in a State or Territory; and
- (b) adopted by a person who is an Australian citizen at the time of the adoption or by 2 persons jointly at least one of whom is an Australian citizen at that time; and
- (c) present in Australia as a permanent resident at that time.<sup>75</sup>

### 4. *Subclass 102 Visa*

The subclass 102 visa “lets children adopted outside Australia live in Australia with their adoptive parent.”<sup>76</sup> To be eligible for this visa, the child must have been adopted, or be in the process of being adopted, by their sponsor parent, be outside Australia when the application is made, and “have been under 18 years of age when adopted, when they apply and when we [i.e., the Department of Home Affairs] make a decision.”<sup>77</sup> As indicated above, the visa enables the

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<sup>69</sup> See *id.* s 22.

<sup>70</sup> See *id.* ss 21(2) & 25; *Become an Australian Citizen (by Conferral): Permanent Residents or New Zealand Citizens - Eligibility*, Department of Home Affairs, <https://perma.cc/SN2H-JSEN>.

<sup>71</sup> *Hong Kong*, IAA, <https://perma.cc/755H-UCZQ>.

<sup>72</sup> *Thailand*, IAA, <https://perma.cc/Y8M7-SY3V>. There are two ways of completing adoptions of children from Thailand: applying to the relevant state or territory court to convert the Thai adoption order to a full adoption, or obtaining a new full and final adoption order from an Australian court. Then: “Once you have converted the adoption in Australia you need to apply for ‘citizenship by conferral’, as soon as possible. If the adoption order is issued by an Australian court your child will automatically receive Australian citizenship.” *Id.*

<sup>73</sup> *Philippines*, *supra* note 26.

<sup>74</sup> *Become an Australian Citizen (by Adoption): Child Adopted Outside Australia by an Australia Citizen - Eligibility*, *supra* note 32.

<sup>75</sup> Australian Citizenship Act 2007 (Cth) s 13.

<sup>76</sup> *Subclass 102: Adoption Visa*, Department of Home Affairs, <https://perma.cc/399E-9J5S>.

<sup>77</sup> *Id.*

child to migrate to Australia as a permanent resident, and subsequently to obtain Australian citizenship if eligible.

To be eligible for this visa, the child must:

- have been or be in the process of being adopted through an intercountry adoption or arrangement with the involvement of an Australian state or territory central authority, or
- have been or be in the process of being adopted through an intercountry adoption between 2 countries (other than Australia) that are parties to the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Adoption Convention), or
- have been adopted through an expatriate adoption (with no Australian state or territory central authority being involved). The adoption must be by an Australian citizen, an eligible New Zealand citizen or the holder of an Australian permanent visa. They must have been living outside Australia for more than 12 months before lodging the visa application.<sup>78</sup>

Other criteria for this visa relate to sponsorship by an eligible adoptive parent (or prospective adoptive parent) (being an Australian citizen, holder of a permanent visa, or an eligible New Zealand citizen), age of the applicant child (being under 18 at the time of adoption, submission of the application, and decision on the application), health requirements, character requirements (only applicable to children aged over 16 years of age), a requirement that the laws relating to adoption in the country in which the child is ordinarily resident have been complied with, and a requirement that the grant of the visa be in the best interests of the child.<sup>79</sup> These criteria are established by the Migration Regulations 1994 (Cth).<sup>80</sup>

As indicated above, two possible citizenship pathways would be available to children entering on this visa, depending on the processes involved: automatic acquisition by adoption (where a final adoption order is issued by an Australian court), or citizenship by conferral.

Visas and citizenship following expatriate adoptions, referred to in the third criteria for the subclass 102 visa, is discussed below.

## **B. Foreign Adopted Children Raised Abroad**

A child adopted through an expatriate adoption, which are “generally completed outside of Australia under the domestic laws in the country of adoption with no involvement by Australian adoption authorities,” requires a visa to enter Australia, “usually a subclass 102 Adoption visa.”<sup>81</sup> The IAA website states that “[t]he only involvement the Australian Government has with

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<sup>78</sup> *Subclass 102: Adoption Visa – Eligibility*, Department of Home Affairs, <https://perma.cc/WNJ7-2L48>.

<sup>79</sup> *Id.*

<sup>80</sup> Migration Regulations 1994 (Cth) sch 1 reg 1108 & sch 2 subclass 102-Adoption, <https://perma.cc/CY9Z-FQBD> (vol. 1) & <https://perma.cc/SYC6-S2AE> (vol. 2).

<sup>81</sup> *Become an Australian Citizen (by Adoption): Child Adopted Outside Australia by an Australia Citizen – Eligibility*, *supra* note 32.



expatriate adoptions is through assessing visa eligibility after the adoption. The Department of Home Affairs handles adoption visas.”<sup>82</sup> Once in Australia, a child on a permanent residence visa “may be eligible for citizenship by conferral.”<sup>83</sup>

The information regarding expatriate adoptions in the context of the subclass 102 visa explains that the following criteria apply:

If the child is adopted through an expatriate adoption, and you are considering bringing them to Australia, then, amongst other criteria:

- at least one adoptive parent must have lived outside Australia for more than 12 months before lodging a visa application
- the adoptive parent must not have lived overseas to avoid Australia’s intercountry adoption laws
- the adoptive parent must have full and permanent parental rights. No remaining legal ties between the child and the birth parents can exist. The adoption must adhere to adoption laws of the home country.<sup>84</sup>

There do not appear to be any special provisions with respect to expatriate adoptions involving adoptive parents who are Australian diplomats or military personnel serving abroad.

As noted above, there are particular age restrictions to both the granting of a subclass 102 visa, and to being eligible for citizenship by conferral without first meeting the residency and other requirements in the Australian Citizenship Act. In addition, citizenship by descent is not available to adopted children. This means that, for example, an adopted child of an Australian citizen who has been solely raised abroad and is 18 years or older would not be eligible for a subclass 102 visa or for Australian citizenship (unless they obtain a different permanent residence visa and subsequently meet the requirements for citizenship by conferral). A situation of this type was reported in mid-2020, involving a 24-year-old who had been adopted at birth in Canada by Australian citizen parents. After her parents moved to Australia to retire, she applied for Australian citizenship (apparently by descent), but was rejected, and subsequently for a subclass 102 visa, which was also rejected.<sup>85</sup> A news article explained that

[m]igration lawyer Ben Watt, from Seek Visa, said the family’s situation was unique.

“There are very few cases circumstances where a child who was adopted by Australian citizens wouldn’t be able to obtain citizenship,” Mr Watt said.

“This scenario where the child was adopted under the laws of Canada and has now turned over the age of 18 is one of those few circumstances where they wouldn’t have a pathway forward.

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<sup>82</sup> *Other Types of Overseas Adoptions*, IAA, <https://perma.cc/NS6F-5C2K>.

<sup>83</sup> *Become an Australian Citizen (by Adoption): Child Adopted Outside Australia by an Australia Citizen – Eligibility*, supra note 32.

<sup>84</sup> *Subclass 102: Adoption Visa – Eligibility*, supra note 78.

<sup>85</sup> Adam Hegarty & Rebeka Powell, *Despite Being Adopted at Birth by Australian Citizens Abroad Stephanie is Out of Visa Options to Live with Her Family*, 9News (June 24, 2020), <https://perma.cc/FX3B-XJYE>.

"I think everyone who you would present this scenario to would say this looks quite unfair. It does not look like the law is working the way it is intended to."

Mr Watt is calling for the laws to be changed to allow for more compassionate grounds to be considered.

"There are some very complex things in the Citizenship act and the thing that is affecting this family is something that is very capable of being changed," he said.

"And treat the children who are adopted by Australians and the biological children of Australia equally."

Mr Watt also said the family had made the mistake of assuming their eligibility, but called on the government to do more to make expats aware of the laws.

"This family could have avoided this issue if they had applied for an adoption visa before the child turned 18 so this is something that could have easily been solved," he said.

"The government should also make this issue more clear on the citizenship website and the various other ways the [sic] communicate to the Australian community that's living abroad."

#### **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

The Department of Home Affairs, on its website and on the relevant forms, lists the steps and documentation required to apply for or acquire citizenship under the different provisions of the Australian Citizenship Act.

##### **A. Citizenship Following Intercountry Adoption**

In applying for citizenship for a child who has been adopted outside of Australia under the Hague Convention or a bilateral agreement, the following documents must be provided, along with the designated form:<sup>86</sup>

- Adoption compliance certificate (or documents that together equal an adoption compliance certificate)
- Any orders relating to the custody, guardianship or parental responsibility for the child
- Identity documents: three original documents that collectively show the applicant's photograph, signature, current residential address, and birth name, date of birth, and gender
- Proof of name change, if applicable
- Identity declaration and endorsed passport-sized photograph of the child
- Penal clearance certificate (i.e., police check) if the applicant is over the age of 18 years

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<sup>86</sup> The information and documentation required is set out in Department of Home Affairs, Application for Australian Citizenship for Children Adopted under Full Hague Convention or Bilateral Arrangements (Form 1272) (Jan. 2021), <https://perma.cc/U8XA-AH75>.

- Evidence of adoptive parent's Australian citizenship
- Adoptive parent's birth certificate if they were not born in Australia
- Evidence of link between adoptive parent's present and previous names, and other name change evidence, if applicable

#### **B. Citizenship by Conferral for Child on Subclass 102 Visa**

Where a child aged 15 years or younger has entered Australia on a subclass 102 permanent residence visa and is applying for citizenship by conferral "on their own" (i.e., a responsible parent is not also applying for citizenship and including the child on their application), the child's responsible parent must consent to and sign the application.<sup>87</sup> As indicated above, such children do not need to meet the residency and other requirements in the Australian Citizenship Act.

For applicants under 16 years of age, the following documents must be provided with the application form:<sup>88</sup>

- Identity documents that show a birth name and date of birth, and that show a photograph and current name, if available (specifically, a full birth certificate or family register containing parent's details, passport or travel document, and evidence of links between birth name and current name, if applicable)
- Identity declaration and endorsed photograph
- Documents that confirm the identity of the person signing the form (identification documents must collectively show a signature, photograph, and current residential address)
- Any orders relating to the custody, guardianship, or parental responsibility for the child
- Evidence of the adoption of the child, if the child was adopted overseas

#### **C. Automatic Acquisition of Citizenship by Adoption in Australia**

As discussed above, a child who enters Australia on a subclass 102 visa and with respect to whom a final adoption order is issued by an Australian court will automatically acquire citizenship. No citizenship application is needed, but the child can apply for a citizenship certificate. The documents required to obtain a citizenship certificate for a child aged 15 years or younger in such situations include the following:<sup>89</sup>

- Full birth certificate including the parents' names
- Passport or travel document, if available

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<sup>87</sup> *Become an Australian Citizen (by Conferral): Child 15 Years and Younger – Eligibility*, Department of Home Affairs, <https://perma.cc/PMX4-M69B>.

<sup>88</sup> The information and documentation required is set out in Department of Home Affairs, *Application for Australian Citizenship: Other Situations (Form 1290)* (Oct. 2020), <https://perma.cc/J6AP-CUEC>.

<sup>89</sup> *Evidence of Citizenship and Certificates: Get a Citizenship Certificate – Step by Step*, Department of Home Affairs, <https://perma.cc/A9Q8-DVY7>.

## Citizenship Through International Adoption: Australia

- Proof of change of name, if applicable
- A passport-sized photograph
- Identity declaration
- Adoption papers
- Evidence of the child's Australian parent's citizenship
- Evidence of the child's permanent residence in Australia at the time of their adoption

Other types of identity documents are needed for children aged 16 years or older.

# Brazil

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**SUMMARY** The Brazilian Constitution determines that children who are adopted have the same rights and qualifications as other children and must not be discriminated against. The first step in cases involving the adoption of a child from abroad is to ratify the international adoption before the Superior Tribunal of Justice. After the ratification, in order for the child to acquire Brazilian citizenship it is necessary to file an application for naturalization with the Ministry of Justice and Public Security. Brazil is a signatory of the Hague Convention, which was incorporated into the country's domestic law on June 21, 1999.

## I. Introduction

### A. Constitutional Principles

Article 12(I) of the Brazilian Constitution provides that certain persons enjoy citizenship at birth. It states that Brazilians by birth are those born in Brazil, including children born to foreign parents who are not in the service of their country;<sup>1</sup> those born abroad to a Brazilian father or mother where either parent is in the service of the Federative Republic of Brazil;<sup>2</sup> and those born abroad to a Brazilian father or mother, provided the child is registered at a proper Brazilian governmental office, or comes to reside in Brazil and opts for Brazilian nationality at any time after reaching the age of majority.<sup>3</sup>

The Constitution further determines that regardless of whether they are born in or out of wedlock or adopted, children must have the same rights and qualifications, and any discriminatory designations with respect to filiation are prohibited.<sup>4</sup>

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<sup>1</sup> Constituição Federal [C.F.], art. 12(I)(a), <https://perma.cc/8Y62-8L3D>.

<sup>2</sup> Id. art. 12(I)(b).

<sup>3</sup> Id. art. 12(I)(c). Article 5 of the Brazilian Civil Code (Código Civil, Lei No. 10.406, de 10 de Janeiro de 2002, <https://perma.cc/F7MR-5G84>) determines that minority ceases at the completion of 18 years of age, when the person is then fully capable of practicing all acts of civil life. Paragraph 1 of article 5 further establishes that a minor's incapacity may also cease by the concession of the parents, or one of them in the absence of the other, through a public instrument, independently of judicial sanction or judicial decision of a sixteen year-old minor (id. art. 5(§1)(I)); by marriage (id. at II); effective exercise of public employment (id. at III); graduation from an institution of higher education (id. at IV); commercial or civil establishment, or the existence of an employment relationship that provides a sixteen-year-old minor with economic support (id. at V).

<sup>4</sup> C.F. art. 227(§ 6).

## B. International Adoption

For Brazilian citizens who intend to adopt a child abroad, the website of the Ministry of Foreign Affairs provides that the legislation of the foreign country regarding the adoption of minors by foreign citizens must be observed; it notes that laws vary widely from country to country and that not every government will be able to allow adoption by a same-sex couple, despite what Brazilian law says on the matter.<sup>5</sup> After the adoption, the parents must register the paternity/maternity of the minor child with the competent local authorities.<sup>6</sup>

In Brazil, the parents must hire a lawyer or contact a public defender for obtaining the ratification of the international adoption before the Superior Tribunal of Justice (Superior Tribunal de Justiça, STJ).<sup>7</sup> Once the international adoption is ratified by the STJ, the migratory situation of the adopted minor must be regularized through naturalization.<sup>8</sup>

According to Resolution No. 9 of May 4, 2005, a foreign judgment will not be effective in Brazil without the prior approval by the STJ or by its President.<sup>9</sup> The essential requirements for the approval of a foreign judgment are that:

- I - It has been issued by a competent authority;
- II - The parties have been served or default has been legally verified;
- III - It has become final; and
- IV - It has been authenticated by the Brazilian consul and accompanied by translation by an official or sworn translator in Brazil.<sup>10</sup>

A foreign judgment will not be approved by the STJ if it offends Brazil's sovereignty or public policy.<sup>11</sup>

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<sup>5</sup> *Adoção no Exterior, Adoção Internacional de Menores Estrangeiros*, Ministério das Relações Exteriores, <https://perma.cc/RT7T-BHCF>.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. The STJ has original jurisdiction to hear and decide, inter alia, approval of foreign judgments and concession of requests for letters rogatory (exequatur). C.F. art. 105(I)(i).

<sup>9</sup> Resolução STJ No. 9, de 4 de Maio de 2005, art. 4, <https://perma.cc/Z49K-LF2Y>.

<sup>10</sup> Id. art. 5.

<sup>11</sup> Id. art. 6.

### C. Naturalization

On May 24, 2017, Brazil promulgated Law No. 13,445, which created a new migration law.<sup>12</sup> Law No. 13,445 is regulated by Decree No. 9,199 of November 20, 2017.<sup>13</sup>

#### 1. Decree No. 9,199 of November 20, 2017

According to article 218 of Decree No. 9,199, the granting of naturalization is within the exclusive competence of the Ministry of Justice and Public Security.<sup>14</sup>

The Minister of Justice and Public Security is authorized to establish the documents and steps necessary to prove the requirements for each type of naturalization.<sup>15</sup> The Minister is also authorized to grant naturalization, provided that the objective conditions necessary for naturalization are satisfied.<sup>16</sup>

The interested party who wishes to apply for an ordinary, extraordinary, or provisional naturalization, or to transform a provisional naturalization into a definitive status, must submit an application to a unit of the Federal Police, addressed to the Ministry of Justice and Public Security.<sup>17</sup> When processing the request for naturalization, the Federal Police must collect the biometric data of the applicant; gather information on the criminal history of the applicant; prepare a report of the naturalization application; and may present other information that may be relevant to the decision regarding the request for naturalization.<sup>18</sup>

Notifications related to the naturalization process preferably will be made by electronic means.<sup>19</sup> The Ministry of Justice and Public Security and Ministry of Foreign Affairs will process requests for naturalization through an integrated electronic system.<sup>20</sup>

Naturalization takes effect after the date of publication of the naturalization act in the Official Gazette (Diário Oficial da União).<sup>21</sup> Once the act of naturalization has been published in the Official Gazette, the Ministry of Justice and Public Security must communicate the naturalizations granted, preferably by electronic means, to the Ministry of Defense; Ministry of Foreign Affairs;

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<sup>12</sup> Lei No. 13.445, de 24 de Maio de 2017, <https://perma.cc/FP4Y-W8X5>.

<sup>13</sup> Decreto No. 9.199, de 20 de Novembro de 2017, <https://perma.cc/E3SD-AMF5>.

<sup>14</sup> Id. art. 218.

<sup>15</sup> Id. art. 219. A list with the documents necessary for naturalization is available on the website of the Ministry of Justice and Public Security, <https://perma.cc/LE6Y-PCMT>.

<sup>16</sup> Id. art. 220.

<sup>17</sup> Id. art. 224.

<sup>18</sup> Id. art. 227.

<sup>19</sup> Id. art. 225.

<sup>20</sup> Id. art. 226.

<sup>21</sup> Id. art. 230.

and the Federal Police.<sup>22</sup> The registration of the act of granting the naturalization will be carried out, in a specific system of the Ministry of Justice and Public Security, with the previous name and, if it exists, the translated or the adapted one.<sup>23</sup> Within a year after the granting of naturalization, the naturalized person over 18 years and under 70 years old must appear before the Electoral Justice for proper registration.<sup>24</sup> Information regarding the need to appear or not before the Electoral Justice will appear in the naturalization decision published by the Ministry of Justice and Public Security in the Official Gazette.<sup>25</sup>

Provisional naturalization may be granted to migrant children or adolescents who have taken up residence in the national territory before reaching the age of ten and must be requested through their legal representative.<sup>26</sup>

The request for provisional naturalization will be made through the presentation of the national migration registration card (*Carteira de Registro Nacional Migratório*) of the naturalized person and the civil identification document of the representative or legal assistant of the child or adolescent.<sup>27</sup>

Provisional naturalization will be converted into definitive naturalization if the person (*naturalizando*) expressly so requests to the Ministry of Justice and Public Security within two years after reaching the age of civil majority.<sup>28</sup> Criminal background certificates issued by the states where the naturalized person has resided after completing the age of majority and, if applicable, a rehabilitation certificate will be required.<sup>29</sup> The Ministry of Justice and Public Security must consult official databases to prove the residence of the naturalized person in the country.<sup>30</sup>

## 2. *Administrative Act No. 623 of November 13, 2020*

### a. Provisional Naturalization

On November 13, 2020, the Ministry of Justice and Public Security enacted Administrative Act (*Portaria*) No. 623, which provides, among other things, for naturalization procedures.<sup>31</sup> Annex III to the Act determines that the application for provisional naturalization must be accompanied by the following documentation:

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<sup>22</sup> Id. art. 230(§ 1).

<sup>23</sup> Id. art. 230(§ 2).

<sup>24</sup> Id. art. 231.

<sup>25</sup> Id. art. 231(sole para.).

<sup>26</sup> Id. art. 244.

<sup>27</sup> Id. art. 245.

<sup>28</sup> Id. art. 246.

<sup>29</sup> Id. art. 246(§ 1).

<sup>30</sup> Id. art. 246(§ 2).

<sup>31</sup> Portaria do Ministério da Justiça e Segurança Pública No. 623, de 13 de Novembro de 2020, <https://perma.cc/7VSM-VFW2>.



## Citizenship Through International Adoption: Brazil

1. A form duly completed and signed by the applicant's legal representative addressed to the Coordination of Migration Processes of the General Coordination of Migration Policy of the Migration Department of the National Secretariat of Justice (Coordenação de Processos Migratórios da Coordenação-Geral de Política Migratória do Departamento de Migrações da Secretaria Nacional de Justiça);
2. When applicable, a request supported with the translation or adaptation of the name to the Portuguese language;
3. Copy of the National Migration Registration Card (Carteira de Registro Nacional Migratório), even if expired, of the person applying for provisional naturalization and the original for conference;
4. Proof of residence, under the terms of article 56 of Administrative Act No. 623; and
5. Copy of the legal representative's identification document and proof of representation.<sup>32</sup>

Article 56 of Administrative Act No. 623 states, the following documents may be required, among others, to prove the applicant's habitual residence in Brazil:

- I - proof of address, verified by means of water, energy or telephone bills;
- II - copy of the lease or deed of purchase and sale of property in the name of the interested party, parents, spouse or partner, accompanied respectively by the birth certificate, marriage certificate, or proof of stable union;
- III - declaration by a financial institution attesting to the client's registration;
- IV - proof of professional relationship, according to the activity developed, such as:
  - a) declaration by an employer attesting to the employment relationship in that location;
  - b) proof of self-employed activity;
  - c) proof of business activities; or
  - d) copy of the work and social security card (Carteira de Trabalho e Previdência Social);
- V - course completion certificates;
- VI - diplomas;
- VII - school records;
- VIII - medical examinations;
- IX - extracts from social security;
- X - health plan extracts; or
- XI - other documents attesting to continuous and uninterrupted residence in the country.<sup>33</sup>

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<sup>32</sup> Id. Anexo III.

<sup>33</sup> Id. art. 56.

Sporadic departures from Brazilian territory will not preclude a finding of habitual residence.<sup>34</sup>

b. Conversion of Provisional Naturalization to Definitive Naturalization

Annex IV to Administrative Act No. 623 establishes that the application for conversion from provisional to definitive naturalization must be accompanied by the following documents:

1. A form duly completed and signed by the applicant addressed to the Coordination of Migration Processes of the General Coordination of Migration Policy of the Migration Department of the National Secretariat of Justice;
2. Official identity document;
3. Criminal record certificate issued by the federal and state courts of the places where the applicant lived after completing the age of civilian majority;
4. Proof of residence, under the terms of article 56 of Administrative Act No. 623;
5. When applicable, a request supported with the translation or adaptation of the name to the Portuguese language, accompanied by the following documents:
  - a. Certificate issued by the state civil distribution registrar (Certidão Estadual de Distribuição Cível) of the place of residence for the last five years;
  - b. Certificate issued by the federal civil distribution registrar (Certidão Federal de Distribuição Cível) of the place of residence for the last five years;
  - c. Certificates from the protest notaries of the place of residence for the last five years; and
  - d. Certificate of no labor debts from the labor court of the place of residence for the last five years.<sup>35</sup>

## II. International Adoption

### A. International Instruments

Brazil approved the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors<sup>36</sup> on June 19, 1996, through Legislative Decree No. 60, and then promulgated it by Decree

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<sup>34</sup> Id. art. 56(sole para.).

<sup>35</sup> Id. Anexo IV.

<sup>36</sup> Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors, O.A.S.T.S. No. 62, <https://perma.cc/2FMS-E436>.

No. 2,429 of December 17, 1997.<sup>37</sup> On August 20, 1998, Brazil also issued Decree No. 2,740,<sup>38</sup> promulgating the Inter-American Convention on International Traffic in Minors.<sup>39</sup>

Decree No. 3,087 of June 21, 1999,<sup>40</sup> promulgated the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.<sup>41</sup> Additionally, on September 16, 1999, Brazil issued Decree No. 3,174,<sup>42</sup> which designated the central authorities in charge of carrying out the duties imposed by the Hague Convention; instituted the National Program on Cooperation on International Adoption; and created the Council of Brazilian Central Authorities. On October 14, 2019, Decree No. 10,064 reinstated the Council of Brazilian Central Authorities for the International Adoption of Children and Adolescents, which defined its objectives, competence and composition.<sup>43</sup>

Article 1 of Decree No. 3,087 states that the objects of the Hague Convention are:

- a) To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b) To establish a system of cooperation amongst contracting states to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) To secure the recognition in contracting states of adoptions made in accordance with the convention.<sup>44</sup>

The Hague Convention applies where a child habitually resident in one contracting state (“the state of origin”) has been, is being, or is to be moved to another contracting state (“the receiving state”) either after his or her adoption in the state of origin by spouses or a person habitually resident in the receiving state, or for the purposes of such an adoption in the receiving state or in the state of origin.<sup>45</sup> The Convention covers only adoptions that create a permanent parent-child relationship.<sup>46</sup> It ceases to apply if the agreements mentioned in article 17(c) of the Convention have not been given before the child attains the age of 18 years.<sup>47</sup>

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<sup>37</sup> Decreto No. 2.429 de 17 de Dezembro de 1997, <https://perma.cc/GJ9H-99AU>.

<sup>38</sup> Decreto No. 2.740 de 20 de Agosto de 1998, <https://perma.cc/KN7T-32FQ>.

<sup>39</sup> Inter-American Convention on International Traffic in Minors, O.A.S.T.S. No. 79, <https://perma.cc/PD2S-T7MM>.

<sup>40</sup> Decreto No. 3.087 de 21 de Junho de 1999, <https://perma.cc/AUR5-K6RH>.

<sup>41</sup> Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, 32 I.L.M. 1134 (1993), <https://perma.cc/G2MB-QLPH>.

<sup>42</sup> Decreto No. 3.174 de 16 de Setembro de 1999, <https://perma.cc/GFB8-HMUZ>.

<sup>43</sup> Decreto No. 10.064, de 14 de Outubro de 2019, <https://perma.cc/GY93-AG9V>.

<sup>44</sup> Decreto No. 3.087 de 21 de Junho de 1999, art. 1.

<sup>45</sup> Id. art. 2(1).

<sup>46</sup> Id. art. 2(2).

<sup>47</sup> Id. art. 3.

## B. Procedures for International Adoption by Residents of Brazil

As established by the Brazilian Central Authorities Council at its 16th Meeting held on December 18, 2013, international adoption applicants residing in Brazil must, as a first step, qualify in their home district, following the rules of each tribunal of justice.<sup>48</sup> After receiving the qualification, the applicants must request that the court of their home district forward a copy of their file to the State Adoption Judiciary Commission (Comissão Estadual Judiciária de Adoção (Internacional), CEJA/CEJAI), indicating the country from which they intend to adopt the child. (This must be a country that has ratified the Hague Convention, otherwise the process will not go through the central authorities.<sup>49</sup>)

As there is no Brazilian body accredited to act in matters of international adoption, the Central Federal Administrative Authority (Autoridade Central Administrativa Federal, ACAF) will send the request to the central authority of the foreign country, requiring additional guidance on the procedures to be followed, as well as on the specific legislation of that country.<sup>50</sup> The Council of Central Brazilian Authorities at their December 18, 2013, meeting approved the following procedures for residents of Brazil seeking international adoptions,<sup>51</sup> which are only applicable to adoptions made between countries that have ratified the Hague Convention.<sup>52</sup>

The procedures approved by the Council of Brazilian Central Authorities specify that all international adoptions must be carried out in accordance with the Hague Convention.<sup>53</sup> Applicants must apply for qualification in the district of their residence, respecting the rules and internal regulations of each state.<sup>54</sup> The certificates of qualification will only indicate that the applicants are “fit for adoption,” without referring to national and/or international adoption.<sup>55</sup>

The district, at the request of the interested party, forwards a copy of the qualification certificate to the CEJA/CEJAI, accompanied by the request for international adoption indicating the child's country of origin.<sup>56</sup>

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<sup>48</sup> *Adoção por Residentes no Brasil*, Ministério da Justiça e Segurança Pública, <https://perma.cc/G4CP-YGEY>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* Documents presented in Portuguese must be translated by a sworn public translator into the language of the country of origin of the child to be adopted.

<sup>52</sup> *Id.*

<sup>53</sup> Fluxo de Habilitação de Pretendentes Residentes no Brasil para Adoção Internacional em Países Ratificantes da Convenção de Haia de 1993 Relativa à Proteção das Crianças e à Cooperação em Matéria de Adoção Internacional, Conselho das Autoridades Centrais Brasileiras (18 de Dezembro de 2013), step 1(1), <https://perma.cc/YG9A-QU3F>.

<sup>54</sup> *Id.* step 1(2).

<sup>55</sup> *Id.* step 1(3).

<sup>56</sup> *Id.* step 1(3)(a).

The President of the CEJA/CEJAI decides whether to accept the applicant's certificate of qualification, in accordance with article 52-C and 52-D of the Statute of the Child and Adolescent (Estatuto da Criança e do Adolescente, ECA).<sup>57</sup> The CEJA/CEJAI then issues a letter to the ACAF, informing it of the applicant's intention to seek an international adoption in a given country, so that it will consult the relevant legislation and determine the procedure to be adopted.<sup>58</sup>

The president of the CEJA/CEJAI determines whether to issue a Certificate of Good Standing to the applicant, according to article 5 of the Hague Convention. The president also will order a supplementary technical study to be done by the CEJA/CEJAI.<sup>59</sup> Upon completion of the study, the member of the CEJA will ask for the opinion of the Public Prosecutor's Office and request the inclusion in the agenda of the CEJA for judgment.<sup>60</sup> Once approved, the CEJA/CEJAI will issue:

- a. statement of the regularity of the applicant's qualification to adopt;
- b. a report on the applicant's qualification to adopt;
- c. a declaration of exemption from costs and expenses;
- d. a statement of commitment for post-adoptive follow-up, in accordance with the legislation of both countries;
- e. a social and psychological assessment report of the applicant;
- f. a declaration of participation in the period of psychosocial and legal preparation of the adopters, as required by article 50(§ 3) of the ECA, with an emphasis on international adoption.<sup>61</sup>

After issuing the report, CEJA/CEJAI will send copies to ACAF, which will guide the action in the adoptee's country of origin, after the documents have been translated by the applicant.<sup>62</sup> The judge of the Child and Youth Court in the district of the applicants' residence must forward the post-adoptive reports to CEJA/CEJAI, in accordance with the current legislation.<sup>63</sup> Post-adoptive reports must also be sent to ACAF for later submission to the adoptee's country of origin.<sup>64</sup>

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<sup>57</sup> Id. step 2(4).

<sup>58</sup> Id. step 2(5).

<sup>59</sup> Id. step 2(6).

<sup>60</sup> Id. step 2(7).

<sup>61</sup> Id. step 2(8).

<sup>62</sup> Id. step 2(9).

<sup>63</sup> Id. step 2(10).

<sup>64</sup> Id. step 2(11).

### **III. Acquisition of Citizenship for Foreign Adopted Children**

#### **A. Foreign Adopted Children Raised in the Country of the Adoptive Parent**

##### *1. Child's Eligibility to Acquire the Adopted Parents' Citizenship*

A child who is adopted abroad by Brazilian parents and brought to Brazil is entitled to Brazilian citizenship by naturalization once the international adoption is ratified by the STJ. (See part I.B above.)

##### *2. Age Requirement*

The legislation does not establish an age that the adopted child must attain to apply for the citizenship of the adoptive parent. However, as discussed above (part I.C), minors under 10 years of age who have taken up residence in the national territory must apply for provisional naturalization. The provisional naturalization will be converted into definitive naturalization if the person expressly so requests the Ministry of Justice and Public Security within two years after reaching the age of civil majority.<sup>65</sup>

##### *3. Physical Custody*

The legislation is silent about physical custody as a requirement to the child's ability to acquire Brazilian citizenship.

#### **B. Foreign Adopted Children Raised Abroad**

##### *1. Child's Address in Brazil*

According to Administrative Act No. 623, Annex III(1)(4) (discussed above in part I.C), a child under 10 years of age applying for provisional naturalization must provide proof of residence in Brazil.<sup>66</sup>

##### *2. Age Requirement*

Once a child obtains provisional naturalization, it will be converted into definitive naturalization if the person expressly so requests the Ministry of Justice and Public Security within two years after reaching the age of civil majority.<sup>67</sup> (See part I.C above.)

##### *3. Absence of Physical Address in Brazil*

The legislation does not make any reference to adopted children of diplomats or military personnel who served abroad for purposes of an exemption of the requirement for a physical address of the adopted child in Brazil.

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<sup>65</sup> Decreto No. 9.199, de 20 de Novembro de 2017, art. 246.

<sup>66</sup> Portaria do Ministério da Justiça e Segurança Pública No. 623, de 13 de Novembro de 2020, ANEXO III, 4.

<sup>67</sup> Decreto No. 9.199, de 20 de Novembro de 2017, art. 246.

#### *4. Physical Custody*

The legislation is silent about physical custody as a requirement to the child's ability to acquire Brazilian citizenship.

### **IV. Mandatory Documentation**

#### **A. List of Documents**

As discussed above (part I.B), the international adoption of the child must first be ratified by the STJ. Administrative Act No. 623 of November 13, 2020 (discussed above in part I.C) lists the documents that must be submitted by the representative of the adopted child who is applying for provisional naturalization, as well as the documents that must be submitted for the conversion of the provisional naturalization into definitive naturalization.

#### **B. Agencies Involved**

The agencies involved in the naturalization process are the STJ, the Federal Police, the Ministry of Justice and Public Security, the Coordination of Migration Processes of the General Coordination of Migration Policy of the Migration Department of the National Secretariat of Justice, the Council of Brazilian Central Authorities for the International Adoption of Children and Adolescents, the State Adoption Judiciary Commission, and the Central Federal Administrative Authority.

#### **C. Timeline**

Article 228 of Decree No. 9,199 determines that the naturalization procedure will end within 180 days, counting from the date of receipt of the request.

# Canada

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**SUMMARY** In Canada, for all international adoptions, a person must complete two separate processes: the adoption process and the immigration or citizenship process. Adoption is handled according to laws of the provinces and territories, which implement the Hague Adoption Convention, and each has its own central adoption authority.

Immigration and citizenship are handled at the federal level by Immigration, Refugees and Citizenship Canada, a department of the government of Canada that oversees immigration and the granting of citizenship. The right to citizenship is set out in Part I of the Citizenship Act. There are different routes to granting citizenship provided under the act. A person who is a permanent resident and an adopted minor child of a citizen can be granted citizenship as “a regular grant for a minor child of a Canadian” through naturalization under section 5(2) of the act. The act also contains a specific provision that regulates the grant of citizenship through application that applies to adopted children of Canadian citizens. If adopted minors are not permanent residents of Canada and are born outside the country, they can submit an adoptive grant of citizenship application under section 5.1.

## I. Introduction

In Canada, the federal government is responsible for the immigration or citizenship process for an adopted child. Immigration, Refugees and Citizenship Canada (IRCC) is a department of government of Canada that oversees immigration and the grant of citizenship. Citizenship and nationality are governed by the Citizenship Act,<sup>1</sup> along with its associated regulations,<sup>2</sup> which provide several ways to acquire or resume citizenship,<sup>3</sup> including various provisions that govern citizenship through birth, descent, naturalization of permanent residents, and adoption.<sup>4</sup> The adoption process itself is the responsibility of the provinces or territories.

## II. International Adoption

In Canada, for all international adoptions, a person must complete two separate processes: the adoption process and the immigration or citizenship process.<sup>5</sup> Since 1996, Canada has been a

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<sup>1</sup> Citizenship Act, R.S.C. 1985, c C-29, <https://perma.cc/MWE2-NGUR>.

<sup>2</sup> Regulations issued under the Citizenship Act can be found at Canada’s Justice Laws website, <https://perma.cc/DYM7-TSW8>.

<sup>3</sup> *Acquisition and Loss of Citizenship*, Immigr., Refugees & Citizenship Can. (IRCC) (June 11, 2015), <https://perma.cc/VMB6-EH99>.

<sup>4</sup> *Acquisition of Citizenship*, IRCC (July 2, 2015), <https://perma.cc/P6XD-42HG>.

<sup>5</sup> *International Adoption Process*, IRCC (May 5, 2016), <https://perma.cc/EPA8-BALQ>.



party to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Adoption Convention).<sup>6</sup>

As noted above, “[a]doption is a [sic] handled by the provinces and territories, and they all have and follow laws implementing the Hague Convention.”<sup>7</sup> Each province and territory has its own central adoption authority.<sup>8</sup> The role of the federal government is primarily the immigration and citizenship process. However, under the Hague Adoption Convention, Canada has a Federal Central Authority, the Intercountry Adoption Services (IAS), a unit in the IRCC. The role of the IAS is to:

- Work directly with the provincial and territorial Central Authorities to obtain and distribute information to both Canadian provincial and territorial authorities, and to foreign authorities. This includes information on Canadian and foreign adoption legislation, adoption criteria requirements, and international adoption procedures and guidelines.
- Facilitate communication, co-operation, and coordinated actions between federal/provincial/territorial Central Authorities, both within the federal government and with foreign Central Authorities.
- Facilitate issue resolution and develop pan-Canadian responses on matters such as unethical and irregular adoption practices.<sup>9</sup>

The IRCC provides an outline of the international adoption process in this way:

- In order to adopt internationally you must work with your provincial or territorial adoption Central Authority.
- The provincial or territorial adoption Central Authority will:
  - Tell you if you need to contact a licensed adoption agency
  - Advise on the adoptions laws of the country from where you want to adopt
  - Explain the requirement of the Hague Convention on Intercountry Adoptions
- To be eligible to adopt a child, you must meet the adoption requirements of the
  - Canadian province/territory where you live, or the country where you live if you are living abroad, and
  - Adoption Authority of the country where the child lives<sup>10</sup>

In the province of Ontario, for example, “[m]ost international adoptions are completed in the child’s country of origin,”<sup>11</sup> and they are governed by the Intercountry Adoption Act, 1998.<sup>12</sup> According to the government of Ontario, “[s]ome international adoptions are completed in

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<sup>6</sup> *Choose a Process – Intercountry Adoption*, IRCC (July 6, 2017), <https://perma.cc/6LF4-K3KQ>.

<sup>7</sup> *What Is the Hague Convention?*, IRCC (Jan. 30, 2020), <https://perma.cc/MF8F-G6HT>.

<sup>8</sup> *Adoption Authorities*, IRCC (Oct. 29, 2019) <https://perma.cc/7A8P-F9KB>.

<sup>9</sup> *International Adoption Process*, IRCC, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> *International Adoptions in Ontario*, Gov’t Ont., <https://perma.cc/HH36-9Z2E>.

<sup>12</sup> Intercountry Adoption Act, 1998, S.O. 1998, c. 29, <https://perma.cc/W2TU-BWUP>.

Ontario after the child's arrival in Canada,"<sup>13</sup> and these are regulated by the Child, Youth and Family Services Act, 2017.<sup>14</sup>

According to the government of Ontario, "[t]he rules and process for adopting outside of Canada are the same for adopting a family member under 18 and adopting a non-family member."<sup>15</sup> A person wishing to adopt must "work directly with an Ontario individual or agency licensed to facilitate international adoptions."<sup>16</sup> A person must also find an approved private adoption practitioner who helps complete an adoption home study assessment and a mandatory parent training program called Parent Resources for Information, Development and Education.<sup>17</sup> After being matched, most international adoptions are "finalized in a court in the child's country of origin and the adoption order is issued there," and the adopting family must make an application for permanent residence for the child to enter Canada.<sup>18</sup> According to the IRCC, to sponsor a child from another country for adoption, the applicant must

- be a Canadian citizen or a permanent resident (if you do not currently reside in Canada, you must do so when the adopted child becomes a permanent resident);
- live in Canada; and
- be at least 18 years old.<sup>19</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

The right to citizenship is set out in Part I of the Citizenship Act. There are different routes to granting citizenship provided under the act.<sup>20</sup> Section 3(1) sets out the persons who are citizens. It states that the person can be granted or acquire citizenship under section 5 through naturalization.<sup>21</sup> Via this route, a person who is a permanent resident and a minor child of a citizen can be granted citizenship as "a regular grant for a minor child of a Canadian" under section 5(2) of the act.<sup>22</sup> Another route is under Section 3(1)(c.1), which stipulates that a person is a citizen of Canada if they have been granted citizenship under section 5.1, a grant of citizenship under the adoption provision.<sup>23</sup>

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<sup>13</sup> *International Adoptions in Ontario*, Gov't Ont., supra note 11.

<sup>14</sup> Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, sched. 1, <https://perma.cc/TQ7D-KQKZ>.

<sup>15</sup> *International Adoptions in Ontario*, Gov't Ont., supra note 11.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> *International Adoptions in Ontario*, Gov't Ont., supra note 11; see also *Immigration Process – Intercountry Adoption: How to Apply*, IRCC (Sept. 30, 2020), <https://perma.cc/5W4D-LE5M>.

<sup>19</sup> Id.

<sup>20</sup> *Granting Citizenship: Overview*, IRCC (Oct. 29, 2019), <https://perma.cc/8CLP-7XAQ>.

<sup>21</sup> Citizenship Act, § 3(1)(c).

<sup>22</sup> *My Adopted Child Has Permanent Residence. How Can I Apply For Citizenship for Him or Her?*, Gov't Can. (Jan. 30, 2020), <https://perma.cc/G4EM-GPU8>.

<sup>23</sup> Citizenship Act, § 3(1)(c.1).

According to the IRCC website:

Certain requirements must be met before a person can be granted citizenship. Some of these requirements may be waived by the Minister on compassionate grounds. The Minister also has discretionary authority to grant citizenship. Persons 14 years of age or over who are granted citizenship must take an Oath of Citizenship in order to become citizens. Their legal status as a citizen takes effect as of the date the Oath is taken. A person who is granted citizenship and does not have to take the Oath as per statutory requirements becomes Canadian on the day of the grant. A person who is granted citizenship is a naturalized Canadian citizen. Any person granted citizenship is issued a certificate of citizenship. There are different types of grants, as outlined in the Citizenship Act.<sup>24</sup>

#### **A. Foreign Adopted Children Raised in the Country of an Adoptive Parent**

As noted above, if the adopted child is already a permanent resident, an applicant can apply for a grant of citizenship either as “a regular grant for a minor child of a Canadian” or a “grant of citizenship under the adoption provision.”<sup>25</sup> However, one government application guide recommends that “if the adopted minor is a permanent resident of Canada, and under 18 years of age” the applicant should apply for a regular grant of citizenship under section 5(2).<sup>26</sup> Another part of the IRCC website states that “[a]doptive parents can sponsor their child to immigrate to Canada as a permanent resident. Once the child’s permanent residence status is granted, the normal process of applying for citizenship can then be followed.”<sup>27</sup>

Under this route, the Minister of Citizenship and Immigration will grant citizenship to any person under 18 years of age who “is the minor child of a Canadian citizen [the parent can apply at the same time under subsection 5(1)].”<sup>28</sup> The minor must be less than 18 years old on the day the application is signed, and “[i]f an applicant turns 18 during the processing of the application, the applicant is still assessed against the requirements for a grant of citizenship as a minor.”<sup>29</sup> The minor must be a permanent resident of Canada, “not have lost that status and have no unfulfilled conditions relating to that status.”<sup>30</sup> The application can be made concurrently with one or both parents or non-concurrently after one or both parents obtain Canadian citizenship.<sup>31</sup>

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<sup>24</sup> *Granting Citizenship: Overview*, IRCC, *supra* note 20.

<sup>25</sup> *My Adopted Child Has Permanent Residence. How Can I Apply For Citizenship for Him or Her?*, Gov’t. Can., *supra* note 22.

<sup>26</sup> IRCC, *Guide CIT 0003 – Application for Canadian Citizenship – Minors (Under 18 Years of Age)* (last updated Jan. 20, 2021), <https://perma.cc/ZZ98-9WKW>.

<sup>27</sup> *Citizenship Law and Adoption*, IRCC (last updated June 11, 2015), <https://perma.cc/LYZ4-FCPV>.

<sup>28</sup> *Granting Citizenship: Overview*, IRCC (last updated Oct. 29, 2019), <https://perma.cc/8CLP-7XAQ>.

<sup>29</sup> *Citizenship Grants: Minors Applying Under Subsection 5(2)*, IRCC (last updated Oct. 29, 2019), <https://perma.cc/5M4Z-63U9>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Applicants are also subject to certain security clearance requirements, including the following:

- Minors must not be prohibited under 22 of the Act and must not be the subject of a declaration by the Governor-in-Council made under section 20 of the Act.
- Permanent resident status is verified for all minor applicants and that status must have been maintained and there must be no unfulfilled conditions under the *Immigration and Refugee Protection Act* related to their permanent resident status.
- Criminal and security clearances are generally not requested for minors under 16, although an official may request such clearances, if adverse information is received.
- Criminal and security clearances are required for minors 16 years of age and older.
- Local offices must verify minor children clearances in situations where they are close to 15 and a half years of age. This is to be prepared to request their criminal and security clearance and have results in time in order to avoid delays in the process.<sup>32</sup>

The IRCC notes that “[p]eople adopted outside Canada who become naturalized citizens can pass citizenship to their children, even if their children are born outside Canada. If they adopt children from outside Canada, those adopted children would be eligible for a grant of citizenship through the direct route,”<sup>33</sup> which is discussed below.

## **B. Foreign Adopted Children Raised Abroad**

The act also contains a specific provision that regulates the grant of citizenship through application that applies to adopted children of Canadian citizens. Adopted minors who are not permanent residents of Canada can submit an adoptive grant of citizenship application under section 5.1.<sup>34</sup> This is considered citizenship by grant through a “direct route” where “[c]hildren who were born outside Canada and adopted, can become citizens without having to immigrate to Canada.”<sup>35</sup>

According to the IRCC, to be eligible for a direct grant of Canadian citizenship, the adopted person must

- not be a Canadian citizen,
- have at least one (1) adoptive parent who, at the time of their adoption, was or is a Canadian citizen, or for adoptions that took place prior to January 1, 1947, the person had to have at least one adoptive parent who became a Canadian citizen on January 1, 1947 (or April 1, 1949, in the case of Newfoundland and Labrador for adoptions that took place prior to April 1, 1949),
- not be subject to the first generation limit to citizenship by descent (unless eligible to benefit from one of the exceptions to the first generation limit), and
- meet the requirements of the *Citizenship Act*.<sup>36</sup>

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<sup>32</sup> Id.

<sup>33</sup> *Citizenship Law and Adoption*, IRCC, *supra* note 27.

<sup>34</sup> IRCC, *Guide CIT 0003 – Application for Canadian Citizenship – Minors (Under 18 Years of Age)*, *supra* note 26.

<sup>35</sup> *Citizenship Law and Adoption*, IRCC, *supra* note 27.

<sup>36</sup> *Citizenship for Your Adopted Child: Who Can Apply*, IRCC (Jan. 30, 2020), <https://perma.cc/R7HA-SRZV>.

Section 5.1(1) of the act provides requirements for the grant for the grant of citizenship to adopted minors, if the adoption:

- (a)** was in the best interests of the child;
- (b)** created a genuine relationship of parent and child;
- (c)** was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen;
- (c.1)** did not occur in a manner that circumvented the legal requirements for international adoptions; and
- (d)** was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.<sup>37</sup>

The Citizenship Regulations (SOR/93-246)<sup>38</sup> “set out the factors decision-makers must consider in assessing whether an application for a grant of citizenship for adopted persons” under section 5.1 meets the requirements of the Citizenship Act.<sup>39</sup> The factors that are to be considered in determining whether the requirements of section 5.1(1) of the act have been met in respect of the adoption of a minor child are included in section 5.1 of the above regulations:

- (a)** if the adoption occurred in Canada and, at the time of the adoption, the minor child was habitually resident outside Canada in a country that is a party to the Hague Convention on Adoption,
  - (i)** whether the provincial authority responsible for international adoption has stated in writing that in its opinion the adoption was in accordance with the Hague Convention on Adoption and that the provincial authority does not object to the adoption, and
  - (ii)** whether the pre-existing legal parent-child relationship was permanently severed by the adoption;
- (b)** if the adoption occurred in Canada and, at the time of the adoption, the minor child was habitually resident outside Canada in a country that is not a party to the Hague Convention on Adoption,
  - (i)** whether the provincial authority responsible for international adoption has stated in writing that it does not object to the adoption,
  - (ii)** whether before the adoption, the minor child’s parent or parents, as the case may be, gave their free and informed consent in writing to the adoption,
  - (iii)** whether the pre-existing legal parent-child relationship was permanently severed by the adoption,
  - (iv)** whether there is no evidence that the adoption was for the purpose of child trafficking or undue gain, and

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<sup>37</sup> Citizenship Act, § 5.1(1).

<sup>38</sup> Citizenship Regulations (SOR/93-246), <https://perma.cc/YUA6-L96A>.

<sup>39</sup> Regulations Amending the Citizenship Regulations, Vol. 149, No. 9 (Feb. 28, 2015), <https://perma.cc/3RFT-FLJ8>.

## Citizenship Through International Adoption: Canada

- (v) whether the child was eligible for adoption in accordance with the laws of the child's country of habitual residence at the time of the adoption;
- (c) if the adoption occurred abroad and, at the time of the adoption, the minor child was habitually resident in a country that is a party to the Hague Convention on Adoption and whose intended destination at the time of the adoption is another country that is also a party to the Hague Convention on Adoption,
  - (i) whether the competent authorities responsible for international adoption in the child's country of habitual residence at the time of the adoption and in the country of the intended destination have stated in writing that in their opinion the adoption was in accordance with the Hague Convention on Adoption and that they do not object to the adoption, and
  - (ii) whether the pre-existing legal parent-child relationship was permanently severed by the adoption;
- (d) in all other cases,
  - (i) whether a competent authority of the country of intended destination at the time of the adoption conducted or approved a home study of the parent or parents, as the case may be, and has stated in writing that it does not object to the adoption,
  - (ii) whether before the adoption, the minor child's parent or parents, as the case may be, gave their free and informed consent in writing to the adoption,
  - (iii) whether the pre-existing legal parent-child relationship was permanently severed by the adoption,
  - (iv) whether there is no evidence that the adoption was for the purpose of child trafficking or undue gain, and
  - (v) whether the minor child was eligible for adoption in accordance with the laws of the child's country of habitual residence at the time of the adoption.<sup>40</sup>

It should be noted that the grant of citizenship through this provision is subject to first generation limit. Under the direct route, "adopted persons will not be able to: pass on their citizenship to any children he or she later has outside Canada" or "apply for a direct grant for any foreign born children he or she later adopts, unless the other adoptive parent is a Canadian citizen who is eligible to pass on Canadian citizenship by descent."<sup>41</sup> Since April 17, 2009, "Canadian citizenship by birth outside Canada to a Canadian citizen parent (citizenship by descent) is limited to the first generation born outside Canada. This means that, in general, persons who were not already Canadian citizens immediately before April 17, 2009 and who were born outside Canada to a Canadian parent are not Canadian if their Canadian parent was also born outside Canada to a Canadian parent or was granted Canadian citizenship under the adoption provisions of the Citizenship Act."<sup>42</sup>

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<sup>40</sup> Citizenship Regulations (SOR/93-246), § 5.1.

<sup>41</sup> *Citizenship Law and Adoption*, IRCC, *supra* note 27.

<sup>42</sup> IRCC, *Guide CIT 0009 – Application for Canadian Citizenship for a Person Adopted by a Canadian Citizen – Part 1 – Confirmation of Canadian Citizenship of the Adoptive Parent(s)*, <https://perma.cc/R547-WZKM>.

Section 5.1(4) sets out the rules regarding the “first generation limit to citizenship by descent.” According to the IRCC:

“[t]he first generation limit to Canadian citizenship by descent applies to foreign-born individuals adopted by a person who was a Canadian citizen at the time of the adoption, as well as to those whose adoption took place prior to January 1, 1947, by a person who became a Canadian citizen on January 1, 1947 (or April 1, 1949, in the case of Newfoundland and Labrador for adoptions that took place prior to April 1, 1949). This means that children born outside Canada and adopted by a Canadian citizen are **not** eligible for a grant of Canadian citizenship under section 5.1, the adoption provisions of the *Citizenship Act*, if:

- their adoptive Canadian citizen parent was born outside Canada to a Canadian citizen; or
- their adoptive Canadian citizen parent was granted Canadian citizenship under section 5.1, the adoption provisions of the *Citizenship Act*<sup>43</sup>

Exceptions to the first generation limit rule are set in sections 5.1(5) and (6).<sup>44</sup> Citizenship would be granted if an adoptive Canadian citizen parent or grandparent were employed as described in one of the following exceptions to the first generation limit:

- at the time of the person’s adoption, either of the person’s adoptive **parents** was employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province or territory, other than as a locally engaged person (a Crown servant);
- at the time of either of the **adoptive parents’ birth or adoption**, one of **their** parents (the adopted person’s **grandparents**) was employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province or territory, other than as a locally engaged person (a Crown Servant).<sup>45</sup>

Please note that the adoption provision under 5.1 also has separate requirements for adopting persons “who were adopted as minors but are adults (18 years of age or older) at the time of application” and “persons who were or will be adopted as adults.”<sup>46</sup> Also a provision exist under section 5.1(3) that sets out specific requirements for international adoptions for the province of Quebec.<sup>47</sup>

Persons who are not eligible for Canadian citizenship under section 5.1 “may be eligible to obtain permanent resident status in Canada and subsequently submit an application for Canadian

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<sup>43</sup> *Application for Canadian Citizenship – Adopted Person*, IRCC (last updated May 13, 2019), <https://perma.cc/F5SZ-3SZG>.

<sup>44</sup> *Citizenship Act*, § 5.1(5) & (6).

<sup>45</sup> *Citizenship Law and Adoption*, IRCC, *supra* note 27.

<sup>46</sup> *Id.*

<sup>47</sup> *Citizenship Act*, § 5.1(3).

citizenship either under subsection 5(2) in the case of a minor child (under 18 years of age) or under section 5(1) in the case of an adult.”<sup>48</sup>

#### **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

##### **A. Application for Citizenship by a Minor – Section 5(2)**

Application under section 5(2) of the act on behalf of a minor child must be according to section 4 of the Citizenship Regulations, No. 2 (SOR/2015-124) and must include certain stipulated information and materials.<sup>49</sup>

The application for citizenship of a minor involves seven steps that include making sure the minor is eligible, gathering the minor’s documents, completing the application form, paying the fees, submitting the application, waiting for a decision, and going to a citizenship ceremony and taking the oath.<sup>50</sup> The documents that must be included with the application according to the IRCC application guide are

- Photocopies of the minor’s biographical page of all valid and expired Passport(s)/Travel documents for the five years immediately before the date of application, or since the minor became a permanent resident if that date is more recent than five years
- Photocopy of two pieces of personal identification (Both pieces of identification should show the minor’s name and date of birth, one of which must have a photo on it.)
- Photocopy of birth certificate or adoption order (A different set of documents is required if the adopted minor is living in Quebec.)
- One photocopy of proof of the parent’s Canadian citizenship, which can include a provincial/territorial birth certificate, certificate of Canadian citizenship, or certificate of naturalization
- Translations for any documents submitted that are not in English or French (Translations must include the translator’s affidavit.)

For a complete list of documents required for the application, see the document checklist.<sup>51</sup>

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<sup>48</sup> IRCC, *Guide CIT 0009 – Application for Canadian Citizenship for a Person Adopted by a Canadian Citizen – Part 1 – Confirmation of Canadian Citizenship of the Adoptive Parent(s)*, supra note 42.

<sup>49</sup> Citizenship Regulations, No. 2 (SOR/2015-124), § 4, <https://perma.cc/KG4S-NHCD>.

<sup>50</sup> IRCC, *Guide CIT 0003 – Application for Canadian Citizenship – Minors (Under 18 Years of Age)*, supra note 26.

<sup>51</sup> IRCC, *Document Checklist Application for Canadian Citizenship – Minors (Under 18 Years of Age)*, <https://perma.cc/25PR-GTSS>.



## **B. Application for Citizenship by Adoptee – Section 5.1**

### *1. Part 1 of Application*

Application under section 5.1(1) of the act must be according to section 5 of the Citizenship Regulations, No. 2 (SOR/2015-124) and must include certain stipulated information and materials.<sup>52</sup>

An application under section 5.1 is a two-part process. Under Part 1 of the application,<sup>53</sup> certain documents are required “to confirm that at least one adoptive parent is or was a Canadian citizen at the time of the adoption or, for adoptions that took place prior to January 1, 1947, at least one adoptive parent became a Canadian citizen on January 1, 1947 (or April 1, 1949, in the case of Newfoundland and Labrador for adoptions that took place prior to April 1, 1949) and is able to pass on Canadian citizenship to the adopted person.”<sup>54</sup>

Under the document checklist,<sup>55</sup> the following documents are required to be submitted, most of which must be certified copies:

- Two pieces of personal identification for the person who is making the application on behalf of the adopted person (adoptive parent or legal guardian) or pieces of personal identification of the adopted person (if 18 years of age or older). Both pieces of personal identification should show the person’s name and date of birth, and at least one of which must have your photograph on it. (certified copy).
- One proof of Canadian citizenship of the adoptive parent(s). (Examples include provincial/territorial birth certificate, Certificate of Canadian citizenship, certificate of naturalization, certificate of Registration of Birth Abroad, Certificate of retention of Canadian citizenship (issued between January 1, 1947 and February 14, 1977), or British birth certificate, British certificate of naturalization or proof that they became a Canadian citizen as a result of the legislative amendments to the Citizenship Act in 2009 or 2015.) (certified copy).
- Documentation proving legal guardianship, if applicable. This applies if the legal guardian is applying for Canadian citizenship on behalf of the adopted person (certified copy)
- Translations for any documents submitted that are not in English or French. Translations must include an affidavit (certified copy)
- Documentation to prove a change of name, if applicable (certified copy)
- Request form for Change of Sex or Gender Identifier<sup>56</sup>

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<sup>52</sup> Citizenship Regulations, No. 2 (SOR/2015-124), § 5.

<sup>53</sup> IRCC, *Guide CIT 0009 – Application for Canadian Citizenship for a Person Adopted by a Canadian Citizen – Part 1 – Confirmation of Canadian Citizenship of the Adoptive Parent(s)*, supra note 42.

<sup>54</sup> Id.

<sup>55</sup> IRCC, *Document Checklist, Part 1 – Confirmation of Canadian Citizenship of the Adoptive Parent(s)*, <https://perma.cc/9ZZR-HZRX>.

<sup>56</sup> Id.; IRCC, *Guide CIT 0009 – Application for Canadian Citizenship for a Person Adopted by a Canadian Citizen – Part 1 – Confirmation of Canadian Citizenship of the Adoptive Parent(s)*, supra note 42.

Once Part 1 of the application has been assessed, and if approved, the authorities will communicate with the applicant by mail about when and where to submit Part 2 of the application. Part 2 of the application cannot be sent until the applicant has received a decision letter indicating that Part 1 has been approved.

## 2. *Part 2 of Application*

Part 2 of the process is the adoptee's application "to assess the adopted person's eligibility for a grant of Canadian citizenship pursuant to section 5.1 of the Citizenship Act." It has its own set of documents that need to be included as part of the second part of the application. They include

- Two pieces of the adopted person's personal identification
- One of the following supporting documents: Adoption Order, Adoption Judgment OR Adoption Certificate. The document must show the adopted person's name, the date of birth, the place of birth and the names of the adoptive parents.
- All of the following supporting documents (if available and applicable to the adopted person)
- Birth certificate showing the names of the biological parents
- For orphaned children: death certificate of parents (certified authentic by the appropriate local government authority)
- Documentation proving legal guardianship, if applicable
- Translations for any documents submitted that are not in English or French. Translations must include an affidavit
- Documentation to prove a change of name, if applicable
- Documentation to support a date of birth correction, if applicable
- Request form for Change of Sex or Gender Identifier<sup>57</sup>

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<sup>57</sup> IRCC, *Document Checklist, Part 2 – Adoptee's Application*, <https://perma.cc/Z5NP-KDD3>.

# China

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**SUMMARY** According to the Nationality Law, foreign citizens or stateless persons who are close relatives of Chinese citizens, have settled in China, or have “other legitimate reasons” may be naturalized as Chinese citizens. In practice, naturalization is rare in mainland China.

The Nationality Law does not specifically address the acquisition of Chinese citizenship through international adoption. Under China’s permanent residence rules, a foreign adopted child under the age of 18 may apply for Chinese permanent residence if the child is going to live with the Chinese citizen or permanent resident parent living in China.

While the Civil Code and measures issued by the Ministry of Civil Affairs provide rules on the adoption of Chinese children by foreign citizens, no such rules that specifically regulate the adoption of foreign children by Chinese citizens have been located. For Chinese citizens adopting foreign children abroad, visas will be issued to these children for their entry into China.

In general, applications to acquire Chinese citizenship shall be submitted to the city or county public security bureaus within China or to the Chinese embassy or consulates in a foreign country. The Ministry of Public Security is responsible for reviewing and approving the applications.

## I. Introduction

Chinese nationality law basically follows the principle of *jus sanguinis*, under which a child’s citizenship is determined by the parents’ citizenship. According to the Nationality Law of the People’s Republic of China (PRC or China),<sup>1</sup> a child born in China is a Chinese citizen if one or both parents are Chinese citizens, or if his parents are settled in China and the parents are stateless or their nationalities cannot be determined. A child born outside China with one or both parents being Chinese citizens is also a Chinese citizen, unless the Chinese citizen parent has settled in a foreign country and the child has acquired foreign citizenship at birth.<sup>2</sup> China does not recognize dual citizenship, and a foreigner cannot retain foreign citizenship after being naturalized as a Chinese citizen.<sup>3</sup>

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<sup>1</sup> This report does not cover Hong Kong and Macao, which are special administrative regions where immigration is controlled separately.

<sup>2</sup> PRC Nationality Law (adopted by the National People’s Congress (NPC) on Sept. 10, 1980) arts. 4-6, <https://perma.cc/GN89-U79J> (in Chinese), <https://perma.cc/87P4-SDZJ> (English translation).

<sup>3</sup> Id. arts. 3, 8.

Foreigners may be naturalized as Chinese citizens in accordance with the Nationality Law, but in practice, naturalization is rare in mainland China. According to a 2010 census, there were only 1,448 naturalized Chinese living on the mainland.<sup>4</sup>

Adoption is governed by the new PRC Civil Code under Chapter 5, “Adoption” of Part V, “Marriage and Family.”<sup>5</sup> Taking effect on January 1, 2021, the Civil Code repealed the PRC Adoption Law that had previously governed adoption in China.<sup>6</sup> In addition to providing general rules on adoption, the Civil Code regulates the adoption of Chinese children by foreign citizens,<sup>7</sup> but does not specifically address the adoption of foreign children by Chinese citizens.

## II. International Adoption

### A. Hague Adoption Convention and Intercountry Adoption

China is a signatory of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention), which was ratified by the National People’s Congress Standing Committee on April 27, 2005. The central authority to perform the duties of the PRC under the convention is the Ministry of Civil Affairs (MCA).<sup>8</sup>

The MCA issued measures to regulate the adoption of Chinese children by foreigners.<sup>9</sup> However, no such measures specifically regulating the adoption of foreign children by Chinese citizen parents have been located.

For foreign children adopted by Chinese citizens abroad, the Chinese embassy or consulate located in the foreign country may, upon application of the Chinese adopters, issue visas to those children for their entry into China. Chinese embassies and consulates may also provide consular authentication (legalization) services for adoption certificates that have been notarized or authenticated by competent authorities of the country of residence.<sup>10</sup>

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<sup>4</sup> National Bureau of Statistics, *Tabulation on the 2010 Population Census of the People’s Republic of China*, <https://perma.cc/HP5A-UV77> (in Chinese).

<sup>5</sup> PRC Civil Code (adopted by the NPC on May 28, 2020, effective Jan. 1, 2021), <https://perma.cc/385M-HRUH> (in Chinese), <https://perma.cc/GLF4-SSB7> (English translation provided by NPC Observer).

<sup>6</sup> Id. art. 1260.

<sup>7</sup> Id. art. 1109.

<sup>8</sup> NPC Standing Committee, Decision on Ratifying the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Apr. 27, 2005), <https://perma.cc/WT6F-3N6P> (in Chinese).

<sup>9</sup> See, e.g., MCA, *Measures for Registration of Adoption of Children by Foreigners in the People’s Republic of China* (May 25, 1999), <https://perma.cc/55NM-NW65> (in Chinese).

<sup>10</sup> Zhenghong Ren, *What Consular Assistance Can Overseas Chinese Citizens Receive When Adopting Foreign Children?*, China Consular Aff. (July 27, 2015), <https://perma.cc/K6VL-RQUE> (in Chinese).

## B. Adoption Under PRC Civil Code

Under the general adoption rules in the Civil Code, the maximum age for being adopted is 18. According to the Civil Code, with exceptions, minors may be adopted if they are: orphans bereaved of parents, minors whose natural parents cannot be traced, or children whose natural parents are incapable of raising them due to unusual difficulties.<sup>11</sup>

Adopters, with exceptions, are required to meet the following requirements:

- (1) having no child or only one child;
- (2) being capable of raising, educating, and protecting the adoptee;
- (3) not suffering from any disease that is deemed medically unfit to be an adopter;
- (4) having no criminal record unfavorable to the healthy growth of the adoptee; and
- (5) having reached the age of 30.<sup>12</sup>

An adopter who has one child may only adopt one more child, while a childless adopter may adopt two. Adoption of orphans, minors with disabilities, or minors in a children's welfare institution whose natural parents cannot be traced may be exempted from this restriction.<sup>13</sup> Additionally, these requirements for adoptees and adopters are not applicable to stepparent adoption with the consent of the natural parents.<sup>14</sup>

An adoption in China must be registered with the civil affairs authority at or above the county level.<sup>15</sup> Upon establishment of an adoptive relationship, the public security organ will facilitate household registration for the adoptee, according to the Civil Code.<sup>16</sup>

## C. Application of Laws

The PRC Law on Application of Laws to Foreign-Related Civil Relations provides that the conditions and formalities of adoption are governed by the laws of the habitual residence of the adopter and the adoptee, while the effect of adoption is governed by the law of the adopter's habitual residence when the adoption occurs.<sup>17</sup>

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<sup>11</sup> PRC Civil Code art. 1093. Minors are defined to be under the age of 18 in the Civil Code. *Id.* art. 17.

<sup>12</sup> *Id.* art. 1098.

<sup>13</sup> *Id.* art. 1100.

<sup>14</sup> *Id.* art. 1103.

<sup>15</sup> *Id.* art. 1105.

<sup>16</sup> *Id.* art. 1106.

<sup>17</sup> PRC Law on Application of Laws to Foreign-Related Civil Relations (adopted by the NPC Standing Committee on Oct. 28, 2010, effective Apr. 1, 2011) art. 28, <https://perma.cc/L3LG-9R62> (in Chinese); <https://perma.cc/2ZJ9-VMXC> (English translation).

### III. Acquisition of Citizenship by Foreign Adopted Children

#### A. Nationality Law

According to the Nationality Law, foreign citizens or stateless persons who are willing to abide by China's Constitution and laws and who are close relatives of Chinese citizens, have settled in China, or have "other legitimate reasons," may be naturalized as Chinese citizens upon approval of their applications.<sup>18</sup> The 18 articles of this law have not been updated since its first enactment in 1980. The law does not specifically address the acquisition of citizenship for Chinese citizens' foreign adopted children.

On April 2, 2018, the National Immigration Administration (NIA) was established. The new agency under the Ministry of Public Security (MPS) is responsible for immigration and border control throughout China, including citizenship management.<sup>19</sup>

#### B. Permanent Residence Rules

China has issued rules on granting permanent residence status to foreigners living in China. The Administrative Measures for the Examination and Approval of Permanent Residence of Foreigners in China were issued in 2004. A higher-level administrative regulation on permanent residence is currently under consideration. Under these rules, foreign children under the age of 18 may apply for Chinese permanent residence if they are going to live with their Chinese citizen or permanent resident parent living in China.<sup>20</sup>

To acquire permanent residence for such a foreign child, the Chinese parent's household registration certificate and the child's birth certificate or other certificate of parent-child relationship must be submitted for review. In the case of an adopted child, the certificate of adoption is also required. Any of those certificates issued by foreign authorities is also subject to authentication by the Chinese embassy or consulate in the relevant country.<sup>21</sup>

### IV. Mandatory Documentation and Procedures to Acquire Citizenship

No specific provisions have been identified on the mandatory documentation and procedures for Chinese citizens' foreign adopted children to acquire Chinese citizenship.

In general, according to information provided by the NIA website, applications to acquire Chinese citizenship shall be submitted to the city or county public security bureaus within China

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<sup>18</sup> PRC Nationality Law art. 7.

<sup>19</sup> *Overview of National Immigration Administration*, NIA, <https://perma.cc/5ZRH-S4SZ> (in Chinese).

<sup>20</sup> MPS & Ministry Foreign Aff., *Administrative Measures for the Examination and Approval of Permanent Residence of Foreigners in China* (Aug. 15, 2004) art. 6(6), <https://perma.cc/YL3Y-JKFW> (in Chinese); *Regulations on the Management of Permanent Residence of Foreigners (Draft for Comment)* (Feb. 27, 2020) art. 17(2), <https://perma.cc/RT78-G3WM> (in Chinese).

<sup>21</sup> *Administrative Measures for the Examination and Approval of Permanent Residence of Foreigners in China*, art. 15.

or the Chinese embassy or consulates in a foreign country. The MPS is responsible for reviewing and approving the applications.<sup>22</sup> The applicant must fill an application form, submit a written petition to acquire Chinese citizenship, and provide relevant documentation as follows:

- (1) a copy of the foreign passport;
- (2) a copy of the Foreign Permanent Resident ID Card;
- (3) documents to prove that the applicant had foreign citizenship at birth, if both or one of his or her parents was born to a Chinese citizen;
- (4) any other materials that the authority deems relevant to the application.<sup>23</sup>

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<sup>22</sup> *Instructions for Applying for Naturalization as Chinese Citizens*, NIA (May 13, 2019), <https://perma.cc/E3BN-KHVZ> (in Chinese).

<sup>23</sup> *Id.*

# Costa Rica

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**SUMMARY** The US concept of citizenship known in Costa Rica as nationality is governed by the Constitution and by the Law of Options and Naturalizations. Intercountry adoption is mainly governed by the Family Code and the Regulations for the Processes of Placement for Adoption Purposes and National and International Adoption of the National Children's Patronage. Costa Rica is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), having ratified it in 1995 and incorporated it in national legislation in the same year. The Central Authority in Costa Rica for international adoptions under the Hague Adoption Convention is the National Council of Adoptions. International adoption is subsidiary to national adoption and will only proceed when there is no possibility of placing a minor in an adoptive family that resides in Costa Rica. Under Costa Rican law, a child of a native Costa Rican father or mother, who is born abroad and is registered as such in the Civil Registry by the Costa Rican parent while the child is a minor, is a Costa Rican national, as are such children who register on their own before reaching 25 years of age. The law makes no distinction between native Costa Rican parents' biological or adopted children born abroad. Both kinds of children are considered Costa Rican nationals. Nevertheless, nationality has to be officially established through birth registration in the Civil Registry.

Under article 23 of the Hague Adoption Convention, to register a child's adoption carried out by Costa Ricans in a signatory state in the Civil Registry, the applicant must submit a certificate of adoption bearing an appropriate apostille, which documents that the final decision of adoption was duly registered in the country of origin. For registration in the Civil Registry of an adoption made by Costa Ricans in a country that is not a signatory to the Hague Adoption Convention, the authenticity of the adoption decision must be accredited in accordance with the rules of recognition of foreign judgments in the Civil Procedure Code of Costa Rica.

## I. Introduction

Under Costa Rican law, the US concept of citizenship is known as nationality. Costa Rican nationality is basically governed by the Constitution of 1949 as amended, which uses both *jus soli* (by place of birth) and *jus sanguinis* (by descent) standards for the determination of nationality.<sup>1</sup> Costa Rican nationality is also governed by Law No. 1155, Law of Options and Naturalizations. This statute restates and implements the constitutional provisions on nationality.<sup>2</sup>

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<sup>1</sup> Constitución Política de la República de Costa Rica, Nacionalidad [Const.], arts. 13-18, Nov. 7, 1949, La Gaceta [L.G.], Oct. 6, 19 & 20, 1949, as amended, <https://perma.cc/D9KC-WYLA>.

<sup>2</sup> Ley No. 1155 de Opciones y Naturalizaciones, Apr. 29, 1950, art. 1 (the original date of publication is not available), <https://perma.cc/U2QL-EHRH>.



Costa Rica has two main legal instruments governing international adoptions. The first is the Family Code,<sup>3</sup> and the second is the National Board of Children's Regulations for the Processes of Placement for Adoption Purposes and National and International Adoption of the National Children's Patronage (Reglamento para los Procesos de Ubicación con Fines Adoptivos y de Adopción Nacional e Internacional del Patronato Nacional de la Infancia).<sup>4</sup>

## II. International Adoption

Costa Rica is a party to the Children's Rights Convention,<sup>5</sup> and as of the approval of the Convention in 1990, a whole movement was generated in Costa Rica aimed at adapting domestic legislation to its principles and precepts.<sup>6</sup> Costa Rica is also a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), having signed it on May 29, 1993, and ratified it on October 30, 1995.<sup>7</sup> Costa Rica incorporated the Hague Adoption Convention in national legislation through Law No. 7517 of 1995.<sup>8</sup>

In Costa Rica, the National Council of Adoptions (Consejo Nacional de Adopciones) of the National Children's Patronage (Patronato Nacional de la Infancia) was designated as the Central Authority under the terms of the Hague Adoption Convention. Therefore, with regard to international adoptions, the competent body to issue an administrative decision declaring the international adoptability of a child is the Council,<sup>9</sup> which has the administrative and technical support of the Department of Adoptions.<sup>10</sup> International adoption is subsidiary to national adoption and will only proceed when the Council has determined that there is no possibility of placing a minor in an adoptive family with habitual residence in Costa Rica.<sup>11</sup>

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<sup>3</sup> Ley No. 5476, Código de Familia, Dec. 21, 1973, L.G., Feb. 5, 1974, <https://perma.cc/9WB8-JSAJ>.

<sup>4</sup> Reglamento para los Procesos de Ubicación con Fines Adoptivos y de Adopción Nacional e Internacional del Patronato Nacional de la Infancia, L.G., July, 8, 2020, <https://perma.cc/VK77-9PXW>.

<sup>5</sup> UN Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), <https://perma.cc/SFK3-3AY2>.

<sup>6</sup> Reglamento para los Procesos de Ubicación con Fines Adoptivos de Adopción Nacional e Internacional del Patronato Nacional de la Infancia, Preamble.

<sup>7</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), opened for signature May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995), <https://perma.cc/8ATW-ZYBE>.

<sup>8</sup> Ley No. 7517, Convenio de Protección al Niño y Cooperación en Adopción Internacional, L.G., July 17, 1995, <https://perma.cc/TJ52-75AP>.

<sup>9</sup> Ley No. 5476, Código de Familia, art. 109 bis.

<sup>10</sup> Reglamento para los Procesos de Ubicación con Fines Adoptivos y de Adopción Nacional e Internacional del Patronato Nacional de la Infancia, arts. 9-12.

<sup>11</sup> Ley No. 5476, Código de Familia, art. 109 bis.

For all purposes, both the administrative and judicial authorities must apply the procedures and conditions established in the international conventions signed and ratified by Costa Rica regarding international adoption and the protection of the rights of minors.<sup>12</sup>

Applicants for international adoption who, due to their immigration status, do not have habitual residence in Costa Rica, may adopt, jointly or individually, a minor who has been judicially declared in a state of abandonment and suitable for international adoption by the National Adoption Council, as long as there are no national adopters or interested parties or those with habitual residence in Costa Rica, according to the Council's records of eligible families.<sup>13</sup> For this purpose, applicants for adoption must comply with the requirements of articles 126 and 127 of the Family Code and submit to the competent judge the documents indicated in articles 112 and 128 of the Code.<sup>14</sup> Additional requirements that the applicants must meet are indicated in articles 81 and 82 of the Regulations for the Processes of Placement for Adoption Purposes and National and International Adoption of the National Children's Patronage.<sup>15</sup>

### III. Acquisition of Citizenship by Foreign Adopted Children

#### A. Foreign Adopted Children Raised in the Country of an Adoptive Parent

As stated above, Costa Rican nationality is determined by *jus soli*, in the case of persons born in the national territory, and *jus sanguinis*, that is, by those who are born from, or adopted by, Costa Rican parents.

Under article 13 of the Constitution, the following are Costa Ricans by birth:

- (1) The child of a Costa Rican father or mother born in the territory of the Republic.
- (2) The child of a Costa Rican father or mother by birth, who is born abroad, and is registered as such in the Civil Registry, by the will of the Costa Rican parent, while he is a minor, or by his own until he/she is 25 years old.
- (3) The child of foreign parents born in Costa Rica who registers as a Costa Rican, by the will of any of his/her parents while he/she is under the age of 18, or by his/her own until he is 25 years old.
- (4) The infant of unknown parents found in Costa Rica.<sup>16</sup>

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<sup>12</sup> Id.

<sup>13</sup> Id. art. 112.

<sup>14</sup> Id. arts. 112, 126-28.

<sup>15</sup> Reglamento para los Procesos de Ubicación con Fines Adoptivos y de Adopción Nacional e Internacional del Patronato Nacional de la Infancia, arts. 81-82.

<sup>16</sup> Const. art. 13.

The Law on Options and Naturalizations restates these provisions of the Constitution.<sup>17</sup> Neither these provisions of the Constitution nor the Law on Options and Naturalizations make any distinction between Costa Rican native parents' biological or adopted children born abroad. Therefore, both kinds of children are considered native Costa Ricans. Nevertheless, nationality has to be officially established.<sup>18</sup> This requires a process of birth registration in the Civil Registry, as stated in the Constitution.<sup>19</sup>

The Law on Options and Naturalizations provides that in accordance with subsection 2 of article 13 of the Constitution, the Costa Rican parent of a minor child born abroad may appear personally or through a special agent before the Civil Registry and request that the child be registered as Costa Rican by birth.<sup>20</sup> The same procedure will be followed when the offspring is older than 21 but less than 25 years of age and opts for Costa Rican nationality.<sup>21</sup>

#### **B. Foreign Adopted Children Raised Abroad**

Neither the Constitution nor the Law on Options and Naturalizations conditions the right to Costa Rican nationality of children born abroad to native Costa Ricans on whether or not the child was raised abroad. As stated above, a Costa Rican parent, while the child is a minor, may appear personally or through a special agent before the Civil Registry, requesting that the child be registered as Costa Rican by birth.<sup>22</sup> The same procedure will be followed when the offspring is older than 21 but less than 25 years of age and opts for Costa Rican nationality.<sup>23</sup>

#### **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

As indicated above, under the Constitution, the birth child of a Costa Rican father or mother, who is born abroad and has been registered in the Civil Registry is a Costa Rican national.<sup>24</sup> In addition, the Constitution and the implementing legislation do not distinguish between biological and adopted children. The Law of the Supreme Electoral Tribunal and Civil Registry,<sup>25</sup> as well as the Regulations of the Civil Status Registry,<sup>26</sup> require that adoptions must be registered in the

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<sup>17</sup> Ley No. 1155, de Opciones y Naturalizaciones, art. 9.

<sup>18</sup> This interpretation of the law was confirmed by the Coordinator of the Adoptions Department of the National Children's Patronage, in a phone consultation, on Jan. 13, 2021.

<sup>19</sup> Const. art. 13, para. 2.

<sup>20</sup> Ley No. 1155, de Opciones y Naturalizaciones, art. 9.

<sup>21</sup> Id. art. 10, para. 2.

<sup>22</sup> Id. art. 9.

<sup>23</sup> Id. art. 10, para. 2.

<sup>24</sup> Const. art. 13, para. 2.

<sup>25</sup> Ley No. 3504, Ley Orgánica del Tribunal Supremo de Elecciones y del Registro Civil, arts. 43, 63, as amended, L.G., May 26, 1965, <https://perma.cc/ZV54-PDVL>.

<sup>26</sup> Decreto 06-2011, Reglamento del Registro del Estado Civil, arts. 7, 45, L.G. May 17, 2011, <https://perma.cc/A4Z8-BSK6>.

Civil Registry. For registration in the Civil Registry of a child's adoption carried out by Costa Ricans in a Hague Adoption Convention signatory state, the applicant must submit the following:

- The certificate of the adoption's conformity with the Convention. This certificate, issued by the competent authority of the state where the adoption has taken place, documents that it has been carried out in accordance with the Hague Adoption Convention, as referred to in article 23 of the Convention.
- The final decision of adoption duly registered in the country of origin and bearing the appropriate apostille.<sup>27</sup>

For registration in the Civil Registry of an adoption made by Costa Ricans in a country that is not a signatory to the Hague Adoption Convention, the authenticity of the adoption decision must be accredited in accordance with the rules on recognition of foreign judgments of the Civil Procedure Code of Costa Rica,<sup>28</sup> as mandated by the Regulations of the Civil Status Registry. These regulations state that the enforcement of judgments issued by foreign courts in matters that affect the civil status of persons may be registered at the request of the interested party, once the procedure established by the Civil Procedure Code has been completed for a foreign judgment to take effect in the country.<sup>29</sup>

Under the Code of Civil Procedure, it is the responsibility of each of the Chambers of the Supreme Court, according to their subject matter jurisdiction, to determine the recognition and effectiveness of foreign judgments and awards.<sup>30</sup> In accordance with the Organic Law of the Judicial Power, the First Chamber, known as the Civil Chamber, hears and determines civil matters.<sup>31</sup> Therefore, this Chamber has subject matter jurisdiction to determine the recognition and effectiveness of foreign judgments, such as adoptions that have been carried out abroad. For the recognition of foreign judgments and awards, the following requirements must be met:

- An authentic copy of the resolution, issued by the judicial authority or the arbitrator in charge of issuing it in the country of origin, must be submitted, stating that the diplomatic or consular requirements demanded by the country of origin and Costa Rica have been met.
- An official translation of the resolution must be attached, when the ruling has been issued in another language.

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<sup>27</sup> Information provided by the Coordinator of the Adoptions Department of the National Children's Patronage, in a phone consultation, on Jan. 22, 2021. No information was found in the Law of the Supreme Electoral Tribunal and Civil Registry or in the Regulations of the Civil Status Registry as to the documents that are needed to register an adoption carried out by Costa Ricans in a country that is signatory of the Hague Adoption Convention.

<sup>28</sup> Id.

<sup>29</sup> Decreto 06-2011, Reglamento del Registro del Estado Civil, art. 16.

<sup>30</sup> Ley No. 9342, Código Procesal Civil, art. 99.3, L.G., Apr. 8, 2016, <https://perma.cc/7C5C-S2MQ>.

<sup>31</sup> Ley No. 7333, Reforma Integral a la Ley Orgánica del Poder Judicial, art. 54, para. 7, L.G., July 1, 1993, <https://perma.cc/K7PW-PDJR>.

## Citizenship Through International Adoption: Costa Rica

- Proof that in the process where the international resolution was issued, the defendant's summons was legally complied with, or that it was held in absentia, in accordance with the regulations of the country of origin.
- The claim invoked must not be the exclusive competence of the Costa Rican courts, must have a connection with Costa Rica and must not be manifestly contrary to public policy.
- There should not be a pending process or sentence with res judicata authority in Costa Rica.<sup>32</sup>

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<sup>32</sup> Ley No. 9342, Código Procesal Civil, art. 99.2.

# France

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**SUMMARY** French law provides for two types of adoption: “simple adoption,” and “plenary adoption.” Plenary adoption is irrevocable and completely severs the family ties between the adopted child and his/her birth family, while in a “simple adoption” the adopted child remains a part of his/her family of birth. Under French law, the conditions of an adoption are subject to the laws of the adopting parent’s home country or, if a married couple is adopting, by the national laws that govern the couple’s marriage. Additionally, a foreign child cannot be adopted if he or she is from a country where adoption is prohibited, unless he or she was born in France and habitually resides in France.

The French Civil Code requires that, for a plenary adoption, the adoptive parents be over the age of 28, be 15 years older than the adopted child, and that the child be no older than 15 years old. Additionally, the adopted child must be a ward of the state, have been declared legally abandoned, or his/her legal guardian must have freely consented to the adoption. The process to adopt in France requires adoptive parents to obtain prior approval from a government agency which verifies that the adoptive child would enter a stable and peaceful family environment.

An adoption legally pronounced abroad will have in France the effects of a plenary adoption if it completely and irrevocably severed the ties between the adopted child and his/her birth family, otherwise it will have the effects of a “simple adoption.” If a foreign child is adopted by a French citizen in a plenary adoption, the child becomes a French citizen by virtue of having a French parent, and will be legally considered to have been a French citizen from birth. A “simple adoption,” by contrast, does not automatically confer French citizenship on the adopted child. A child’s adoption should be recorded in the civil status registry of the place where he/she was born or, if the child was born abroad, in the civil status registry of the Ministry of Foreign Affairs. This recordation takes the place of the child’s birth registration, and can be used as evidence of his/her French citizenship for most purposes.

## I. Introduction

Questions of French citizenship as well as adoption are principally governed by the Civil Code.<sup>1</sup> French citizenship can be acquired either by having at least one French parent, or by being born in France and having resided in France for at least five years between the ages of 11 and 18.<sup>2</sup>

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<sup>1</sup> Code civil, arts. 17 - 33-2, 343 - 370-5, <https://perma.cc/AZ4E-AF5R>.

<sup>2</sup> Id. arts. 18, 21-7.

French law provides for two types of adoption: “simple adoption” (*adoption simple*) and “plenary adoption” (*adoption plénière*). A plenary adoption is irrevocable, and completely severs the family ties between the adopted child and his/her birth family.<sup>3</sup> The adopted child in a plenary adoption gains the same status, and the same rights and obligations, as a birth child of the adoptive parents.<sup>4</sup>

By contrast, a “simple adoption” is revocable (albeit only for serious cause), and it does not sever the family ties between the adopted child and his/her birth family.<sup>5</sup> In a “simple adoption,” the adoptive parents gain full parental authority over the adopted child, and the latter gains inheritance rights to the adoptive parents’ estate, but the adopted child remains part of his/her family of birth.<sup>6</sup> Traditionally, “simple adoption” was mainly used for intra-family adoptions or for the adoption of adults, as plenary adoptions are subject to age limitations while “simple adoptions” are not.<sup>7</sup> Nowadays, “simple adoptions” are also often used by persons to create a formal tie to their spouse’s child from a previous relationship.<sup>8</sup>

## II. International Adoption

France is a party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>9</sup> France’s central authority for purposes of the Hague Convention is a department of the Ministry of Foreign and European Affairs called the Service de l’adoption internationale (International Adoption Service).<sup>10</sup> Additionally, France is a party to the European Convention on the Adoption of Children.<sup>11</sup>

According to the Civil Code, the conditions of an adoption are subject to the laws of the adopting parent’s home country or, if a married couple is adopting, by the national laws that govern the couple’s marriage.<sup>12</sup> Therefore, a French person seeking to adopt would have to abide by French adoption law, as would a married couple who got married in France.

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<sup>3</sup> Id. arts. 356, 359.

<sup>4</sup> Id. art. 358.

<sup>5</sup> Id. arts. 364, 370.

<sup>6</sup> Id. arts. 364, 365, 368.

<sup>7</sup> Mélanie Courmont-Jamet, Joséphine Tillaye-Duverdier, *Droits des beaux-parents et des grands-parents en cas de décès de l’un ou des deux parents de l’enfant*, Actu-Juridique.fr (Dec. 7, 2020), <https://perma.cc/THL7-Q2NU>.

<sup>8</sup> Id.

<sup>9</sup> *Convention Countries*, U.S. Department of State (Apr. 6, 2020), <https://perma.cc/JS82-79H4>.

<sup>10</sup> *L’adoption internationale en France*, Ministère des affaires étrangères et européennes, <https://perma.cc/7J2A-GW8V>; Décret n° 2009-407 du 14 avril 2009 relatif à l’Autorité centrale pour l’adoption internationale, April 16, 2009, art. 1, <https://perma.cc/6UEY-AAUH>.

<sup>11</sup> European Convention on the Adoption of Children (Revised), Nov. 27, 2008, CETS No.202, <https://perma.cc/78AD-2DBS>.

<sup>12</sup> C. civ., art. 370-3.

Additionally, a foreign child cannot be adopted if he or she is from a country where adoption is prohibited, unless he or she was born in France and habitually resides in France.<sup>13</sup> Regardless of which country's law is applicable, the French Civil Code provides that an adoption is only valid if the adopted child's legal guardian consented to it.<sup>14</sup> That consent must be freely given, without consideration, after the child's birth, and in full knowledge of the adoption's consequences.<sup>15</sup>

The principal conditions for a valid plenary adoption under French law are the following:

- The adoptive parent(s) must be over the age of 28, except if an adoptive parent is adopting the child of his/her spouse.<sup>16</sup>
- The adoptive parent(s) must be at least 15 years older than the child they are adopting, except if an adoptive parent is adopting the child of his/her spouse, in which case the minimum age difference is ten years.<sup>17</sup>
- The adopted child is under the age of 15 at the time of the adoption (although some exceptions exist), and has been under the adoptive parents' care for at least six months.<sup>18</sup>
- The adopted child is either a ward of the state, or was declared legally abandoned, or his/her legal guardian freely consented to the adoption.<sup>19</sup>

The process to adopt in France requires adoptive parents to obtain prior approval from a government agency called the Aide Sociale à l'Enfance (ASE), which verifies that the adoptive child would enter a stable and peaceful family environment.<sup>20</sup> This appears to be required of all French adoptive parents, whether they wish to adopt in France or abroad. The documentation required to obtain approval from the ASE includes the adoptive parent's criminal record, medical certificate, and evidence of their financial resources.<sup>21</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. arts. 343 - 343-2.

<sup>17</sup> Id. art. 344.

<sup>18</sup> Id. art. 345.

<sup>19</sup> Id. art. 347.

<sup>20</sup> *La demande de l'agrément*, France Diplomatie (Nov. 2020), <https://perma.cc/5V3Q-K7C2>.

<sup>21</sup> *Liste des pièces nécessaires à la demande d'agrément en vue d'une adoption*, Ministère de l'Europe et des Affaires étrangères (Aug. 2019), <https://perma.cc/6J2B-V8P2>.



An adoption legally pronounced abroad will have in France the effects of a plenary adoption if it completely and irrevocably severed the ties between the adopted child and his/her birth family.<sup>22</sup> Otherwise, it will have the effects of a “simple adoption.”<sup>23</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

If a foreign child is adopted by a French citizen in a plenary adoption, the child becomes a French citizen by virtue of having a French parent.<sup>24</sup> That child is legally considered to have been a French citizen from birth.<sup>25</sup> There is no residency requirement: so long as at least one adoptive parent is French, the adopted child is considered a French citizen whether he or she is raised in France or abroad.

“Simple adoptions,” however, do not entail any consequences regarding the adoptee’s citizenship.<sup>26</sup> In other words, if a French citizen adopts a foreign citizen in a “simple adoption,” the adopted person does not become a French citizen by virtue of the adoption, contrary to what happens in a plenary adoption.

### IV. Mandatory documentation and procedures to acquire citizenship

A child’s adoption must be recorded on the *registres de l’état civil* (civil status register) of the place where the child was born, or, if the child was born abroad, of the ministry of foreign affairs.<sup>27</sup> This recordation includes the date, time, and place of the child’s birth; his/her gender; his/her name and surname as result from the adoption; and the name, place and date of birth, profession, and domicile of the adoptive parent(s).<sup>28</sup> This recordation will take the place of the child’s birth registration, and will not mention his/her birth parents.<sup>29</sup> In most cases, this birth registration (*acte de naissance*) can be used as evidence of the person’s French citizenship, for example when applying for a passport or national identity card.<sup>30</sup>

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<sup>22</sup> C. civ., art. 370-5.

<sup>23</sup> Id.

<sup>24</sup> Id. art. 20.

<sup>25</sup> Id.

<sup>26</sup> Id. art. 21.

<sup>27</sup> Id. art. 354.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> *Carte d’identité / Passeport : comment prouver sa nationalité française ?* Service-Public.fr (Sept. 4, 2019), <https://perma.cc/GP92-PQCU>.

# Germany

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**SUMMARY** In 2019, there were a total of 155 international adoptions in Germany. German citizenship may be acquired through international adoption if the child is younger than 18 years of age at the time the application for adoption is submitted, the adoptive parent is German, the adoption is valid under German law, and the legal effects of the international adoption are equivalent to the ones for the adoption of minors under German law with regard to the acquisition of citizenship. So called “weak adoptions” must be converted to “strong adoptions” before citizenship can be conveyed. Strong adoptions are adoptions that completely terminate the former legal parent-child relationship.

The Adoption Support Act, which is slated to enter into force on April 1, 2021, will make amendments to certain laws that will affect international adoptions. It will prohibit international adoptions performed without an agency and such adoptions will generally not be recognized in Germany. In addition, the adoptive parents will be required to file a request for recognition of a foreign adoption decision without undue delay with the specialized family court. There is no such duty if the adoptive parents have a conformity certification according to the Hague Convention on Intercountry Adoption.

## I. Introduction

In 2019, a total of 3,744 children were adopted in Germany.<sup>1</sup> Of those 3,744 adoptees, 359 did not have German citizenship.<sup>2</sup> Of the total number of adoptions, 155 were characterized as “international adoptions.”<sup>3</sup>

Questions of German citizenship are mainly addressed in article 116 of the German Basic Law, the country’s constitution, and the Nationality Act (*Staatsangehörigkeitsgesetz*, StAG).<sup>4</sup> Article 116, paragraph 1 of the Basic Law defines a “German” as someone “who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.” Paragraph 2 provides that former German citizens whose citizenship

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<sup>1</sup> Destatis, *Statistiken der Kinder- und Jugendhilfe. Adoptionen* 5 (2020), <https://perma.cc/UPW4-3K88>.

<sup>2</sup> Id. at 5 & 9.

<sup>3</sup> Id. at 11.

<sup>4</sup> Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG], May 23, 1949, Bundesgesetzblatt [BGBl.] I at 1, art. 116, as amended, <https://perma.cc/4JK9-TYXG> (original), <https://perma.cc/6FCR-JZZP> (English translation, updated through Mar. 28, 2019); Staatsangehörigkeitsgesetz [StAG], July 22, 1913, Reichsgesetzblatt [RGBl.] I at 583, as amended, <https://perma.cc/PW8X-EADR> (original), <https://perma.cc/SH5X-8C7G> (English translation, updated through Nov. 20, 2019).

was revoked between January 1933 and May 1945 by the Nazi regime and their descendants are entitled to have their German citizenship restored.

According to the Nationality Act, German citizenship can be acquired in the following ways:

- By birth;
- By declaration, for children born before July 1, 1993, to a German father and a foreign mother;
- By adoption as a child of a German parent;
- By issuance of a certificate pursuant to the Federal Expellees Act (Bundesvertriebenengesetz);<sup>5</sup>
- For Germans without German citizenship within the meaning of article 116, paragraph 1 of the Basic Law under the procedure laid down in Section 40a of the Nationality Act;
- By naturalization.<sup>6</sup>

In general, citizenship by birth is acquired by birth to a German parent (*jus sanguinis*). In addition, since January 1, 2000, a child of foreign parents acquires German citizenship by birth in Germany (*jus soli*) if one parent has been a legal resident in Germany for eight years and possesses a permanent right of residence or a residence permit as a Swiss citizen or as a family member of a Swiss citizen on the basis of the European Union (EU)-Switzerland Agreement on the Free Movement of Persons.<sup>7</sup>

Dual citizenship is possible with another Member State of the EU or with Switzerland.<sup>8</sup>

The main legislative instruments relevant for adoption, international adoption, and the acquisition of citizenship through adoption are the Hague Convention on Intercountry Adoption, the Act to Implement the Hague Adoption Convention, the European Convention on the Adoption of Children (revised), the Act on the European Convention of November 27, 2008 on the Adoption of Children (revised), the German Civil Code, the Nationality Act, the Act on the Effect of Adoptions According to Foreign Law (Adoptionswirkungsgesetz, AdWirkG), and the German Adoption Placement Act (Adoptionsvermittlungsgesetz, AdVermiG). Procedural requirements are set out in the Act on the Effect of Adoptions According to Foreign Law and the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG).

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<sup>5</sup> Bundesvertriebenengesetz [BVFG], Aug. 10, 2007, BGBl. I at 1902), as amended, <https://perma.cc/ZKZ6-M44Z>.

<sup>6</sup> StAG, § 3.

<sup>7</sup> Id. § 4, para. 3.

<sup>8</sup> Id. § 25, para. 1.

## II. International Adoption

### A. Legal Framework

The German rules on international adoptions are applicable if the child or the adoption applicants have their habitual residence abroad or if the child has been brought to Germany within two years before the placement.<sup>9</sup>

Germany is a state party to the Hague Convention on Intercountry Adoption, which entered into force for Germany on March 1, 2002.<sup>10</sup> The Act to Implement the Hague Adoption Convention entered into force on January 1, 2002.<sup>11</sup> In addition, Germany has ratified the European Convention on the Adoption of Children (revised), which entered into force on July 1, 2015.<sup>12</sup> The Act on the European Convention of November 27, 2008 on the Adoption of Children (revised) implemented the requirements of the European Convention into German national law.<sup>13</sup> Other legal requirements are codified in the Act on the Effect of Adoptions According to Foreign Law.<sup>14</sup> On April 1, 2021, amendments to the international adoption procedure are slated to enter into force.

#### 1. General Requirements for Adoption Applicants

A prospective adoptive parent living in Germany must be at least 25 years of age. If spouses jointly adopt a child, one spouse must be at least 25 years old, whereas the other spouse must be at least 21 years old.<sup>15</sup> Spouses can generally only jointly adopt a child, with the exception of a stepchild adoption.<sup>16</sup> There are no requirements with regard to the nationality of the adoption applicants. If foreign law applies to the adoption, other age requirements may be in place. German citizens living abroad may require a certification that they are legally qualified under German law to adopt a child, which the Federal Office of Justice issues upon request.<sup>17</sup>

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<sup>9</sup> Adoptionsvermittlungsgesetz [AdVermiG], Dec. 22, 2001, BGBl. 2002 at 354, as amended, § 2a, para. 1, <https://perma.cc/793J-L48W>.

<sup>10</sup> The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/8ATW-ZYBE>.

<sup>11</sup> Adoptionsübereinkommens-Ausführungsgesetz [AdÜbAG], Nov. 5, 2001, BGBl. I at 2950, as amended, <https://perma.cc/CA3Z-RVMK>.

<sup>12</sup> European Convention on the Adoption of Children (Revised), Nov. 27, 2008, CETS No.202, <https://perma.cc/78AD-2DBS>.

<sup>13</sup> Gesetz zu dem Europäischen Übereinkommen vom 27. November 2008 über die Adoption von Kindern (revidiert), Jan. 7, 2015, BGBl. II at 2, <https://perma.cc/V25K-FBBM>.

<sup>14</sup> Adoptionswirkungsgesetz [AdWirkG], Nov. 5, 2001, BGBl. I at 2950, as amended, <https://perma.cc/KDA9-CMGL>.

<sup>15</sup> Bürgerliches Gesetzbuch [BGB], Jan. 2, 2002, BGBl. I at 42, 2909; corrected in 2003 BGBl. I at 738, as amended, § 1743, <https://perma.cc/4FXK-3DHA> (original), <https://perma.cc/YB6R-Y8SN> (English translation, updated through Oct. 1, 2013).

<sup>16</sup> Id. § 1741, para. 2.

<sup>17</sup> AdVermiG, § 7, para. 4.

## 2. *Process According to the Hague Convention*

The rules contained in the Hague Convention take precedence over the general rules on recognition and conversion of foreign decisions.<sup>18</sup> The Hague Convention applies when a child younger than 18 years of age habitually resides in one country that is a state party to the Convention (state of origin) and is adopted by spouses or a single person who habitually reside in another contracting state (receiving state). Only adoptions which create a permanent parent-child relationship are covered.<sup>19</sup> In addition, the competent authority of the state where the adoption took place must certify that the adoption was made in accordance with the Convention (conformity certification).<sup>20</sup> Such a conformity certification will be recognized by operation of law in Germany.<sup>21</sup>

Adoption applicants that reside in Germany must apply to the competent national authority and state from which country they are planning to adopt a child, as well as indicate that they do not have another international adoption application pending.<sup>22</sup> The German adoption placement agency will advise the applicants. If it is satisfied that the applicants are eligible and suitable to adopt, it will prepare a report to that regard and transmit it to the central authority of the state of origin.<sup>23</sup> The central authority in the state of origin will review the application, match the adoption applicants with a child, and forward the suggestion to the German agency. The German agency must review the suggestion and determine, among other things, whether the envisaged placement is in the best interests of the child.<sup>24</sup> If it accepts the suggestion from the state of origin, it will inform the applicants and discuss the suggestion with them.<sup>25</sup> The prospective adoptive parents must declare their intent to adopt the child that they were matched with by the state of origin at their local youth welfare office where they have their primary residence. The declaration must be notarized.<sup>26</sup>

## 3. *Act on the Effect of Adoptions According to Foreign Law*

The aim of the Act on the Effect of Adoptions According to Foreign Law (Adoptionswirkungsgesetz, AdWirkG) was to create uniform rules for the recognition and legal effects of international adoptions. It applies to adoptions from countries that have ratified the

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<sup>18</sup> Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit [FamFG], Dec. 17, 2008, BGBl. I at 2586, 2587, as amended, § 97, para. 1, <https://perma.cc/U5M5-4TRE> (original), <https://perma.cc/WD59-R93D> (English translation, updated through June 22, 2019).

<sup>19</sup> Hague Convention, art. 2.

<sup>20</sup> Id. art. 23.

<sup>21</sup> Id.

<sup>22</sup> AdÜbAG, § 4, para. 2, sentence 1.

<sup>23</sup> Id. § 4, paras. 3, 5.

<sup>24</sup> Id. § 5, para. 1.

<sup>25</sup> Id. § 5, para. 2.

<sup>26</sup> Id. § 7, para. 1.

Hague Convention and to adoptions from non-member countries.<sup>27</sup> Recognition according to this act is an optional procedure, as foreign adoption decisions are recognized by operation of law as long as there are no impediments to the recognition, such as a violation of the German public order (*ordre public*).<sup>28</sup> Recognition by operation of law means that there is generally no need for a German court decision recognizing the foreign adoption.<sup>29</sup> However, proceedings to recognize the foreign adoption decision (declaratory judgment) may still be conducted to have legal certainty and to achieve a binding effect for and among all (*inter omnes*), meaning so that no domestic court or authority may question the validity of the adoption.<sup>30</sup>

Recognition of an international adoption according to this act is only possible for adoptions that create a permanent parent-child relationship.<sup>31</sup> It is not required that such a parent-child relationship produces the exact same legal effects as a German adoption; however, the foreign decision or adoption contract must result in a status change for the child in order to distinguish it from guardianship or custody.<sup>32</sup> The Federal Office of Justice (Bundesamt für Justiz, BfJ) has published a non-binding list of countries and the effects of adoptions of minors in that country or according to that country's laws, which acts as a guideline in that regard.<sup>33</sup>

With regard to international adoptions, German law differentiates between so-called "strong adoptions (*starke Adoption*)" and "weak adoptions (*schwache Adoption*)."<sup>34</sup> Strong adoptions are adoptions that completely terminate the former legal parent-child relationship and are therefore equivalent to German domestic adoptions, whereas weak adoptions leave some rights and duties of the biological parents, such as inheritance rights, in place. The Act on the Effect of Adoptions According to Foreign Law applies to both types of adoptions; however, weak adoptions may be converted into strong adoptions if it is in the best interest of the child, if the required consents have been given for the purpose of such an adoption with the effect to terminate the legal parent-child relationship, and if there are no overriding interests of the spouse, life partner, or children

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<sup>27</sup> Deutscher Bundestag: Drucksachen und Protokolle [BT-Drs.] 14/6011, at 46, <https://perma.cc/MK3W-DF3M>.

<sup>28</sup> FamFG, § 109.

<sup>29</sup> Hague Convention, art. 23, para. 1; FamFG, § 108, para. 1.

<sup>30</sup> Adoptionswirkungsgesetz [AdWirkG], Nov. 5, 2001, BGBl. I at 2950, 2953, as amended, § 4, para. 2, <https://perma.cc/KDA9-CMGL>.

<sup>31</sup> AdWirkG, § 1, sentence 1.

<sup>32</sup> See, e.g., Hessischer Verwaltungsgerichtshof [VGH Kassel] July 5, 1993, docket no. 12 UE 2361/92, ECLI:DE:VGHHE:1993:0705.12UE2361.92.0A, para. 26, <https://perma.cc/NAS3-URZM>. See also Oberlandesgericht Hamm [OLG Hamm], July 10, 2014, docket no. 11 UF 269/13, ECLI:DE:OLGHAM:2014:0710.11UF269.13.00, para. 5, <https://perma.cc/3U33-9M45>, stating that the *kafala* in Islamic countries does not affect the biological parent-child relationship and only creates support and assistance obligations. For the effects of German adoptions in general, see BGB, §§ 1754-1756.

<sup>33</sup> BfJ, *Staatenliste betreffend die rechtlichen Wirkungen einer im Ausland oder nach ausländischem Recht ausgesprochenen Adoption eines minderjährigen Kindes* (Jan. 2019), <https://perma.cc/JN6U-WEMT>.

<sup>34</sup> AdWirkG, § 2, para. 2.

of the adopting parent or the adoptee.<sup>35</sup> Due to the conversion, the international adoption will have the same legal effects as a German domestic adoption and German law will be applicable.<sup>36</sup>

#### 4. *Upcoming Amendments*

In December 2020, the German Bundestag (parliament) and the German Bundesrat, the constitutional body through which the German states participate in the legislative process, agreed on a conciliation proposal for an Act to Provide Improved Support for Families with Regard to Adoption (Adoption Support Act) (Gesetz zur Verbesserung der Hilfen für Familien bei Adoption, Adoptionshilfe-Gesetz).<sup>37</sup> Once it has been signed by the German federal president and published in the Federal Law Gazette, it will enter into force on April 1, 2021.<sup>38</sup> For the recognition of foreign adoption decisions that have been initiated prior to that date, the previous rules will be applicable.<sup>39</sup>

Among other things, the Adoption Support Act will make amendments to the Adoption Placement Act and the Act on the Effect of Adoptions According to Foreign Law that will affect international adoptions. One of the aims of the amendments is to prevent international adoptions performed without the help of a competent adoption agency to safeguard the best interests of the child.<sup>40</sup> It therefore prohibits such international adoptions and adoptions performed without an agency will generally not be recognized in Germany.<sup>41</sup> In addition, the adoptive parents will be required to file a request for recognition of a foreign adoption decision without undue delay with the specialized family court.<sup>42</sup> There is no such duty if the adoptive parents have a conformity certification according to the Hague Convention.<sup>43</sup>

### **B. Competent Authorities**

Central authorities within the meaning of article 6 of the Hague Convention are the Federal Office of Justice and the central adoption offices of the youth welfare offices of the 16 German states.<sup>44</sup> Since 2019, the Federal Office of Justice is also the competent national authority within the

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<sup>35</sup> Id. § 3.

<sup>36</sup> Id. § 3, para. 1.

<sup>37</sup> BT-Drs. 19/25163, <https://perma.cc/H6PH-UQ2B> (conciliation proposal); BT-Drs. 19/16718, <https://perma.cc/BY65-7EHQ> (original Bundestag proposal); BT-Drs. 19/19596, <https://perma.cc/F678-8MC7> (committee recommendation).

<sup>38</sup> BT-Drs. 19/25163, *supra* note 37, no. 4.

<sup>39</sup> Id. at 3, no. 3; BT-Drs. 19/16718, *supra* note 37, at 22, article 3, no. 7, amended version of AdWirkG, § 9.

<sup>40</sup> BT-Drs. 19/16718, *supra* note 37, at 2.

<sup>41</sup> Id. at 9, article 1, no. 6, amended version of AdVermiG, § 2b; Id. at 21, article 3, no. 4, amended version of AdWirkG, § 4, para. 1, sentence 1.

<sup>42</sup> Id. at 21, article 3, no. 1, amended version of AdWirkG, § 1, para. 2; Id. at 21, article 3, no. 5, amended version of AdWirkG § 5, para. 1, sentence 2.

<sup>43</sup> Id. at 21, article 3, no. 1, amended version of AdWirkG, § 1, para. 2.

<sup>44</sup> AdÜbAG, § 1, para. 1.

meaning of article 15 of the European Convention on the Adoption of Children (revised).<sup>45</sup> As such, it supports foreign authorities that request information for an adoption case on a person that lives or has lived in Germany.

With regard to international adoptions in general, the competent authorities are:

- the central adoption offices of the state youth welfare offices;
- the adoption agency of the local youth welfare office insofar as it has been authorized to perform this function by the central adoption office of the state welfare office with regard to one or several countries or on an ad-hoc basis;
- an agency accredited as an international adoption agency;
- a foreign agency accredited according to the Hague Convention insofar as it has received permission from the Federal Office of Justice to perform this function.<sup>46</sup>

Since 2019, the BfJ also functions as the general coordination body for international adoptions with regard to all countries, not only those that are state parties to the Hague Convention.<sup>47</sup> It is not itself authorized to help with adoption placements, but it serves as a designated contact for overarching foreign adoption issues.<sup>48</sup>

The Federal Office of Justice also established a database that collects data on international adoptions according to the Foreign Adoption Notification Regulation.<sup>49</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

Citizenship by adoption may be acquired if

- the child is younger than 18 years of age at the time the application for adoption is submitted,
- the adoptive parent is a German,
- the adoption is valid under German law, and

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<sup>45</sup> Internationales Familienrechtsverfahrensgesetz [IntFamRVG], Jan. 26, 2005, BGBl. I at 162, as amended, § 3, para. 1, sentence 2, <https://perma.cc/RSK9-JQ5J> (original), <https://perma.cc/V4PD-KFG5> (English translation); Gesetz zur Förderung der Freizügigkeit von EU-Bürgerinnen und -Bürgern sowie zur Neuregelung verschiedener Aspekte des Internationalen Adoptionsrechts vom Jan. 31, 2019, BGBl. I at 54, <https://perma.cc/R8TP-BH5E>.

<sup>46</sup> AdVermiG, § 2a, para. 3.

<sup>47</sup> Id. § 2a, para. 4.

<sup>48</sup> BfJ, *Internationale Adoption. Hinweise zur grenzüberschreitenden Adoption von Kindern* 13 (11th ed. Nov. 2019), <https://perma.cc/4AAG-EX8W>.

<sup>49</sup> Auslandsadoptions-Meldeverordnung [AusAdMV], Nov. 11, 2002, BGBl. I at 4394, as amended, <https://perma.cc/4TVA-FLUR>.



- the legal effects of the international adoption are equivalent to the ones for the adoption of minors under German law with regard to the acquisition of citizenship.<sup>50</sup>

There is no difference between foreign adopted children raised in the country of the adoptive parent and foreign adoptive children raised abroad. The Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) has interpreted “valid under German law” in section 6 of the Nationality Act as meaning that the foreign adoption must be valid under German law and that the legal effects of the international adoption must be equivalent to the ones for the adoption of minors under German law with regard to the acquisition of citizenship.<sup>51</sup>

Foreign adoptions only have legal effects in Germany if they are recognized. In general, as mentioned, foreign adoption decisions are recognized by operation of law. Courts and government authorities indirectly review whether a foreign adoption decision may be recognized in the procedure where the validity is at issue, such as an application for citizenship. It is generally presumed that foreign adoption decisions are eligible for recognition.<sup>52</sup> Recognition is only excluded if there is an impediment, in particular a violation of the German public order (*ordre public*).<sup>53</sup> The court must determine whether the best interests of the child were taken into account and whether the biological parents and, if necessary, the adopted child were heard.<sup>54</sup> Only material infringements of the German public order are relevant.

The application for adoption must be submitted before the child turns 18 for the adopted child to acquire citizenship by operation of law. It is irrelevant whether the adoption decision takes place after the child has turned 18 or whether the application has been set aside for a long time as long as the application was not withdrawn or no final negative decision was issued.<sup>55</sup>

Weak adoptions must be converted into strong adoptions to convey citizenship to the adopted child, as the legal effects of weak adoptions are not equivalent to a German domestic adoption. As mentioned, the prior legal parent-child relationship is not completely terminated in the case of a weak adoption.<sup>56</sup> The application for conversion must be submitted before the adopted child

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<sup>50</sup> StAG, § 6; Bundesverwaltungsgericht [BVerwG], Oct. 25, 2017, docket no. BVerwG 1 C 30.16, ECLI:DE:BVerwG:2017:251017U1C30.16.0, para. 12, <https://perma.cc/DK4D-VAGJ>.

<sup>51</sup> BVerwG, supra note 50, para. 12, <https://perma.cc/DK4D-VAGJ>.

<sup>52</sup> FamFG, § 108.

<sup>53</sup> BVerwG, supra note 50, at 13; FamFG, § 109, para. 1, no. 4; Hague Convention, art. 24.

<sup>54</sup> The Higher Regional Court of Cologne, for example, found a violation of the German public order where the child’s best interests were not considered and only a formal review of documents submitted by the adoptive parents was conducted, see Oberlandesgericht Köln [OLG Köln], May 29, 2009, docket no. 16 Wx 251/08, ECLI:DE:OLGK:2009:0529.16WX251.08.00, paras. 22, 23, <https://perma.cc/95M3-RJEL>.

<sup>55</sup> BVerwG, Oct. 14, 2003, docket no. BVerwG 1 C 20.02, ECLI:DE:BVerwG:2003:141003U1C20.02.0, at 13, II.5c), <https://perma.cc/F62S-YD7L>, citing BVerwG, Dec. 18, 1998, docket no. BVerwG 1 C 2.98, <https://perma.cc/CMR5-A4A7>.

<sup>56</sup> BVerwG, supra note 50, paras. 21 & 25.

turns 18. If the application is submitted after the child has turned 18, citizenship can only be acquired by naturalization.<sup>57</sup>

#### IV. Mandatory Documentation and Procedures to Acquire Citizenship

In general, acquisition of citizenship through international adoption does not require a decision from the foreigner's office; it is conveyed by operation of the law once the adoption takes effect as long as the above requirements are fulfilled, in particular the age requirement. However, the citizenship agency that issues a passport will make inquiries with regard to the identity of the child when there is doubt. The applicant will have to submit information regarding the name, birth name, birth date, birthplace, gender, and origin of the child and proof that the child is registered with this personal data in the country of origin to the agency.<sup>58</sup> Proof is generally a national passport of the state of origin or other documents showing the identity of the child.<sup>59</sup>

For recognition and conversion of foreign adoption decisions, German courts are generally competent to hear a case if the adopting parent, one of the adopting spouses, or the adopted child are German citizens or have their habitual residence in Germany.<sup>60</sup> The German regional court (family court) where the adoptive parent has his or her habitual residence or, alternatively, where the adopted child has its habitual residence are competent to hear the case, if there is a higher regional court in that area.<sup>61</sup> If neither the adoptive parents nor the adopted child have their habitual residence in Germany, the regional court Schöneberg in Berlin is competent.<sup>62</sup>

The applicants must submit a request for recognition or conversion; there is no automatic review of foreign decisions.<sup>63</sup> There are no formal requirements for the application. The application for recognition can be submitted by the adoptive parent, the child, the biological parents, and the German civil registry, whereas the application for conversion can only be submitted by the adoptive parent.<sup>64</sup> The German court will at a minimum review the original foreign adoption decision.<sup>65</sup> Other documents that may be necessary are the foreign birth certificate of the child, a conformity certificate according to the Hague Convention if applicable, foreign home studies or

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<sup>57</sup> Id. para. 25; StAG, § 10.

<sup>58</sup> Oberverwaltungsgericht NRW, Nov. 19, 2018, docket no. 19 A 2331/17, ECLI:DE:OVGNRW:2018:1119.19A2331.17.00, paras. 6 & 12, <https://perma.cc/J8FU-HD8X>.

<sup>59</sup> Id. para. 12.

<sup>60</sup> AdWirkG, § 5, para. 1, sentence 2; FamFG, § 110.

<sup>61</sup> AdWirkG, § 5, para. 1, sentence 2; FamFG, § 187, paras. 1, 2.

<sup>62</sup> AdWirkG, § 5, para. 1, sentence 2; FamFG, § 187, para. 5.

<sup>63</sup> AdWirkG, § 2, para. 1, § 3, para. 1.

<sup>64</sup> Id. § 4, paras. 1, 2.

<sup>65</sup> Oberlandesgericht Celle [OLG Celle], May 10, 2011, docket no. 17 UF 148/10, para. 4, <https://perma.cc/9AKJ-2URQ>.

## Citizenship Through International Adoption: Germany

court records, or declarations of consent of the biological parents if not clear from other documents.<sup>66</sup> Depending on the country, the authenticity of the documents must be proven.

The Federal Office of Justice provides access to a searchable database that contains decisions from German courts on international adoptions.<sup>67</sup>

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<sup>66</sup> Christian Braun, *Anhang zu § 199 FamFG*, in *Praxiskommentar Kindschaftsrecht* 1062 (Stefan Heilmann ed., 2015), paras. 29, 30.

<sup>67</sup> *Rechtsprechungsdatenbank Auslandsadoption*, BfJ, <https://perma.cc/C3HM-U758>.

# India

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**SUMMARY** In India adoption is largely governed by the religious personal laws applicable to a particular community. The adoption law applicable to members of the Hindu, Jain, Buddhist, and Sikh faiths is the Hindu Adoptions and Maintenance Act. In 2006, as a result of amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000, a secular adoption process for children in need of care and protection was established. The 2000 Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. On January 15, 2017, India issued the Adoption Regulations, 2017 under the 2015 Act. The regulations provide for adoption procedures for non-resident Indians, overseas citizens of India (OCI) and foreign prospective adoptive parents, and adoption of a child from a foreign country by an Indian citizen.

There do not appear to be specific provisions for the grant of citizenship of foreign adopted children. A child adopted abroad by the Indian citizens, having a foreign passport, requires an Indian visa to come to India. Section 5(1)(d) of the Citizenship Act stipulates that the Central Government can register as a citizen, on application, a person (who is not an illegal immigrant) who belongs to a number of categories including minor children of persons who are citizens of India. However, it is unclear whether adopted minor children of Indian citizens can be granted citizenship through registration.

## I. Introduction

Citizenship requirements and pathways are predominantly regulated by the Indian Constitution<sup>1</sup> and the Citizenship Act, 1955 and its associated rules.<sup>2</sup> The Foreigners Division of the Ministry of Home Affairs (MHA) “administers all matters, including policies, statutes, and rules, related to visas, immigration, citizenship, and overseas citizenship.” Indian citizenship is “largely determined by the rule of jus sanguinis (citizenship of the parents) as opposed to jus soli (place of birth)”<sup>3</sup>, and India “provides for a single citizenship for the whole of India.”<sup>4</sup> A person can be a citizen by birth, descent, registration, or naturalization.<sup>5</sup>

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<sup>1</sup> India Const., Part. II, arts. 5–11, <https://perma.cc/9QM7-YJFP>.

<sup>2</sup> Citizenship Act, No. 57 of 1955, <https://perma.cc/2838-GM72>.

<sup>3</sup> Tariq Ahmad, *Laws Concerning Children of Undocumented Migrants: India* (Law Library of Congress, Sept. 2017), <https://perma.cc/8V9K-MPWT>.

<sup>4</sup> *Citizenship*, Know India (Sept. 19, 2017), <https://perma.cc/YJ77-XC2A>.

<sup>5</sup> Tariq Ahmad, *Citizenship Pathways and Border Protection: India* (Law Library of Congress, Mar. 2013), <https://perma.cc/8V9K-MPWT>; Acquisition of Indian Citizenship (IC), Ministry of Home Affairs – Foreigners Division, <https://perma.cc/M4FD-LJQ4>; see also Citizenship Act § 3(a).

In India adoption is largely governed by the religious personal laws applicable to a particular community. The adoption law applicable to members of the Hindu, Jain, Buddhist, and Sikh faiths is the Hindu Adoptions and Maintenance Act.<sup>6</sup> Prior to 2006, followers of the Muslim, Christian, Parsi, and Jewish religions, as well as foreigners and nonresident Indians, in the absence of a law enabling adoption, were able to obtain a guardianship order only under the Guardians and Wards Act.<sup>7</sup> Section 7 of the Guardians and Wards Act establishes the power of the court to make an order as to guardianship.<sup>8</sup> The Supreme Court had laid down judicial guidelines in *Lakshmi Kant Pandey v. Union of India (UOI)*, “under which foreign persons could become guardians of Indian children and adopt them in accordance with the laws of their home country.”<sup>9</sup>

In 2006, as a result of amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000, a secular adoption process for children in need of care and protection was established. The amendments allow those not covered by the Hindu Adoptions and Maintenance Act to legally adopt. However, this act appears to be applicable only to children who have been subject to abuse or abandonment.<sup>10</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000, was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015, which came into force on January 15, 2016.<sup>11</sup> According to a news release of January 15, 2016, the law is intended “to streamline adoption procedures for orphaned, abandoned and surrendered children.”<sup>12</sup> The government also issued the Juvenile Justice (Care and Protection of Children) Model Rules, 2016<sup>13</sup> for states to adopt or promulgate their own rules.

## II. International Adoption

India is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). The Central Adoption Resource Authority (CARA) is a statutory body under the Ministry of Women & Child Development that “functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions.”<sup>14</sup> CARA is also “designated as the Central

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<sup>6</sup> The Hindu Adoptions and Maintenance Act, 1956, <https://perma.cc/5LJR-NLVD>.

<sup>7</sup> Guardian and Wards Act, Act No. 8 of 1890, <https://perma.cc/DQ8C-YVKU>.

<sup>8</sup> Id. § 7.

<sup>9</sup> Pinky Anand, *Family Law in India: Overview*, Practical Law (Nov. 1, 2020), [https://uk.practicallaw.thomsonreuters.com/6-581-5985?\\_lrTS=20210128140208689&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/6-581-5985?_lrTS=20210128140208689&transitionType=Default&contextData=(sc.Default)&firstPage=true).

<sup>10</sup> Juvenile Justice (Care and Protection of Children) Act, Act No. 56 of 2000, GAZETTE OF INDIA (Dec. 30, 2000), <https://perma.cc/M73S-9XXL>; see also Juvenile Justice (Care and Protection of Children) Rules, 2007, <https://perma.cc/C7VM-K3JF>.

<sup>11</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, Act No. 2 of 2016, <https://perma.cc/GKQ9-V7JU>.

<sup>12</sup> Press Release, Press Information Bureau, Government of India, Cabinet, The Juvenile Justice (Care and Protection of Children) Act, 2015 Comes into Force from Today (Jan. 15, 2016), <https://perma.cc/RQ7A-SRP3>.

<sup>13</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, <https://perma.cc/U9TU-U9F7>.

<sup>14</sup> CARA, Central Adoption Resource Authority, <https://perma.cc/4N87-5CKC>.

Authority to deal with inter-country adoptions in accordance with the provisions<sup>15</sup> of the Hague Convention.

On January 15, 2017, India issued the Adoption Regulations, 2017<sup>16</sup> under the Juvenile Justice Care and Protection Act of 2015. The regulations provide for adoption procedures for non-resident Indians, overseas citizens of India (OCI) and foreign prospective adoptive parents, and adoption of a child from a foreign country by an Indian citizen.

Section 22 of the Regulations covers the procedure for adoption of a child from a foreign country by Indian citizens. The procedure consists of the following:

- Necessary formalities for adoption of a child from a foreign country by Indian citizens shall initially be completed in that country *as per their law and procedure*.
- On receiving Home Study Report of the prospective adoptive parents (including supporting documents), Child Study Report and Medical Examination Report of the child, the Authority shall issue the approval, as required in the cases of adoption of children coming to India as a receiving country under Articles 5 and 17 of the Hague Adoption Convention.
- A child adopted abroad by the Indian citizens, having a foreign passport, and requiring the Indian visa to come to India, shall apply for visa to the Indian mission in the country concerned, who may issue entry visa to the child after checking all the relevant documents so as to ensure that the adoption has been done following the due procedure.
- The immigration clearance for the child adopted abroad shall be obtained from the Central Government in the Foreigners' Division, Ministry of Home Affairs, through the Indian diplomatic mission to that country.<sup>17</sup>

There are eligibility and age criteria in the Act and the regulations for prospective adoptive parents but it is unclear whether they apply to children to be adopted in a foreign country by Indian citizens.<sup>18</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

#### A. Foreign Adopted Children Raised in India

There do not appear to be specific provisions for the grant of citizenship of foreign adopted children. As noted above, a child adopted abroad by Indian citizens, having a foreign passport, requires an Indian visa to come to India. It is unclear whether adopted minor children of Indian citizens can be granted citizenship through registration.<sup>19</sup>

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<sup>15</sup> Pinky Anand, *supra* note 9.

<sup>16</sup> Adoption Regulations, 2017, <https://perma.cc/MLB9-7LPN>.

<sup>17</sup> *Adoption Procedure for Non-Resident Indian, Overseas Citizen of India and Foreign Prospective Adoptive Parents*, CARA, <https://perma.cc/W3ZZ-CQCB>.

<sup>18</sup> *Eligibility Criteria for Prospective Adoptive Parents*, <https://perma.cc/454W-LKR7>; see also *Frequently Asked Questions*, CARA, <https://perma.cc/Q3LE-W3RX>.

<sup>19</sup> Sitharamam Kakarala, *India and The Challenge of Statelessness: A Review of the Legal Framework Relating to Nationality* vii-viii (National Law University, 2012), <https://perma.cc/V4WM-V4H3>.

Section 5(1)(d) of the Citizenship Act stipulates that the Central Government can register as a citizen, on application, a person (who is not an illegal immigrant) who belongs to a number of categories including “minor children of persons who are citizens of India.”<sup>20</sup> Moreover, Rule 6 of the Citizenship Rules, 2009 require the parent of the minor child to make a declaration stating that “he is the legal guardian of the minor.”<sup>21</sup> The Act and the rules do not define parent and minor child to include the adoptive relationship. According to one report:

the term 'parent' has not been explained to clarify the inclusion of a biological parent and an adoptive parent alike. This leaves a gap in understanding whether an adopted child can obtain registration as citizen under this provision or not.<sup>22</sup>

However, the adoption laws themselves set out the legal effect of adoption. For example, section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2015 states:

63. Effect of adoption. – A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, *for all purposes*, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family.<sup>23</sup>

It should be noted, however, that the Ministry of Home Affairs has said that “[a]ny minor child can be registered as a citizen of India under Section 5(4), if the Central Government is satisfied that there are special circumstances justifying such registration. Each case would be considered on merits.”<sup>24</sup> In other words, “[t]he Central Government will consider each minor’s case on a case-by-case basis.”<sup>25</sup>

Citizenship by naturalization under section 6 of the Citizenship Act can be acquired by “a foreigner (not illegal migrant) who is ordinarily resident in India for twelve years (throughout the period of twelve months immediately preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months).”<sup>26</sup> A set of qualifications are also listed under the third schedule of the Act for the naturalization of a person.<sup>27</sup>

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<sup>20</sup> Citizenship Act § 5(1)(d).

<sup>21</sup> Citizenship Rules, 2009, <https://perma.cc/T49B-NYV4>.

<sup>22</sup> Sitharamam Kakarala, *supra* note 19, at vi-vii.

<sup>23</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 63; A similar provision is found in section 12 of the Hindu Adoptions and Maintenance Act, 1956.

<sup>24</sup> *Acquisition of Indian Citizenship (IC)*, Ministry of Home Affairs – Foreigners Division, <https://perma.cc/D8XX-MQLF>.

<sup>25</sup> Consortium for Street Children, *Legal Atlas: India*, <https://perma.cc/ZEX3-5EGJ>.

<sup>26</sup> *Procedure for Applying Online for Indian Citizenship*, Ministry of Home Affairs – Foreigners Division, <https://perma.cc/9CNX-LF7A>.

<sup>27</sup> Citizenship Act, Sch. 3, <https://perma.cc/7W32-KUV2>.

## B. Foreign Adopted Children Raised Abroad

The same rules for registration of children of Indian citizens (if applicable) would apply to adopted children raised abroad. No special rules for citizenship are provided for adopted children of overseas diplomats or members of the armed forces.

## IV. Mandatory Documentation and Procedures to Acquire Citizenship

The Citizenship Rules, 2009<sup>28</sup> contain the requirements for applications for citizenship through registration. Rule 6 states that an application for registration as a citizen for a minor child of a citizen of India requires use of Form IV, and a declaration by the parent of the child that he is the legal guardian.<sup>29</sup>

Form IV lists the required documentation to be included with the application as follows:

1. A copy of the valid Foreign passport.
2. A copy of the valid Residential Permit.
3. Proof of Indian citizenship of both the parents viz. copy of Indian passport/birth certificate. . . .
4. In case of guardian, enclose proof of guardianship.<sup>30</sup>

The Foreign Affairs Division of the Ministry of Home Affairs sets out the procedure of the application under section 5:

Application in relevant Form for grant of Indian citizenship by registration under section 5 has to be submitted to the Collector/District Magistrate of the area where the applicant is resident. The application has to be accompanied by all the documents and fees payments as mentioned in the relevant Forms. It is very important that applications are complete in all respects otherwise valuable time of the applicant would be lost in making good the deficiencies after they were detected. The application along with a report on the eligibility and suitability of the applicant is to be sent by the Collector/District Magistrate to the concerned State Government/UT Administration within 60 days. Thereafter, the State Govt./UT Administration shall forward the application to the Ministry of Home Affairs (MHA), Government of India within 30 days. Each application is examined in MHA in terms of the eligibility criteria under the Citizenship Act, 1955 and the Citizenship Rules, 1956. If the applicant is not fulfilling the eligibility criteria, communication to this extent would be sent through the State Govts./UT Administration. Any deficiency in the application would be brought to the notice of the applicant through the State Govt./UT Administration. The applicant, thereafter, has to make good the deficiency through the State Govts./UT Administration. No correspondence would be made directly with the applicant. However, a copy of the correspondence through the State Govts./UT Administration would be marked to the applicant. Each applicant whose case is found to be eligible after scrutiny of application is informed about the acceptance of his application

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<sup>28</sup> Citizenship Rules, 2009.

<sup>29</sup> *Id.*, Rule 6.

<sup>30</sup> *Id.*, Form IV; see also required documents listed under drop down menu at *Registration of a Minor Child Under Section 5(1)(D) of the Citizenship Act, 1955*, Ministry of Home Affairs – Foreigners Division, <https://perma.cc/H6VJ-63EX>.



## Citizenship Through International Adoption: India

through the State Government. The applicant should not renounce his foreign citizenship till the citizenship application is accepted and informed of the decision. The applicant is then required to furnish through the State Government, a certificate of the renunciation of his foreign citizenship issued by the mission of the concerned country, proof of fee payment as per SCHEDULE IV of the Act, and personal particulars in Form-V. Thereafter, a certificate of Indian citizenship is issued to the applicant through the State Government.<sup>31</sup>

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<sup>31</sup> *Acquisition of Indian Citizenship (IC)*, supra note 24.

# Israel

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**SUMMARY** The adoption by Israeli residents of a child born abroad is governed by provisions in the Adoption of Children Law, 5741-1981, which implements relevant procedures under the Hague Convention on Intercountry Adoption.

The central authority for purpose of the Convention is located at the ministry of labor, social affairs and social services in Jerusalem. Intercountry adoptions may only be handled through accredited non-profit organizations (*amutot*). Accredited *amutot* process adoption requests and approve or deny requests, based on investigation of criteria established by law and ministry-established rules. *Amutot* also engage in forwarding adoption requests to foreign competent authorities, handing over children for adoption, arranging adopted children's entry into Israel and their acquisition of permanent residence visas, and related activities prescribed by law.

A child adopted by Israeli residents in accordance with the intercountry adoption procedures acquires Israeli citizenship effective on the date of adoption, as evidenced by registration in the adoption register based on an adoption order granted by an Israeli court, or by a court or competent administrative authority in the foreign country meeting specified conditions.

A child adopted by a non-resident citizen of Israel may be eligible to acquire Israeli citizenship with the adoptive parents' consent as of the date of adoption, depending on the means by which the adoptive parent acquired Israeli citizenship.

Children adopted by Israeli citizens residing abroad may be registered in the Population Register and receive a "citizenship document" based on a valid adoption order in the country of residence.

## I. Introduction

The Nationality Law, 5712-1952 regulates acquisition of Israeli citizenship.<sup>1</sup> In accordance with conditions enumerated in this law, citizenship may be acquired by return (for Jews and members of their family under conditions enumerated in the Law of Return 5710-1950);<sup>2</sup> by residence in Israel; by birth; by birth and residence in Israel; by adoption; by naturalization; and by grant.<sup>3</sup>

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<sup>1</sup> Nationality Law, 5712-1952, Sefer Hahukim (SH, Book of Laws, official gazette) 5712 No. 95 p. 146, as amended.

<sup>2</sup> Law of Return, 5710-1950, SH 5712 No. 51, p. 159, as amended. An unofficial translation is available on the Knesset website, <https://perma.cc/42HJ-DSBS>.

<sup>3</sup> Nationality Law § 1.

A child born in Israel to an Israeli father or a mother acquires citizenship by birth. A child born outside of Israel to an Israeli father or mother will acquire Israeli citizenship if the Israeli father or mother has acquired citizenship based on return; residence in Israel; naturalization; birth in Israel to a father or a mother who was an Israeli citizen; or by adoption when the adoptive father or the mother was an Israeli citizen.<sup>4</sup>

A child adopted by an Israeli parent under the Adoption of Children Law, 5741-1981, as amended<sup>5</sup> (ACL), acquires Israeli citizenship effective on the date of adoption.<sup>6</sup> A child adopted outside Israel by an adoptive parent who is an Israeli citizen acquires Israeli citizenship effective on the date of foreign adoption, subject to the adoptive parents' consent and provided that they were not residents of Israel on the day of adoption.<sup>7</sup>

The entry into Israel of children adopted by Israeli citizens and their acquisition of Israeli citizenship through intercountry adoption procedures are regulated by the ACL and implementing regulations.<sup>8</sup>

## II. International Adoption

Israel is a signatory of the Hague Convention on Intercountry Adoption (the Convention).<sup>9</sup> The ACL authorizes Israeli courts to handle intercountry adoptions of children from foreign countries by adopters who reside in Israel.<sup>10</sup>

Israel is considered a “receiving” country, where international adoptions usually involve foreign children adopted by Israeli adopters. This situation results from the limited number of healthy infants available for adoption in Israel. As in other countries with advanced economies, this is attributed to “a number of social and economic factors including widespread use of birth control, an increased number of abortions, and more options available to unwed mothers who want to keep their children.”<sup>11</sup>

The ACL establishes the criteria for both domestic and intercountry adoptions. The law does not permit private adoptions, and persons involved in such adoptions are subject to criminal sanctions of up to three years imprisonment if convicted.<sup>12</sup>

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<sup>4</sup> Id. § 4(a).

<sup>5</sup> Adoption of Children Law, 5741-1981, SH 1028 p. 193, as amended (ACL), § 1(b).

<sup>6</sup> Nationality Law §§ 1 & 4B.

<sup>7</sup> Id. § 4B.

<sup>8</sup> Entry Regulations to Israel (Request for Approval of the Entry of a Child in International Adoption), 5758-1998 (Entry Regs.), Kovetz Hatakanot (KT, Subsidiary Legislation) 5758 No. 5885, p. 482.

<sup>9</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/C5BW-4GUP>.

<sup>10</sup> ACL § 28.

<sup>11</sup> Lara Kislinger, *Inter-Country Adoption: A Brief Background and Case Study*, Center for Adoption, <https://perma.cc/MQ4H-4B7V>.

<sup>12</sup> ACL § 33.

Under the ACL, any decision rendered by a court must be in the child's best interest.<sup>13</sup> When examining the best interest of the adoptee,

the child's rights, needs and interests will be taken into account, inclusive of his right to stability, including reducing his transfer as much as possible between frameworks or among families; [and] to the extent that the adoptee is able to understand the matter, [the adoptee's] will and opinion regarding the matter will also be taken into account.<sup>14</sup>

#### **A. The Central Authority for Intercountry Adoptions and Services**

In accordance with the ACL, the minister of labor, social affairs and social services (LSS) appoints a chief social worker who serves as the central authority for international adoptions under the Convention (hereinafter Central Authority).<sup>15</sup> The Central Authority office is located in the ministry in Jerusalem.<sup>16</sup>

The Central Authority is authorized to act under the law "when it is not possible to act in an international adoption through an accredited *amuta*."<sup>17</sup> An *amuta* is a non-profit association, i.e., a body established for any legal purpose whose main objective is not to make or distribute profit among its members. An *amuta* must be registered in the registry of *amutot* (plural of *amuta*).<sup>18</sup>

The Central Authority may also deliver information in Israel or abroad to the extent necessary for international adoptions.<sup>19</sup>

#### **B. Organizations Permitted to Handle Intercountry Adoptions**

In accordance with the ACL, intercountry adoptions are handled by *amutot* that were established for the sole purpose of facilitating intercountry adoptions. To be permitted to handle intercountry adoptions, *amutot* must be granted accreditation by the minister of LSS and by the minister of justice.<sup>20</sup> Adoption of a child not through a recognized *amuta* constitutes a criminal offense.<sup>21</sup>

The law requires an accredited *amuta* to conduct its activities in good faith, with dedication and respect of the law, while assuring the welfare of the child and respecting the child's fundamental rights, including those recognized under international law. The law further provides that the

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<sup>13</sup> Id. § 1(b).

<sup>14</sup> Id. § 1(b). Translations here and below by author, R.L.

<sup>15</sup> Id. § 28B.

<sup>16</sup> Contact information available at *Israel - Central Authority*, HCCH, <https://perma.cc/Z645-B5HY>. See also *Adoption Services*, State of Israel, Ministry of LSS, <https://perma.cc/6BHG-TVMR>.

<sup>17</sup> ACL § 28E (a).

<sup>18</sup> The Amutot Law, 5740-1980, § 1, SH 5740 No. 983 p. 210, as amended.

<sup>19</sup> ACL § 28E (b).

<sup>20</sup> Id. § 28C.

<sup>21</sup> *Adoption Services*, supra note 16.

*amuta* owes loyalty to adoption applicants and persons who already adopted a child through it, as long as this does not conflict with its loyalty obligation to the child.<sup>22</sup>

### C. Procedure for Submission and Processing of Intercountry Adoption Applications

Israeli residents may submit an application for the adoption of a child from a foreign country to an accredited *amuta*. The application includes a waiver of medical confidentiality and consent to release information from the police criminal registry as related to the applicant's qualifications as an adoptive parent.<sup>23</sup>

The law provides:

- (a) The accredited *amuta* shall investigate all the following:
  - (1) the applicant's qualifications and suitability as an adoptive parent;
  - (2) the applicant's family background and his past and present medical condition;
  - (3) the applicant's social environment;
  - (4) information obtained from the Criminal Register;
  - (5) the reasons for the application to adopt a child by international adoption;
  - (6) the applicant's ability to assume an obligation to adopt a child by international adoption;
  - (7) particulars about the child whom the applicant wishes to adopt;
  - (8) other matters to be prescribed by the Minister of Labor and Social Welfare, including a psychological evaluation of the applicant and his family.
- (b) The accredited *amuta* shall inquire from the Central Authority whether the applicant was found to be disqualified for international adoption.<sup>24</sup>

### D. Competence of Applicants

In order to adopt children from abroad, the age difference between the parents and the child must be less than 48 years. The adoptive parents must be at least 25 years old and have lived together for over three years. The applicants must have lived in Israel for at least three of the last five years, or at least 12 of the last 18 months preceding filing of the adoption application to the *amuta*. Applicants who were convicted of any offenses against minors or of sexual or violent offenses will be rejected.<sup>25</sup>

Applicants for intercountry adoption who have previously adopted a child from a foreign country may be approved for adoption of another child only after at least 18 months have passed since the date of the previous adoption. This condition does not apply to children who are relatives.<sup>26</sup> Additionally, applicants who were disqualified by another accredited *amuta* or the

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<sup>22</sup> ACL § 28D.

<sup>23</sup> Id. § 28G.

<sup>24</sup> Id. § 28H.

<sup>25</sup> *Adoption Services*, supra note 16.

<sup>26</sup> Id.

appeals committee following rejection of their application for an intercountry adoption<sup>27</sup> will not be eligible for adoption within two years after such decision.<sup>28</sup>

#### **E. Procedures Following *Amuta's* Approval of Adoption Request**

The *amuta* may contact the competent authority of a foreign country in which it is permitted to operate and request that it hand over the child named in the application to the applicant for purposes of intercountry adoption. The *amuta's* request will be issued only after it has certified that an applicant was qualified and suitable to adopt a child by intercountry adoption based on its investigation of the items listed above. The request must be accompanied by an opinion drawn up by a social worker that includes all the items investigated as described above.<sup>29</sup>

When the competent authority of the foreign country has given notice that a child suitable for adoption by the applicant has been found, the accredited *amuta* must verify that the foreign competent authority has determined that handing over the child for adoption by the applicant is to the benefit of the child. The *amuta* must similarly verify that the foreign competent authority has confirmed that the child's parents, other authorized person, and if applicable the child, have given consent for the adoption.<sup>30</sup>

The ACL further requires the accredited *amuta* to determine whether the adoption would be in the child's best interest based on an opinion by a social worker and information received from the foreign competent authority on the child's background, past and present medical condition, and any other material details.<sup>31</sup>

#### **F. Immigration Status and Procedures**

The *amuta* will apply to the ministry of the interior in Jerusalem for approval of the child's entry into Israel for permanent residence. The application must be accompanied by the authorization issued by the foreign competent authority, as well as by a doctor's certificate attesting that the child was examined and found not to be sick with a contagious disease that may endanger public health.<sup>32</sup>

Upon receipt of an entry visa, the child will be delivered to the applicant in the foreign country. In exceptional cases, where the applicant is unable to receive the child in the foreign country and with the approval of the Central Authority, the child will be delivered to the applicant in Israel.<sup>33</sup> According to the LSS,

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<sup>27</sup> See *infra* under section II. I. of this report, Procedures to be Followed after Rejection of Adoption Request.

<sup>28</sup> ACL § 28J.

<sup>29</sup> *Id.* § 28K.

<sup>30</sup> *Id.* § 28L.

<sup>31</sup> *Id.* §§ 28M-N.

<sup>32</sup> Entry Regs. § 2, KT 5758 No. 5885, p. 482.

<sup>33</sup> ACL §§ 28O-P.

## Citizenship Through International Adoption: Israel

The child will enjoy the status of a permanent resident (including health insurance) and after six months, the *amuta* will submit an application to register the child in the adoption register. The child will then receive Israeli citizenship if he is entitled to it.<sup>34</sup>

The child's entry and permanent visa will expire if the child has not entered Israel within six months from the date of receipt of the visa. The visa will similarly expire if no application has been filled within six months from the date of the child's entry into Israel, for registration of the adoption in the adoption register, or for an intercountry adoption.<sup>35</sup>

### G. Adoption Decree

An Israeli family court may make an order for the adoption of a child from a foreign country after it is satisfied that all the conditions for international adoption under the law are met, and only after it has received a written professional opinion from the accredited *amuta* or a welfare officer in support of the adoption.<sup>36</sup> The ACL further requires that the adopter be of the same religion as the adoptee. However, the court may render an intercountry adoption decree even if the adopter is not of the same religion as the adoptee if the court is satisfied that doing so will not have an adverse effect on the child's welfare.<sup>37</sup>

If the adoptive parent received a child for the purpose of intercountry adoption under the provisions of ACL, and a court or competent administrative authority in the foreign country has given a final judgment or order for the adoption of the child, the adoption will be recognized to be effective on the date of the judgment or order. Such recognition depends on whether the Central Authority or the Israeli court have ruled that the adoption was not contrary to the best interest of the child or to public policy. Under such circumstances, the accredited *amuta* must transmit the foreign judgment or order, with the approval of the foreign state, to the adoption registrar for registration, similarly to any other adoption decree.<sup>38</sup>

The foreign judgement or order submitted by the *amuta* must be verified by a diplomatic or consular representative of Israel in the foreign country, translated into Hebrew, and include a notarized translation certificate.<sup>39</sup>

### H. Means of Protecting the Child's Welfare

If the Central Authority has determined that the continued presence of the child in the applicant's home prior to the grant of the adoption order is not to the child's benefit, it may order the child's removal from the applicant's custody and any other temporary steps to protect the child's welfare. The Central Authority may then hand the child over to another person in Israel, who has

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<sup>34</sup> *Adoption Services*, supra note 16.

<sup>35</sup> Entry Regs. § 4.

<sup>36</sup> ACL § 28T (a-b).

<sup>37</sup> Id. §§ 5 & 28T(c).

<sup>38</sup> Id. §§ 28KF & 29.

<sup>39</sup> Adoptions Register Regulations, 5724-1964, § 6A, KT 5724 No. 1528 p. 506, as amended.

agreed to accept the child with the intention of adopting him, or return the child to the competent authority in the foreign country. Before reaching these decisions, the child's opinion must be taken into consideration, if he has reached the age of nine or is capable of understanding the matter.<sup>40</sup>

### **I. Procedures to be Followed after Rejection of Adoption Request**

If the *amuta* disqualifies an applicant, it must inform the Central Authority of its decision at the earliest possible time.<sup>41</sup> The applicant may contest the *amuta*'s disqualification decision before a five-member appeal committee. The appeal committee is appointed by the minister of LSS, in consultation with the minister of justice. The committee's members include a judge of the family court who will serve as a chairman, two social workers, a clinical psychologist, and a specialist in psychiatry; at least two of the members must not be State employees. The decision of the appeal committee is final.<sup>42</sup>

An accredited *amuta* may not handle the application of an applicant who was disqualified by another accredited *amuta* or the appeals committee within two years after such decision. The Central Authority must inform the accredited *amuta* if it finds that the applicant is not qualified.<sup>43</sup>

### **III. Acquisition of Citizenship for Foreign Adopted Children**

#### **A. Foreign Adopted Children Raised in the Country of Adoptive Parent**

The following applies if a citizen of Israel adopted a child in a foreign country and brought the child back to Israel:

- The child may be eligible to acquire the adopted parents' citizenship in accordance with the conditions and procedures enumerated in the ACL and the Nationality Law, as well as relevant rules discussed above.
- The adopted child will receive Israeli citizenship on the effective date of the adoption. A child adopted under the ACL must be under eighteen years of age.<sup>44</sup> The law authorizes deviation from the minimum age in cases where the court finds that doing so will be to the adoptee's benefit, under special circumstances and for reasons that must be stated in the court's decision.<sup>45</sup>

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<sup>40</sup> ACL § 28U.

<sup>41</sup> Id. § 28I.

<sup>42</sup> Id. § 36A.

<sup>43</sup> Id. § 28J.

<sup>44</sup> Id. § 2.

<sup>45</sup> Id. §§ 4 & 25.



- While the child may be physically transferred by the *amuta* to the adoptive parents, the *amuta* maintains guardianship over the child “and will have, until an adoption order or until another court decision is issued, rights, obligations and powers of a parent.”<sup>46</sup>

#### **B. Foreign Adopted Children Raised Abroad**

The following applies when a citizen of Israel who lives abroad adopts a child in a foreign country, and the adopted child has never been to and does not have a physical address in Israel.

- The child may be eligible to acquire the adoptive parent’s Israeli citizenship with the adoptive parents’ consent, if the non-resident Israeli adoptive parent has acquired Israeli citizenship by return, residence in Israel, naturalization, birth in Israel to an Israeli parent, or by adoption.<sup>47</sup>
- There is no specific age requirement that applies.
- It appears that a child of diplomats and military personnel who serve abroad will be subject to the same ACL requirements that apply to foreign adopted children raised in Israel if either one of their parents are considered Israeli residents.
- The child’s ability to acquire Israeli citizenship depends on a valid adoption decree given abroad. It appears that the child becomes an Israeli citizen with the adoptive parents’ consent on the date of adoption.<sup>48</sup>
- Mandatory requirements for acquisition of citizenship do not appear to include a physical address or physical custody.

#### **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

Israeli citizenship is acquired upon the grant of a valid adoption decree. A certificate of Israeli citizenship document for an adopted child may be requested:

- (1) In Israel, in one of the following:
  - (A) in the district or sub-district bureau for immigration and registry in the district or sub-district administration in which the applicant's permanent residence is;
  - (B) in the Aliyah [immigration by return] and Registry Division, Ministry of the Interior . . . Jerusalem;
- (2) Abroad—in the diplomatic or consular representation of Israel or . . . of a state representing the affairs of Israel that is located close to the applicant's place of residence.<sup>49</sup>

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<sup>46</sup> Id. § 28JI.

<sup>47</sup> Nationality Law §§ 4 & 4B.

<sup>48</sup> Id. § 4B(2).

<sup>49</sup> Nationality Regulations, 5729-1968, § 3, KT 5729, No. 2288 p. 19, as amended.

## Citizenship Through International Adoption: Israel

In addition to payment of a fee, an application for the issue of a citizenship document will have to be supplemented by “documents and photos as directed by the person authorized to do so.”<sup>50</sup>

Israel’s Ministry of Foreign Affairs (MFA) website provides that

[a]n Israeli citizen who is not a resident of Israel that adopts a child abroad according to an adoption order valid in the country in which he is a resident will be considered the child’s parent for every matter, and in general will be entitled to Israeli citizenship and to registering the parenthood in the Population Registry, all in accordance with the procedures of the Population Authority.<sup>51</sup>

In order to register a child who was born abroad to Israeli citizens, one of the Israeli parents must appear in person before the diplomatic or consular representative at the mission. Among the documents that need to be presented are the original birth certificate, verified with an apostille stamp in countries that are signatories to the 1961 Hague Convention. Applicants may alternatively present a certificate verified by the relevant authority in the child’s country of birth, along with photocopies of the parents’ passports, verified marriage certificate and additional documents as relevant.<sup>52</sup>

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<sup>50</sup> Id. § 2.

<sup>51</sup> *Consular Services FAQs, Can an Israeli Couple Living Abroad Adopt a Local Child?*, MFA, <https://perma.cc/BL9F-KDFF>.

<sup>52</sup> *Request a Certificate of Israeli Citizenship*, Israel’s Population and Immigration Authority, <https://perma.cc/7VD9-8489>.

# Italy

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**SUMMARY** As a general rule, Italy only recognizes *jus sanguinis* (by descent) acquisition of Italian citizenship. An exception in the law allows *jus soli* (by place of birth) acquisition of Italian citizenship. By operation of the law, children adopted abroad by Italian parents are also Italian citizens. The legislation does not specify whether a foreign minor adopted child must have resided in Italy or not prior to adoption. Two pending bills before Parliament would expand the *jus soli* grounds for the acquisition of Italian citizenship.

## I. Introduction

Under Italian law, citizenship implies a relationship between a person and the state, by virtue of which the legal order recognizes and guarantees full rights and duties to the citizen.<sup>1</sup> The main provisions on the acquisition of Italian citizenship are contained in Law No. 91 of 1992.<sup>2</sup> As a general rule, Italian citizenship is acquired *jus sanguinis*, that is, by those who are born to, or adopted by, Italian parents.<sup>3</sup>

A very limited ground for the acquisition of Italian citizenship, *jus soli*, occurs in the case of persons born in the national territory to stateless parents, or to unknown parents or parents who may not transmit their own citizenship to the child according to the law of their country of origin.<sup>4</sup>

Those who have been lawful residents of Italy for at least 10 years as well as non-Italians married to Italian citizens may also apply for Italian citizenship.<sup>5</sup>

Other legislation applicable to the acquisition of Italian citizenship by adoption includes:

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<sup>1</sup> *Cittadinanza [Citizenship]*, Ministero dell'Interno [Ministry of the Interior], <https://perma.cc/J2SL-82GR>.

<sup>2</sup> Legge 5 febbraio 1992, n.91, Nuove Norme sulla Cittadinanza (L. n. 91/1992), art. 1(1)-1(2), G.U. Feb. 15, 1992, n.38, <https://perma.cc/R7VN-LKE7>.

<sup>3</sup> Ministry of the Interior, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

- Law No. 189 of July 30, 2002, Amendment to the Provisions on Immigration and Asylum;<sup>6</sup>
- Legislative Decree No. 286 of 1998 containing the main provisions that regulate the entry, residence, and acquisition of Italian citizenship by foreign citizens;<sup>7</sup>
- Decree of the President of the Republic No. 362 of April 18, 1994, Regulations on the Procedure for the Acquisition of Italian Citizenship;<sup>8</sup>
- Decree of the President of the Republic No. 572 of October 12, 1993, Regulations for the Implementation of Law No. 91 of 1992, New Provisions on Citizenship;<sup>9</sup> and
- Law No. 184 of May 4, 1983 on the Adoption and the Custody of Minors (Law No. 184).<sup>10</sup>

## II. Main Provisions on the Acquisition of Italian Citizenship

As stated above, per Law No. 91 of 1992, birth in Italy does not automatically produce citizenship. The following persons acquire Italian citizenship by birth: (a) a child of a father or mother who is an Italian citizen, (b) a child born in Italian territory if both parents are unknown or stateless or if the child does not acquire the citizenship of the parents according to the law of the state to which the parents belong, and (c) a child of unknown parents found in the national territory, if the possession of another citizenship is not proved.<sup>11</sup>

Consequently, Italian immigration law does not allow “*jus soli*,” that is, citizenship based on the territory of birth (as is the case in the US) independent of the parents’ citizenship. The legal status of children born in Italy to foreign parents depends directly on their parents’ status: If one of the parents obtains Italian citizenship (usually after 10 years of legal residence), citizenship passes automatically to the parent’s children.<sup>12</sup>

Subsequent legislative amendments to existing legislation have not changed these rules, which have been in force since 1992.

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<sup>6</sup> Legge 30 luglio 2002 n.189 Modifica alla Normativa in Materia di Immigrazione e di Asilo, G.U. Aug. 26, 2002, n.199, <https://perma.cc/7SCY-W29Z>.

<sup>7</sup> Decreto Legislativo 25 luglio 1998, n.286 Testo Unico delle Disposizioni Concernenti la Disciplina dell’Immigrazione e Norme sulla Condizione dello Straniero (D.L. n. 286/1998), G.U. Aug. 18, 1998, n.191, <https://perma.cc/N5NX-G8RS>.

<sup>8</sup> Decreto del Presidente della Repubblica 18 aprile 1994, n.362 (D.P.R. 362/1994), G.U. June 13, 1994, n.136, <https://perma.cc/J77T-XPEG>.

<sup>9</sup> Decreto del Presidente della Repubblica 12 ottobre 1993, n. 572, Regolamento di Esecuzione della Legge 5 Febbraio 1992, No. 91, Recante Nuove Norme sulla Cittadinanza (D.P.R. 572/1993), G.U. Jan. 4, 1994, n.2, <https://perma.cc/44N8-4HEZ>.

<sup>10</sup> Legge 4 maggio 1983, No. 184, Disciplina dell’Adozione e dell’Affidamento dei Minori (L. n. 184/1983), G.U. May 17, 1983, n.133, <https://perma.cc/J654-UBGG>.

<sup>11</sup> L. n. 91/1992, art. 1(1)-1(2).

<sup>12</sup> Carlo Ciavoni, Cittadinanza ai Figli degli Immigrati. Ecco Perché l’Italia è Indietro [Citizenship for the Children of Immigrants: This Is Why Italy Is Behind], *La Repubblica* (Jan. 27, 2012), <https://perma.cc/ZZN6-D8TD>.

### III. International Adoption

In 1998, Italy ratified the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>13</sup> In the case of international adoptions under this Convention, the relevant authority is the “Commission for Intercountry Adoption, Central Authority for the Application of The Hague Convention,” which is presided over by the Ministry of Equal Opportunity and Family.<sup>14</sup>

The relevant domestic authorities involved in international adoption in Italy are the tribunals for minors with jurisdiction in the place of residence of the adoptive parents.<sup>15</sup>

### IV. Acquisition of Citizenship by Foreign Adopted Children

Under Law No. 184 of 1983, foreign minors (that is, minors who are citizens of another state) who are adopted by Italian parents acquire Italian citizenship.<sup>16</sup> This provision also applies to minors adopted prior to the entry into effect of Law No. 184 of 1983.<sup>17</sup> Law No. 91 of 1992 also contains provisions on the acquisition of Italian citizenship based on adoption: Foreign minors adopted by an Italian citizen acquires Italian citizenship,<sup>18</sup> including those whose adoptions occurred before the date of entry into force of Law No. 91 of 1992.<sup>19</sup> If an adoption is revoked based on a fact attributable to the adoptee, the adoptee loses Italian citizenship, provided that the former adoptee is in possession of another citizenship or reacquires it.<sup>20</sup> In other cases of revocation, the former adoptee retains Italian citizenship. However, when revocation takes place after an adoptee reaches the age of majority, the former adoptee may renounce Italian citizenship within one year from the act of revocation if in possession of another citizenship or if the former adoptee reacquires it.<sup>21</sup>

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<sup>13</sup> Legge 31 Dicembre 1998, No. 476 Ratifica ed Esecuzione della Convenzione per la Tutela dei Minori e la Cooperazione in Materia di Adozione Internazionale, Fatta a L'Aja il 29 Maggio 1993. Modifiche alla Legge 4 maggio 1983, No. 184, in Tema di Adozione di Minori Stranieri, G.U. Jan. 1, 1999, n.8, <https://perma.cc/Z5L7-MVEF>.

<sup>14</sup> Commissione per le Adozioni Internazionali. Autorità Centrale per la Convenzione de L'Aja del 29/05/93, <https://perma.cc/YY8L-FSZN>.

<sup>15</sup> *Come Funziona l'Adozione dei Minori in Italia [How the Adoption of Minors Works in Italy]*, Internazionale (Mar. 2, 2016), <https://perma.cc/EVW7-CS9U>.

<sup>16</sup> L. n. 184/1983, art. 39, para. 1.

<sup>17</sup> Id. art. 39, para. 2.

<sup>18</sup> L. n. 91/1992, art. 1(3)(1).

<sup>19</sup> Id. art. 1(3)(2).

<sup>20</sup> Id. art. 1(3)(3).

<sup>21</sup> Id. art. 1(3)(4).

### **A. Foreign Adopted Children Raised in the Country of the Adoptive Parents**

Foreign children under 14 years of age who intend to enter Italy for purposes of adoption are permitted entry upon evidence that there is an adoption or pre-adoptive custody resolution for them issued by a foreign authority concerning Italian citizens residing in Italy or in the foreign state.<sup>22</sup> The consular authority of the place where the resolution was issued must declare that the resolution was approved in accordance with the legislation of that state.<sup>23</sup> Foreign minors under 14 years of age can also enter Italy for adoption under a favorable decision by the Ministry of Foreign Affairs in agreement with the Ministry of the Interior.<sup>24</sup>

Foreigners may request reunification for dependent minor children.<sup>25</sup> For purposes of reunification, minor children are those younger than 18 years of age. Adopted or foster minors or minors subject to custody are included in the definition of children.<sup>26</sup>

### **B. Foreign Adopted Children Raised Abroad**

For purposes of adoption, current legislation does not distinguish whether or not the minor was raised outside of Italy.

## **V. Mandatory Documentation and Procedures to Acquire Citizenship**

Several regulations govern the procedures for acquiring Italian citizenship, including:

### **A. D.P.R. No. 362 of 1994**

The request for the acquisition of Italian citizenship must be submitted to the appropriate police prefect (*prefetto*) according to the residence of the petitioner or, when applicable, to the respective consular authority.<sup>27</sup>

The required documents include: (a) certificates of birth of the concerned persons (adoptive parents and adoptive child), (b) proof of family relationship, (c) evidence of the parents' Italian citizenship, (d) criminal certificate issued by the Italian penal authorities, (e) certificate of residence of the parents, and (f) proof of marriage between the adoptive parents.<sup>28</sup>

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<sup>22</sup> L. n. 184/1983, art. 31.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> D.L. n. 286/1998, art. 29(1)(b).

<sup>26</sup> Id. art. 29(2).

<sup>27</sup> D.P.R. n. 362/1994, art. 1(1).

<sup>28</sup> Id. art. 1(3).

The authority receiving the request must transmit the files to the Ministry of the Interior within 30 days.<sup>29</sup> The Ministry of the Interior's final decision is transmitted to the interested parties through the authority that received the request for citizenship.<sup>30</sup>

#### **B. D.P.R. No. 572 of 1993 Implements Law No. 91 of 1992**

According to these regulations, for a minor child to acquire Italian citizenship based on the ground that one of the child's parents has acquired or reacquired Italian citizenship, the child must live with the parent on the date on which the latter acquires or reacquires citizenship.<sup>31</sup> Cohabitation with the parent must be stable and appropriately certified with suitable documentation.<sup>32</sup>

Foreigners legally residing in Italy or who have requested the renewal of their residence permit while waiting for adoption are obliged to register with the National Health Service and have equal rights and obligations under the National Health Service program.<sup>33</sup>

### **VI. Pending Bills on the Acquisition of Citizenship *Jus Soli***

Two bills amending the current legislation applicable to the acquisition of Italian citizenship to expand *jus soli* grounds are pending before the Italian Parliament.

#### **A. 2018 Bill**

This bill would extend citizenship by birth to those who are born in the territory of the Republic to foreign parents of whom at least one has been a regular resident for at least one year at the moment of the child's birth.<sup>34</sup> The bill would also extend Italian citizenship to those born in the national territory to parents of whom at least one was born in Italy.<sup>35</sup>

In both cases, citizenship would be acquired under a declaration signed by one of the parents.<sup>36</sup> Within a year of reaching the age of majority, a person could renounce Italian citizenship if in possession of another citizenship.<sup>37</sup> In the absence of such a declaration, a person born in the territory of the Republic to foreign parents of whom at least one has been a regular resident for

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<sup>29</sup> Id. art. 2(1).

<sup>30</sup> Id. art. 4(1).

<sup>31</sup> D.P.R. n. 572/1993, art. 12(1).

<sup>32</sup> Id. art. 12(2).

<sup>33</sup> D.L. n. 286/1998, art. 34(1)(b).

<sup>34</sup> Dossier No. 52, Modifiche alla Legge 5 Febbraio 1992, n. 91, Recante Nuove Norme sulla Cittadinanza [Amendments to Law No. 91 of February 5, 1992, and Other Provisions on Citizenship], Schede di Lettura 23 ottobre 2018, at 2, <https://perma.cc/EW4V-K4PS>.

<sup>35</sup> Id.

<sup>36</sup> Id. art. 1(2-bis).

<sup>37</sup> Id. art. 1(2-bis).

at least one year at the moment of the person's birth, and without further conditions, can acquire citizenship if the person submits a request within two years after reaching the age of majority.<sup>38</sup>

**B. 2017 Bill**

Another pending legislative bill would grant Italian citizenship to children born in Italy to immigrants who are regular residents for at least five years, when at least one of the parents is not an Italian citizen. Under the proposed legislation, children born abroad but who arrived in Italy before age 12 could become Italian citizens provided they have attended school for at least six years.<sup>39</sup>

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<sup>38</sup> Id. art. 1(2-ter).

<sup>39</sup> Disegno di Legge S. 2092, Modifiche alla Legge 5 Febbraio 1992, n. 91, e Altre Disposizioni in Materia di Cittadinanza [Bill No. 2092, Amendments to Law No. 91 of February 5, 1992, and Other Provisions on Citizenship] (Dec. 23, 2017), Senato della Repubblica, XVII Legislatura (2013-2018), <https://perma.cc/D52R-QHHV>.



# Japan

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**SUMMARY** The Japanese Nationality Law is based on lineage. Birth within Japanese territory does not enable a person to acquire Japanese nationality.

The number of adoptions is very low in Japan. There is no special law for adoption of a foreign child.

Japanese parents must obtain permission from a family court to adopt a minor. In a case of adoption of a foreign child, the applicable law is the law of the adoptive parent's nationality. There are two types of adoption: (ordinary) adoption and special adoption. Special adoption extinguishes the legal relationship between a child and the child's natural parent.

An adopted child of a Japanese citizen can obtain Japanese nationality by naturalization. Some conditions for naturalization are exempted for an adopted child. The adopted child must have been domiciled continuously in Japan for one year or more, and must have been a minor according to his or her national law at the time of the adoption.

## I. Introduction

The Japanese Nationality Law is based on lineage. A child whose father or mother is a Japanese national at the time of the child's birth acquires Japanese nationality.<sup>1</sup> Therefore, birth within Japanese territory does not enable a person to acquire Japanese nationality. A person who is not a Japanese national, including a foreign adoptee, may acquire Japanese nationality by naturalization.<sup>2</sup>

## II. International Adoption

### A. Overview

Japan is not a signatory to the Hague Adoption Convention.<sup>3</sup> There is no special law for adoption of children from foreign countries or for adoption of Japanese children by persons of a different nationality.

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<sup>1</sup> Nationality Act, Act No. 147 of 1950, as amended by Act No. 88 of 2008, art. 2, <https://perma.cc/86ER-UD7Z> (unofficial translation).

<sup>2</sup> Id. art. 4.

<sup>3</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/8ATW-ZYBE>.

The number of adoptions of children is very low in Japan.<sup>4</sup> In 2019, the total number of reported adoptions was 114,094.<sup>5</sup> However, about 67% of them are adoptions of adults, according to an article published in 2012.<sup>6</sup> In 2017, the total number of cases related to adoption of minors in family courts was about 1600. Among them, the cases that involved a foreigner as an adoptive parent or an adoptee was about 400.<sup>7</sup>

## B. Adoption Law

To adopt a minor, a Japanese parent must obtain permission from a family court. In a case of adoption of a foreign child, the applicable law is the law of adoptive parent's nationality, therefore, Japanese law.<sup>8</sup> The Civil Code Part IV provides the family law.<sup>9</sup>

There are two types of adoption: (ordinary) adoption and special adoption. Special adoption extinguishes the legal relationship between a child and the child's natural parent.<sup>10</sup> On the other hand, ordinary adoption does not extinguish the relationship. For example, an adopted child can have a right to inherit from his or her biological parents.<sup>11</sup>

### 1. Ordinary Adoption

A person who has reached the age of majority (20 years)<sup>12</sup> may adopt another.<sup>13</sup> A married person must adopt a minor only jointly with the spouse unless the child has been a legitimate child of

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<sup>4</sup> Charles Lewis, *Cultural and Legal Hurdles Block Path to Child Adoptions in Japan*, Japan Times (Sept. 30, 2013), <https://www.japantimes.co.jp/community/2013/09/30/issues/cultural-and-legal-hurdles-block-path-to-child-adoptions-in-japan/>.

<sup>5</sup> 戸籍統計 [Statistics on Family Registry 2019], e-Stats, <https://perma.cc/CSH9-6ND4>.

<sup>6</sup> Chiaki Moriguchi, 児童福祉としての養子制度を考える「成年養子大国・日本」と「子ども養子大国・アメリカ」の変遷を追う [Thinking about Adoption as Child Welfare System: History of “Adult Adoption Country · Japan” and “Child Adoption Country” America], 36 Hitotsubashi Q. 26 (2013), [http://www.hit-u.ac.jp/hq-mag/chat\\_in\\_the\\_den/220\\_20180306/](http://www.hit-u.ac.jp/hq-mag/chat_in_the_den/220_20180306/).

<sup>7</sup> Replies to the List of Issues in Relation to the Combined Fourth and Fifth Reports of Japan on the Convention on the Rights of the Child (Nov. 2018), Annex II, at 22, <https://perma.cc/H2PW-DY66>.

<sup>8</sup> Act on General Rules for Application of Laws, Act No. 78 of 2006, art. 31, <https://perma.cc/6KQP-WUZZ> (unofficial translation).

<sup>9</sup> Civil Code, Act No. 89 of 1896, amended by Act No. 34 of 2019 (Reiwa), <https://perma.cc/NZA8-W4FW> (tentative translation as amended by Act No. 94 of 2013).

<sup>10</sup> Id. art. 817-2.

<sup>11</sup> Yoshiro Shirota, 養子が死亡したときの相続人は実の兄弟姉妹？誰が相続するかを解説！ [Do Biological Siblings Inherit When an Adopted Person Dies? Explain Who Inherits!], [そこが知りたい！相続問題 \[I Want to Know That! Inheritance Issues\]](https://www.shinjuku-law.jp/columns-souzoku/youshi-souzokunin/), Tokyo Shinjuku L. Off. (June 28, 2020), <https://www.shinjuku-law.jp/columns-souzoku/youshi-souzokunin/>.

<sup>12</sup> Civil Code art. 4.

<sup>13</sup> Id. art. 792.

the spouse.<sup>14</sup> If a minor to be adopted is 15 years of age or older, the consent of the minor is required. If a minor has not attained 15 years of age, his or her legal representative may give consent to the adoption. When either or both of the parents are not legal representatives of the minor, and even if parental authority is suspended, the legal representative must obtain the consent of that parent before giving consent to the adoptive parent.<sup>15</sup>

Prospective adoptive parents must apply to a family court for permission to adopt a minor. When the court permits the adoption, the adoptive parents and the minor's legal representative notify the Family Registry of the adoption. The adoption takes effect when the notification is accepted.<sup>16</sup>

## 2. *Special Adoption*

A ruling of special adoption is made only when both parents of a person to be adopted are incapable or unfit to care for the child or there are any other special circumstances, and it is found that the special adoption is especially necessary for the interests of the child.<sup>17</sup>

Only married couples can adopt a child by special adoption.<sup>18</sup> Adoptive parent must be 25 years of age or older, however, one of them can be 20 years of age or older.<sup>19</sup> A child to be adopted must be younger than 15 years of age at the time of the application to a family court for adoption.<sup>20</sup> However, special adoption is still possible if the prospective adoptive parents have continually cared for the child since before the child attained 15 years of age and there was an inevitable reason for delay in petitioning for special adoption.<sup>21</sup> In this case, the child's consent is required for the adoption. A child to be adopted must be younger than 18 years of age at the time of the court decision on special adoption.<sup>22</sup> In addition, for a grant of special adoption, the consent of both of the child's parents is required unless the parents are incapable of indicating their intention, have abused the child, or abandoned the child without reasonable cause, or there is any other cause of grave harm to the interests of the child to be adopted.<sup>23</sup>

In making a ruling of special adoption, a court must consider the circumstances of the care given by the person(s) to become adoptive parent(s) over the prospective adopted child for at least six

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<sup>14</sup> Id. art. 795.

<sup>15</sup> Id. art. 797.

<sup>16</sup> Id. arts. 739, 799.

<sup>17</sup> Id. art. 817-7.

<sup>18</sup> Id. art. 817-3. When a child is a legitimate child of one member of a couple, the other member adopts the child by special adoption.

<sup>19</sup> Id. art. 817-4.

<sup>20</sup> Id. art. 817-5, para. 1. The maximum age was raised by Act No. 34 of 2019 (Reiwa), which took effect on April 1, 2020.

<sup>21</sup> Id. art. 817-5, para. 2.

<sup>22</sup> Id. art. 817-5, para. 1.

<sup>23</sup> Id. art. 817-6.

months from the time of the application for special adoption. However, if the circumstances of care are evident prior to the application, the period can be reduced.<sup>24</sup>

### C. Adoption Agency

Child Guidance Offices of local governments and authorized adoption agencies can mediate the adoption of children.<sup>25</sup> Adoption agencies must try to arrange adoptions so that the children will be raised in Japan.<sup>26</sup>

## III. Acquisition of Citizenship by Foreign Adopted Children

### A. General Requirements for Naturalization

The Minister of Justice may give permission for a foreigner's naturalization if, in general, certain conditions are satisfied.

A foreigner must

1. have been domiciled in Japan for five years or more consecutively;
2. be 20 years old or older and of full capacity to act according to the law of his or her home country;
3. be of upright conduct;
4. be able to secure a livelihood by his or her own property or ability, or those of his or her spouse or other relatives with whom he or she lives on common living expenses;
5. lose other nationalities, if he or she has any, by the acquisition of Japanese nationality; and
6. have never plotted, advocated, or been involved with a political party or other organization that has plotted or advocated the overthrow of the Constitution of Japan or the Japanese government.<sup>27</sup>

A foreigner may be exempted from one or several items if other conditions are met. Especially in cases where a foreigner has a Japanese spouse or other family relations in Japan, the requirements for naturalization are relaxed. Regarding the requirement of five years' domicile in Japan, a person is deemed to be domiciled in Japan only when he or she lives in Japan legally.<sup>28</sup>

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<sup>24</sup> Id. art. 817-8.

<sup>25</sup> 民間あっせん機関による養子縁組のあっせんに係る児童の保護等に関する法律 [Act on Protection of Children During Adoption Mediation by Adoption Agencies], Act No. 110 of 2016, arts. 2, 6.

<sup>26</sup> Nationality Act, Act No. 147 of 1950, as amended by Act No. 88 of 2008, art. 3, para. 2.

<sup>27</sup> Id. arts. 4, 5.

<sup>28</sup> 木棚照一 [Shoichi Kidana], 国籍法 [Nationality Law] 260 (2003), bibliographic information at <https://lcn.loc.gov/2004389772>.

## **B. Foreign Adopted Children (Raised in the Country of an Adoptive Parent or Abroad)**

An adopted child of a Japanese citizen can obtain Japanese nationality by naturalization. When an adopted child has been domiciled continuously in Japan for one year or more and was a minor according to the child's national law at the time of the adoption, the child may be exempted from the requirements for naturalization of length of domicile, age, and financial ability listed in the Nationality Act.<sup>29</sup>

For a child who was adopted abroad to become a Japanese national, the child must come to Japan and be domiciled there for one year or more. Although the adopted person must be a minor according to his or her national law at the time of the adoption, there is no time limit to apply for naturalization. Therefore, an adopted person can be naturalized even after he or she becomes an adult.

When a foreign child is adopted by Japanese parents abroad, an adopted foreign child must obtain a visa to enter Japan and gain resident status in Japan. When the child is adopted by special adoption, the child can obtain a "Spouse of Japanese National and Others" visa and resident status.<sup>30</sup> When the child is adopted by ordinary adoption, the child can obtain a "Long-Term Resident" visa and resident status provided that he or she is five years of age or younger.

No special rules for Japanese diplomats or other officials were located.

## **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

An applicant for permission for naturalization must appear at the appropriate local Legal Affairs Bureau and submit the application form through the bureau head. The applicant must attach sufficient documents to prove that the conditions necessary for naturalization are met.<sup>31</sup> Legal Affairs Bureaus are under the jurisdiction of the Ministry of Justice.<sup>32</sup>

The website of the Ministry of Justice has an application form that can be filled out as a sample,<sup>33</sup> however, it does not explain the procedure. Instead, it directs people who plan to apply for naturalization to visit the appropriate local Legal Affairs Bureau.<sup>34</sup> According to administrative scriveners' websites, after consultation with a visitor, an officer of a local Legal Affairs Bureau

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<sup>29</sup> Nationality Act art. 8.

<sup>30</sup> Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, as amended by Act No. 63 of 2019, Appended Table 2, <https://perma.cc/ZY8K-9V47>.

<sup>31</sup> Enforcement Ordinance of Nationality Act, MOJ Ordinance No. 34 of 1984, as amended by MOJ Ordinance No. 9 of 2016, art. 2.

<sup>32</sup> Ministry of Justice Establishment Act, Act No. 93 of 1999, as amended by Act No. 102 of 2018, art. 15.

<sup>33</sup> 帰化許可申請 (Application for Permission for Naturalization) 例 1 (sample 1), MOJ, <https://perma.cc/9V4B-Z288>.

<sup>34</sup> Id.

hands out a leaflet that explains the procedure and required documents.<sup>35</sup> The Ministry of Justice does not make the leaflet open to the public, however, a couple of administrative scriveners post it online.<sup>36</sup>

The documents required include:

- Child's passport
- Certificate of acceptance of birth registration of the child
- Certificate of nationality of the child
- A copy of the family court decision on adoption
- Certificate to prove the adoption decision is binding and final
- A copy of adoptive parents' Family Register
- Copies of resident's card (all households of adoptive parents)
- Child's foreigner residence card
- Certificates of employment and salary (both adoptive parents)
- A copy of the savings balance certificate or savings passbook
- Tax documents of adoptive parents<sup>37</sup>

When the Minister of Justice permits naturalization of an applicant, public notice of the naturalization will appear in the official gazette. Naturalization takes effect from the date of the public notice.<sup>38</sup> Within the one month of the public notice, the adoptive parents must register the child in their Family Register.<sup>39</sup>

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<sup>35</sup> For example, Yoko Aramaki, 「帰化申請」とは？ [What Is an "Application for Naturalization" ?], 荒巻陽子行政書士事務所, Yoko Aramaki Admin. Scrivener Off., <http://aramaki-gyosei.jp/「帰化申請」とは？/>.

<sup>36</sup> MOJ, 帰化許可申請の手引き [Guidance for Application for Permission for Naturalization], <https://perma.cc/6NWH-DLRF>.

<sup>37</sup> Id. See also テーマ：在留資格 & 帰化 [Theme: Resident Status & Naturalization], 特別養子縁組 & パパ育児 [Special Adoption & Papa's Childcare Leave] Blog, <https://papa888.at.webry.info/theme/763af98d6e.html>.

<sup>38</sup> Nationality Act, Act No. 147 of 1950, as amended by Act No. 88 of 2008, art. 10.

<sup>39</sup> Family Registry Act, Act No. 224 of 194, as amended by Act No. 17 of 2019 (Reiwa), art. 102-2, <https://perma.cc/5HHB-YFUS> (unofficial translation as amended by Act No. 35 of 2007).

# Mexico

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**SUMMARY** Mexico is signatory party to the Hague Convention on Intercountry Adoption. The General Law on the Rights of Children and Adolescents provides broad guidelines on international adoption to be followed by adoption authorities nationwide. A foreign child adopted by Mexican parents for which naturalization is sought must have resided legally in Mexico for at least one year immediately preceding the filing of the application. Mexican adoptive parents of a foreign minor child may file a request to obtain Mexican nationality for their child, or the child may do so when he/she reaches the age of majority.

## I. Introduction

### A. Acquisition of Citizenship

Mexico's Nationality Law provides that a foreigner who wants to apply for naturalization must demonstrate that he/she has resided legally in Mexico for at least five years immediately preceding the filing of the application.<sup>1</sup> The five-year period of residency in Mexico may be reduced to one year if the applicant for naturalization is adopted by a Mexican national.<sup>2</sup> In addition to the period of residency, applicants for naturalization are required to speak Spanish, demonstrate knowledge of the history of Mexico and integration into its culture, take an oath of allegiance to Mexico, renounce any other nationality, and submit a naturalization application to Mexico's Department of Foreign Affairs.<sup>3</sup>

### B. Main Legislation on International Adoption

Mexico is a federal republic comprising thirty-one states and Mexico City (the nation's capital). Each of these jurisdictions and the federal government has enacted laws concerning children issues (including adoption) which are in force in their respective jurisdictions.<sup>4</sup>

The most salient law at the national level is the General Law on the Rights of Children and Adolescents, as it provides for broad guidelines on international adoption that are to be followed

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<sup>1</sup> Ley de Nacionalidad, as amended, art. 20, D.O.F., Jan. 23, 1998, <https://perma.cc/8JJU-V6XF>. See also Reglamento de la Ley de Nacionalidad, as amended, art. 14, D.O.F., June 17, 2009, <https://perma.cc/89BT-7LUJ>.

<sup>2</sup> Ley de Nacionalidad, art. 20-III.

<sup>3</sup> Id. art. 19.

<sup>4</sup> Ley General de los Derechos de Niñas, Niños y Adolescentes arts. 26, 29-31, 34, D.O.F., Dec. 4, 2014, as amended, <https://perma.cc/4T8Z-R9W5>.

by adoption authorities nationwide.<sup>5</sup> This law provides that international adoptions must take place in a manner that ensures that the rights of adopted children as provided by relevant agreements are complied with and that adoptions are approved in view of the best interest of the children involved.<sup>6</sup>

## II. International Adoption

Mexico is signatory party to the Hague Convention on Intercountry Adoption.<sup>7</sup>

For purposes of the Convention, Mexico's Central Authority is comprised of multiple agencies, including two at the federal level and an adoption authority in each of the 31 states and Mexico City.<sup>8</sup> The two federal authorities are the Department of Foreign Relations (SRE) and the National System for the Full Development of the Family (DIF), which coordinates national policy for child and family welfare, including processing of intercountry adoption cases and authorization of foreign adoption service providers in Mexico.<sup>9</sup>

In addition, intercountry adoptions also involve one of the 32 state DIF offices, which must certify that the prospective adoptive parents in Mexico are suited to adopt a foreign child and that they have received pertinent counseling.<sup>10</sup> Under Mexican law, the procedure to pursue the adoption by Mexican parents of a foreign child located abroad is to be determined by the central authority of the child's country of origin.<sup>11</sup>

## III. Acquisition of Citizenship for Foreign Adopted Children

### A. Foreign Adopted Children Brought to the Country of Adoptive Parent

As stated above, Mexico's Nationality Law provides that a foreigner who wants to apply for naturalization must demonstrate that he/she has resided legally in Mexico for at least five years immediately preceding the filing of the application,<sup>12</sup> but this requirement may be reduced to one year in cases of adoption.<sup>13</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id. art. 31.

<sup>7</sup> Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/C5BW-4GUP>; *Adopciones, Trámite de adopción internacional*, Sistema Nacional para el Desarrollo Integral de la Familia (last updated Jan. 17, 2020), <https://perma.cc/NXR8-UA9P>.

<sup>8</sup> *Adopciones, Trámite de adopción internacional*, supra note 7. See also *Mexico Intercountry Adoption Information*, U.S. Department of State, Bureau of Consular Affairs, <https://perma.cc/LLE8-TV86>.

<sup>9</sup> *Mexico Intercountry Adoption Information*, supra note 8.

<sup>10</sup> Id. See also Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes art. 103, D.O.F., Dec. 2, 2015, <https://perma.cc/23DX-7F99>.

<sup>11</sup> Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes art. 101.

<sup>12</sup> Ley de Nacionalidad art. 20. See also Reglamento de la Ley de Nacionalidad art. 14.

<sup>13</sup> Ley de Nacionalidad art. 20-III.



The adoptive parents may request citizenship for their minor adopted child.<sup>14</sup> The child may also apply for citizenship upon attaining the age of majority (i.e., 18 years of age).<sup>15</sup>

#### **B. Foreign Adopted Children Raised Abroad**

Mexico's Nationality Law does not appear to include rules specifically allowing for an adopted child to apply for citizenship without fulfilling the one-year residency requirement noted above. Nor does this law appear to include a waiver of such residency requirement applicable to Mexican government officials while serving abroad.

#### **IV. Documentation and Procedure to Acquire Citizenship**

Mexican adoptive parents of a foreign minor child may file a request to obtain Mexican nationality for their child by submitting the following documents to Mexico's Department of Foreign Relations:

- a request signed by the adopting parents
- the original of a current identification document issued to the adopting parents by the Mexican government, such as a passport or a voting card
- proof of Mexican nationality of adopting parents, such as a birth certificate
- a certified copy of the adoption decree
- the adopted child's proof of legal residency and birth certificate<sup>16</sup>

The adopted individual upon attaining the age of majority may also apply for citizenship by presenting the same documentation.<sup>17</sup>

Once the Department of Foreign Relations receives the complete naturalization application, it must notify the Department of Governance about such filing for its review and approval, after which the Department of Foreign Relations may issue a naturalization certificate within 90 days.<sup>18</sup>

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Reglamento de la Ley de Nacionalidad arts. 16, 19.

<sup>17</sup> Id. art. 20.

<sup>18</sup> Id. art. 21.

# Russian Federation

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**SUMMARY** In the Russian Federation, adoption is governed by the Family Code of the Russian Federation and the Federal Law on the State Database on Children Left Without Parental Care. The laws regulate only adoption of children born on the territory of the Russian Federation. The legislation does not specify the rules and procedures for intercountry adoption.

Citizenship of children adopted abroad is governed by the Federal Law on Citizenship of the Russian Federation. Adopted children may be the subject of bilateral treaties as well, if such a treaty exists with a specific country.

The Russian Federation is a signatory to the Hague Adoption Convention, but it has not been ratified by the Parliament (the Federal Assembly). Citizenship by descent is available for children adopted abroad.

As a legal successor to the former Soviet Union, Russia's rules and procedures for acquisition of its citizenship for individuals from the countries of the former Soviet Union are less restrictive.

In 2020, the Russian Federation introduced simplified rules and procedures for the acquisition of citizenship.

The Law on Citizenship provides that, in the case of adoption of children from the Russian Federation, the children retain their Russian citizenship. If Russian parent(s) adopt a child abroad, the adopted child acquires Russian citizenship from the day of adoption.

Adults adopted by Russians must acquire Russian citizenship by obtaining permanent residence permits.

## I. Introduction

The currently-in-force Federal Law on the Citizenship of the Russian Federation is the governing law on citizenship matters in the country. The law sets out grounds, terms, and procedure for the acquisition and termination of citizenship in the Russian Federation.<sup>1</sup>

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<sup>1</sup> Federal Law on the Russian Federation Citizenship, No. 62-FZ, adopted on May 15, 2002, last amended on July 13, 2020, <https://perma.cc/S92B-9LSX> (in Russian).

The law states that “[t]he rules regulating the matters of the Russian Federation citizenship shall not contain provisions which restrict citizens’ rights by virtue of social, racial, ethnic, language or religion affiliation.”<sup>2</sup>

Under this law, citizenship in the Russian Federation shall be acquired:

- by virtue of birth;
- as a result of being admitted for Russian Federation citizenship (Naturalization);
- as the result of reinstatement of Russian Federation citizenship (restoration of citizenship for former citizens);
- on other grounds set out in the present Federal Law or an international treaty of the Russian Federation.<sup>3</sup>

A child can claim Russian citizenship through birth if any of the following applies,

- both parents are Russian citizens (or one parent if a single parent);
- if one parent is a Russian citizen and the other is stateless;
- one parent is a Russian citizen and the other is a foreign national, if the child is born in Russia;
- one parent is a Russian citizen and the other is a foreign national, if the child is born outside Russia and has not been granted citizenship of any foreign country;
- both parents are foreign nationals living in Russia, if the child is born in Russia and has not been granted citizenship of any foreign country.<sup>4</sup>

The recent amendments to Russia’s Citizenship Law, in force since October 12, 2020, enable foreigners to obtain Russian nationality without renouncing their original citizenship.<sup>5</sup>

Formerly, foreign nationals could only obtain citizenship if they could prove that they had reported their renunciation of foreign citizenship to the foreign state’s authorities.<sup>6</sup> The amendment applies to foreign citizens and stateless individuals who permanently reside in Russia. The procedure for acquiring Russian citizenship is available to certain categories of persons (for example, those having a parent who is a Russian citizen and lives in Russia). Applicants who are eligible under this amendment need not provide evidence of a legal source of income. The main advantage is that there is no longer a need to reside in Russia for five years before applying.<sup>7</sup>

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<sup>2</sup> Id. art. 4, § 1.

<sup>3</sup> Id. art. 12.

<sup>4</sup> Id. art. 12.

<sup>5</sup> Id. art. 14.

<sup>6</sup> Federal Law, No. 134-FZ, Concerning the Simplification of the Procedure for Acquisition of Russian Citizenship, April 24, 2020, art. 2(2), <https://perma.cc/8CHX-G274> (in Russian).

<sup>7</sup> Peter Roudik, *Russia: New Law Eliminates Requirement to Renounce Foreign Citizenship*, Global Legal Monitor, Library of Congress (May 1, 2020), <https://perma.cc/M4S9-4ASD>.

According to the law, the government offices dealing with immigration and citizenship issues, which had monitored the termination of foreign citizenship by Russian nationals, are required only to accept written notification from applicants for Russian citizenship that they hold or have terminated citizenship in another state.<sup>8</sup> Under the amendments, the processing times for applications for naturalization (or renunciation) under simplified procedures were shortened from six to three months (for applications submitted within Russia). The same reduction in processing time is applicable to certain categories of people, such as former Soviet Union citizens who remain stateless and their children.<sup>9</sup>

In addition, the amendments to the law stipulate a right to file a citizenship application by citizens of Moldova, Ukraine, Belarus, and Kazakhstan who have an active residence permit but without having to wait to complete three years of living in Russia.<sup>10</sup>

## II. International Adoption

### A. Laws Governing Adoption

Legislative instruments of the Russian Federation governing international adoption are mainly focused on adoption of children who are citizens of the Russian Federation.

In the Russian Federation, the adoption process is governed by the Family Code of the Russian Federation (sections 124 to 165);<sup>11</sup> the Civil Procedure Code, chapter 29 on Adoption of a Child;<sup>12</sup> the Governmental Order, No. 275, on the Rules for Adoption, Including for Noncitizens of the Russian Federation of March 29, 2000;<sup>13</sup> and the Federal Law on the State Database of Children Left Without Parental Care 2001 (art. 5).<sup>14</sup>

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<sup>8</sup> Federal Law, No. 134-FZ, art. 1(3.b).

<sup>9</sup> Id. art. 41.1, § 1.

<sup>10</sup> Id. art. 1(2.b).

<sup>11</sup> Family Code of the Russian Federation, No. 223-FZ, adopted on Dec. 29, 1995, last amended on Feb. 2, 2020, <https://perma.cc/P63H-LZZ4> (in Russian).

<sup>12</sup> Civil Procedure Code of the Russian Federation, No. 138-FZ, adopted on Nov. 14, 2002, last amended on Jan. 12, 2021, <https://perma.cc/RE3G-6FG2> (in Russian).

<sup>13</sup> Decree of the Government of the Russian Federation on the Approval of the Rules for the Transfer of Children for Adoption and Control Over the Conditions of Their Life and Upbringing in Adoptive Families on the Territory of the Russian Federation, and the Consular Registration Rules Institutions of the Russian Federation of Children Who Are Citizens of the Russian Federation and Adopted by Foreign Citizens or Stateless Persons, No. 275, Mar. 29, 2000, revised from Dec. 14, 2019, <https://perma.cc/H6KV-3EAG> (in Russian).

<sup>14</sup> Federal Law on the State Database of Children Left Without Parental Care, No. 44-FZ, Apr. 16, 2001, <https://perma.cc/4YQU-HSA5> (in Russian).

The Constitution of the Russian Federation states as follows, “[C]itizenship of the Russian Federation shall be acquired and terminated in accordance with federal law, and shall be one and equal, irrespective of the grounds on which it is acquired.”<sup>15</sup>

Notably, in 2000, following the President’s Resolution, the Russian Federation signed the Hague Convention on Protection of Children and Co-operation in the Field of Intercountry Adoption of 29 May 1993 (Hague Adoption Convention).<sup>16</sup> However, this convention has not been ratified by the Federal Assembly of the Russian Federation.<sup>17</sup>

Also, the Russian Federation is not a party to the European Convention on the Adoption of Children of 27 November 2008.<sup>18</sup>

The procedures on intercountry adoption are regulated in the Russian Federation through a number of bilateral treaties on cooperation in the field of adoption. Such agreements have been concluded with Spain,<sup>19</sup> Israel,<sup>20</sup> Italy,<sup>21</sup> and France.<sup>22</sup>

The Russian Federation has also signed bilateral treaties on legal assistance on civil, family, and criminal cases, which include adoption issues, with the Socialist Republic of Vietnam, Republic of Lithuania, Republic of Latvia, Republic of Moldova, Republic of Estonia, Republic of Kyrgyzstan, Republic of Azerbaijan, and Georgia.<sup>23</sup>

According to these international treaties, the adoption procedure or its abolition is carried out according to the legislation of the state in which the child is a citizen, unless otherwise stated.

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<sup>15</sup> Constitution of the Russian Federation, adopted on Dec. 12, 1993, as amended through July 4, 2020, art. 6, § 1, <https://perma.cc/5SLS-C95H>.

<sup>16</sup> Resolution of the President of the Russian Federation on the Signing of the Convention on the Protection of Children and Cooperation in the Field of Intercountry Adoption by the Russian Federation, No. 241-rp, June 26, 2000, <https://perma.cc/GW9D-CDMJ> (in Russian).

<sup>17</sup> Hague Conf. Priv. Int’l L., Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, #33, (May 1, 1995), Status Table, last updated on Oct. 26, 2020, <https://perma.cc/7Y3D-9MZY>.

<sup>18</sup> Council of Europe, *Chart of Signatures and Ratifications of Treaty No. 058, European Convention on the Adoption of Children*, Status Table, <https://perma.cc/95A3-5BED>.

<sup>19</sup> Agreement Between the Russian Federation and the Kingdom of Spain on Cooperation in the Field on Adoption of Children, International Treaty, July 9, 2014, ratified on Mar. 8, 2015, Federal Law No. 28-FZ, <https://perma.cc/HE52-2BTF>.

<sup>20</sup> Agreement Between the Russian Federation and the State of Israel on Cooperation in the Field on Adoption of Children, signed on Jan. 22, 2020, (not yet entered into force), <https://perma.cc/23WJ-WWC7> (in Russian).

<sup>21</sup> Agreement Between the Russian Federation and the Italian Republic on Cooperation in the Field on Adoption of Children, signed November 6, 2008, <https://perma.cc/58B8-2UBF>.

<sup>22</sup> Agreement Between the Russian Federation and the French Republic on Cooperation in the Field on Adoption of Children, signed Nov. 18, 2011, <https://perma.cc/Y3GL-8RBK>.

<sup>23</sup> *Bilateral Treaties of the Russian Federation on Private International Law and International Civil Procedure*, Nat’l Res. Univ. Higher Sch. Econ. Russ. Fed., <https://perma.cc/DE6F-UJBZ> (in Russian).

In 1998, the Russian Federation enacted the Law on the Basic Guarantees of the Rights of the Child in the Russian Federation.<sup>24</sup>

The Ministry of Education of the Russian Federation is the main governmental institution responsible for international adoptions in Russia. The Department of the State Policy for the Protection of Children's Rights of the Ministry of Education is authorized to collect information and register data on prospective candidates as adoptive parents and guardians (trustees), create a state database of children left without parental care, provide citizens with information about children left without parental care, and issue referrals to citizens for visitation with children left without parental care.<sup>25</sup>

Furthermore, the Department of Children's Rights Protection requires any agency wishing to facilitate adoptions in Russia to be accredited by the Russian government. The agencies authorized by the Ministry of Education can mediate adoptions of children, provide services for prospective parents including monitoring the living conditions and upbringing of adopted children as well as submitting reports to the relevant authorities regarding the children's psychological development and adaptation to their new home.<sup>26</sup> Also, Russian adoption authorities created a unified database of adoptable children and placed their information in a national registry, the Office for Registration of Acts of Civil Status for domestic adoptions (ZAGS).<sup>27</sup>

## B. Adoption Procedures

Under Russian legislation, a prospective parent can apply to a regional or federal operator of the Parentless Children Database for information on children available for adoption. Applicants can obtain information about children and their relatives as well as acquire an independent medical assessment of a child.<sup>28</sup>

Applications for adoption are generally heard by district courts (*rayonniy sud*). However, applications for adoption by foreign nationals and Russian citizens permanently residing abroad are within the jurisdiction of the 89 courts of federal territories, regions, and cities of federal importance in the Russian Federation (courts of appeal).<sup>29</sup>

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<sup>24</sup> Federal Law on Basic Guarantees of the Rights of the Child in the Russian Federation, No. 124-FZ, adopted on July 27, 1998, <https://perma.cc/E4TT-WKA8>.

<sup>25</sup> Russ. Fed'n Ministry Educ., State Servs., Dep't Children's Rts. Protection, <https://perma.cc/YQW5-M5BL>.

<sup>26</sup> Federal Law on the State Database of Children Left Without Parental Care, arts. 5-11.

<sup>27</sup> Federal Law on the Acts of Civil Status, No.143-FZ, adopted on Nov.15, 1997, last amended June 1, 2011, ch. V, State Registration of Adoption, arts. 39-47, <https://perma.cc/5A54-7QJJ> (in Russian); Russ. Fed'n Ministry Educ., *Databank of Children – Orphans*, adopt.ru, <https://perma.cc/3ZMJ-Q874>.

<sup>28</sup> Federal Law on the State Database of Children Left Without Parental Care, arts. 5, 11.

<sup>29</sup> Eugene S. Anichkin et al., *Adoption of Russian Children by Foreign Citizens: Some Problems Concerning the Implementation of Norms of International Law*, 8(3) Scientific Station (UNIFAP) 25 (Sept-Dec. 2018), <https://perma.cc/27XP-VLYD>.

Under the Family Code, a single applicant generally must be at least 16 years older than the child who is being adopted.<sup>30</sup> Adoption by unmarried or same-sex couples is prohibited.<sup>31</sup>

According to article 127 of the Family Code, adoption must be denied if the applicant's parental rights were revoked in the past, or the applicant has a criminal conviction for certain crimes, and on other grounds.<sup>32</sup> The Code prescribes that a child's adoption hearings must be closed to the public. The court must consider the child's opinion on the matter if the child is at least 10 years of age. The court will grant an adoption order if it finds this to be in the best interests of the child and that the prospective parents are fit and financially secure enough to provide for the needs of the child. Adoptive parents can give children new names and change their birth information.<sup>33</sup> A child adopted by foreign parents retains Russian citizenship. Children are eligible for intercountry adoptions when it is impossible to place these children with relatives or with citizens of the Russian Federation.<sup>34</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

#### A. Foreign Adopted Children Raised in the Country of an Adoptive Parent

The provisions of article 26 of the Law on Citizenship set forth the rules for the citizenship of children upon their adoption.

A child, adopted by a citizen of the Russian Federation or spouses who are citizens of the Russian Federation or spouses one of whom is a citizen of the Russian Federation, and the other one is a stateless person, shall acquire the citizenship of the Russian Federation from the day of his or her adoption, irrespective of the child's place of residence, on the basis of an application by the adoptive parent who is a citizen of the Russian Federation.

A child adopted by the spouses, one of whom is a citizen of the Russian Federation and the other one possesses another citizenship, may acquire the citizenship of the Russian Federation under the simplified procedure on the basis of an application by both adoptive parents irrespective of the child's place of residence.<sup>35</sup>

In the case of the absence of an application from both adoptive parents within one year of the day of adoption, the child shall acquire the citizenship of the Russian Federation from the day of adoption, provided that the child and the adoptive parents reside in the territory of the Russian Federation.<sup>36</sup>

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<sup>30</sup> Family Code, art. 128.

<sup>31</sup> Id. art. 127.

<sup>32</sup> Id. art. 127.

<sup>33</sup> Id. art. 134.

<sup>34</sup> Id. art. 124(4).

<sup>35</sup> Federal Law on the Russian Federation Citizenship, No. 62-FZ, art. 26, §§ 2, 3.

<sup>36</sup> Id. art. 26, § 4.

Additionally, article 37 of the Law on Citizenship stipulates that, under paragraphs 2 and 4 of article 26, Russian citizenship will be acquired as of the date of adoption of the child. The consent of a child who is between 14 and 18 years of age is required to apply for citizenship.<sup>37</sup>

## **B. Foreign Adopted Children Raised Abroad**

The Russian Federation's current laws regarding rules and procedures for adoption do not distinguish whether or not a minor was raised outside of the Russian Federation.

## **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

The procedures, rules, and requirements for the acquisition of citizenship in the Russian Federation are stipulated in the Presidential Decree, No. 1325, on the Approval of the Regulations on Procedure for Consideration of Issues of Citizenship in the Russian Federation.<sup>38</sup> The website of the State Services in the Field of Migration of the Ministry of Internal Affairs of the Russian Federation provides information with instructions on the methods of submission of various pertinent types of required documents.<sup>39</sup>

As mentioned above, an adopted child is automatically considered a citizen of the Russian Federation on the day of adoption if an adoptive parent is a citizen of the Russian Federation. Nevertheless, the procedures prescribed in the decree provide steps for formalizing the fact of citizenship.

Presidential Decree 1325 defines the requirements for the acquisition of citizenship by children and persons with disabilities.<sup>40</sup>

## **A. Applying for Citizenship Abroad**

Outside of the Russian Federation, a citizenship application must be submitted by a parent of an adopted child at the diplomatic mission of the Russian Federation in the country of the applicant's residence.<sup>41</sup> Each diplomatic mission may have its own additional requirements (depending on

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<sup>37</sup> Id. art. 9, § 2.

<sup>38</sup> Decree of the President of the Russian Federation on the Approval of the Regulations on Procedure for Consideration of Issues of Citizenship of the Russian Federation, No. 1325, Nov. 14, 2002, with additions and amendments of Oct. 5, 2020, <https://perma.cc/E6AS-23L3> (in Russian).

<sup>39</sup> Russ. Fed'n Ministry Internal Aff., *State Services in the Field of Migration*, <https://perma.cc/65LT-Y8DL> (in Russian).

<sup>40</sup> Decree, No. 1325, Chapter on the Admission to the Citizenship of the Russian Federation of Children and Disabled Persons, <https://perma.cc/J6C7-6V24> (in Russian).

<sup>41</sup> Russ. Fed'n Foreign Ministry Consular Dep't, *Information on Countries, Bilateral Treaties*, <https://perma.cc/WFQ9-KQWQ> (in Russian).



the country), which might include verified (apostilled) translations and consular fees. In some countries, the application can be submitted through a special provider of that type of service.<sup>42</sup>

The documents required include:

- A copy of identification documents of parent(s), confirming citizenship in the Russian Federation (passport);
- An original birth certificate of adopted child, with apostille and notarized translations in Russian language;
- An original certificate of adoption, with apostille and notarized translations in Russian language;
- A copy of child's passport (if the child enjoys another country's citizenship);
- An citizenship application (see Appendix No. 7, Application);
- Written consent of another parent (if required), with apostille and notarized translations in Russian language;
- A copy of marriage certificate (if required,) with apostille and notarized translations in Russian language;
- An original of parent's international Russian passport and a copy of its first pages;
- the parent(s)' and an adopted child's passport-type photographs;
- Consulate fee.<sup>43</sup>

Time of processing may differ from country to country, however, an average length is three months from the day of submission of the application.

Russian parents must submit an application in person but some diplomatic missions may allow submitting documents by proxy or by postal service. The consent of children between 14 and 18 years of age is required.

An adopted adult is also eligible to apply for citizenship. The procedure requires first obtaining a permanent residence permit from the Russian Federation. Information on the details and required documents can be found on the web portal of the Russian General Directorate of Migratory Affairs (GUVM) of the Ministry of Internal Affairs of the Russian Federation.<sup>44</sup> The GUVM issues residence permits and Russian passports.

The GUVM is also authorized to proceed with applications for Russian citizenship.<sup>45</sup>

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<sup>42</sup> Russ. Fed'n Foreign Ministry Consular Dep't, *Citizenship Issues*, <https://perma.cc/A8G2-T3QA> (in Russian); Presidential Decree, Appendix No. 7, Application Form for Citizenship, <https://perma.cc/MJ6G-PYM9> (in Russian).

<sup>43</sup> Russ. Fed'n Ministry Internal Aff., *General Directorate for Migration*, <https://perma.cc/U6AA-P558> (in Russian).

<sup>44</sup> Russ. Fed'n Ministry Internal Aff., *Citizenship of the Russian Federation*, <https://perma.cc/LP87-55XC> (in Russian).

<sup>45</sup> Id.

## **B. Applying for Citizenship in the Russian Federation**

An application for citizenship in the Russian Federation can be submitted by adoptive parents who reside in the Russian Federation. The procedures are handled by the Russian diplomatic missions only if the child is a minor and lives abroad.<sup>46</sup>

If adopted persons live abroad, they can claim Russian citizenship by their adoptive parents who are living in Russia, if at least one of the parents is a citizen of the Russian Federation. Citizenship in the Russian Federation is obtained through registration of the permanent residence permit and may take slightly more than a year. The documents proving direct kinship with a foreign citizen (certificate of adoption and others) will serve as the main documents in the process of acquiring Russian citizenship. All letters in the applicant's surname, name, and patronymic (if any) must match in all documents, otherwise it is necessary to make requests to archives, ZAGS, and other institutions that can provide certificates of kinship.<sup>47</sup>

When submitting documents for Russian citizenship, the applicant should bear in mind that if the state of which the applicant is a citizen at the time of applying for Russian citizenship prohibits having dual or second citizenship with Russia, the applicant will eventually be deprived of the other citizenship. The Russian Migration Service has an agreement with the migration services of many countries.

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<sup>46</sup> Law on Citizenship, art. 14.

<sup>47</sup> Id. art. 14.

# South Africa

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**SUMMARY** In South Africa, intercountry adoption is governed under the Children’s Act and its subsidiary legislation, the General Regulations Regarding Children. These laws were enacted to implement the Hague Convention on Intercountry Adoption, to which South Africa acceded in 2003, and which enjoys primacy over national law. One of the central actors in intercountry adoption is the Director-General of the Department of Social Development, who is designated as the Central Authority. Among the key roles of the Central Authority is accrediting child protection organizations, which do most of the work of facilitating intercountry adoptions, and exercising oversight over such organizations.

A child adopted by South African citizens abroad is entitled to South African citizenship by descent under the principle that a child follows the citizenship of parents, provided the child’s birth and adoption are registered with the Department of Home Affairs. Although only persons under the age of eighteen may be adopted, no age limit appears to apply to qualification for citizenship. A child who acquires citizenship through adoption may lose citizenship if the child’s responsible parent loses his or her citizenship in certain circumstances. However, the child may apply for resumption of South African citizenship upon attaining the age of majority if he or she resides or demonstrates intention to reside in South Africa.

## I. Introduction

Under the South African Constitution, the national government enjoys exclusive legislative jurisdiction on citizenship issues.<sup>1</sup> Accordingly, the 1995 Citizenship Act,<sup>2</sup> which is the principal law, and its subsidiary legislation, the Citizenship Regulations,<sup>3</sup> regulate the application for and acquisition of South African citizenship. The Department of Home Affairs administers the Citizenship Act.<sup>4</sup> The Minister of the Department has wide discretionary powers on an array of issues including with regard to the granting of citizenship to a foreigner; however, all his decisions are subject to judicial oversight.<sup>5</sup>

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<sup>1</sup> South Afr. Const., 1996, §§ 3 & 44, <https://perma.cc/85L8-MBEZ>.

<sup>2</sup> South African Citizenship Act No. 88 of 1995 (Oct. 6, 1996), <https://perma.cc/AV8H-Y9V7>.

<sup>3</sup> Regulations on the South African Citizenship Act, 1995 (Citizenship Regulations) (Dec. 28, 2012), <https://perma.cc/T7NG-3PJ3>.

<sup>4</sup> Citizenship Act §§ 1, 22, & 23.

<sup>5</sup> F. Venter, *Citizenship and Nationality*, in 3 *The Law of South Africa* 335, 342 (W.A. Joubert et al. eds., 3<sup>rd</sup> ed., 2013).

South African citizenship may be acquired by birth, descent, or naturalization.<sup>6</sup> A person born in or outside of South Africa is a citizen by birth if at least one of his parents is a South African citizen.<sup>7</sup> Anyone born in South Africa to non-South African citizens is a citizen by birth if he does not already have or qualify for citizenship of a foreign country and his birth has been duly registered in South Africa in accordance with the applicable law.<sup>8</sup> In addition, anyone born in South Africa to parents who have been granted permanent residency permits qualifies for citizenship by birth if he has lived in the country from the time of his birth to the time of attaining the age of majority, and his birth has been duly registered in accordance with the applicable law.<sup>9</sup>

Anyone adopted by a South African citizen in accordance with the applicable law and whose birth has been duly registered in accordance with the applicable law is a citizen by descent.<sup>10</sup>

Further, a person may apply for and acquire South African citizenship by naturalization. The Minister has the power to naturalize a foreigner applicant if the applicant can prove that

- he is not a minor;
- he is a permanent resident;
- he has been an ordinary resident in South Africa for ten years and has resided in the country for a continuous period of at least five years immediately preceding his application;
- he is a person of good moral character;
- he has mastered any one of the official languages in South Africa;
- he is from a country that allows dual citizenship, or if not, he has renounced his citizenship of the country in accordance with the applicable laws; and
- he has a satisfactory knowledge of the duties and responsibilities associated with South African citizenship.<sup>11</sup>

If the applicant is married to a South African citizen, or was married to a citizen but was widowed, he must show that he has been lawfully admitted to South Africa for permanent residence and has ordinarily resided in the country for at least ten years during which he has been married to the South African citizen.<sup>12</sup> Absence from South Africa for more than ninety days in the last five years immediately preceding the application precludes an applicant from eligibility to apply for citizenship.<sup>13</sup>

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<sup>6</sup> Citizenship Act §§ 2, 3, & 4.

<sup>7</sup> *Id.* § 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* § 3.

<sup>11</sup> Citizenship Act § 5; Citizenship Regulations § 3.

<sup>12</sup> Citizenship Act § 5; Citizenship Regulations § 5.

<sup>13</sup> Citizenship Regulations § 5.

An application for naturalization of children who are permanent and lawful residents in South Africa may be made by a parent or guardian.<sup>14</sup> In addition, children born in South Africa to parents who are not citizens or who have not been granted permanent residency in South Africa may apply for naturalization upon reaching the age of majority.<sup>15</sup> To qualify, an applicant in this class must have lived in South Africa from the time of birth to the day of attaining the age of majority and his birth must have been registered in South Africa in accordance with the applicable laws.<sup>16</sup>

## II. International Adoption

Intercountry adoption does not have a long history in South Africa. It was only allowed in 2000 after the country's Constitutional Court confirmed a decision of the Cape High Court, which found unconstitutional a provision in the 1983 Child Care Act exclusively reserving the adoption of South African-born children to South African citizens.<sup>17</sup> In December 1, 2003, South Africa acceded to the Hague Convention on Intercountry Adoption (the Convention) and sought to implement it through a national legislation "in order to regulate inter-country adoption according to internationally accepted standards."<sup>18</sup> In 2005, the country enacted implementing legislation, the Children's Act of 2005<sup>19</sup> (the Act) and, in 2010, its subsidiary legislation, the General Regulations Regarding Children, 2010.<sup>20</sup> Chapter 16 of the Act regulates intercountry adoption.

### A. Purpose of the Act and Status of Hague Convention

The first provision in the Act's chapter governing intercountry adoption provides the purpose of the chapter as follows:

- (a) to give effect to the Hague Convention on Inter-country Adoption;
- (b) to provide for the recognition of certain foreign adoptions;
- (c) to find fit and proper adoptive parents for an adoptable child; and
- (d) generally to regulate inter-country adoptions.<sup>21</sup>

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<sup>14</sup> Citizenship Act § 5.

<sup>15</sup> *Id.* § 4.

<sup>16</sup> *Id.*

<sup>17</sup> Minister for Welfare and Population Development v Fitzpatrick and Others 2000 (3) SA 422 (CC), <https://perma.cc/92RP-KPAJ>.

<sup>18</sup> *The Hague Convention of the Civil Aspects of International Child Abduction: Inter-Country Adoptions*, The Central Authority of South Africa, <https://perma.cc/3WM7-TQ78>.

<sup>19</sup> Children's Act 38 of 2005 (as amended through 2018), <https://perma.cc/FYW6-PLDU>.

<sup>20</sup> General Regulations Regarding Children, 2010 (Apr. 1, 2010), <https://perma.cc/RT3W-KPGV>.

<sup>21</sup> Children's Act § 254.

The Act accords the Convention supremacy over national law. The Act states that the Convention “is in force in the Republic and its provisions are law in the Republic.”<sup>22</sup> While national law governs adoptions to which the Convention applies, in the event of a conflict between national law and the Convention, the Convention prevails.<sup>23</sup>

The country’s president may enter into an agreement on intercountry adoption with a state that is not a state party to the Convention in order to ensure that intercountry adoption to and from that state is procured in accordance with the standards of the Convention.<sup>24</sup> Any such agreement may not deviate from the provisions of the Convention and is subject to parliamentary approval.<sup>25</sup>

## **B. Relevant Agencies and Roles**

As required by the Convention,<sup>26</sup> the Act designated the Director General of the Department of Social Services as South Africa’s Central Authority.<sup>27</sup> The Director General, in consultation with his/her counterpart at the Department of Justice and Constitutional Development, is required to perform the functions assigned by the Convention to Central Authorities.<sup>28</sup> The Central Authority may delegate its role to another organ of state or a child protection organization accredited by the Central Authority under the Act to provide intercountry adoption.<sup>29</sup> One source notes the importance of ensuring the integrity of the accreditation process, mainly because most of work of intercountry adoptions is done by child protection organizations, and the Central Authority’s role is largely that of oversight.<sup>30</sup>

An accredited child protection organization “may enter into an adoption working agreement with an accredited adoption agency in another country.”<sup>31</sup> However, it must provide a copy of such agreement to the Central Authority and it may not proceed to implement terms of such agreement unless and until the Central Authority approves it.<sup>32</sup>

The Act does not include a provision allowing the use of non-accredited bodies in the intercountry adoption process. However, it expressly states that “it does not prohibit the

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<sup>22</sup> Id. § 256.

<sup>23</sup> Id.

<sup>24</sup> Id. § 254; Anne Louw, *Intercountry Adoption*, in *Child Law in South Africa* 481, 486 (2<sup>nd</sup> ed., Trynie Boezaart, 2017).

<sup>25</sup> Children’s Act § 254.

<sup>26</sup> Children’s Act, Schedule 1 (Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (May 23, 1993), § 6.

<sup>27</sup> Children’s Act § 257.

<sup>28</sup> Children’s Act, Schedule 1, §§ 7-9.

<sup>29</sup> Children’s Act §§ 258 & 259.

<sup>30</sup> Louw, *supra* note 24, at 486.

<sup>31</sup> Children’s Act § 260.

<sup>32</sup> Id.

rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or member of another profession.”<sup>33</sup>

### C. Adoption from South Africa

A habitual resident of a Convention country who wishes to adopt a child who is a habitual resident of South Africa must apply to the central authority of the Convention country.<sup>34</sup> If the Central Authority in the Convention country finds the application satisfactory, it must prepare a report on the applicant in accordance with the Convention and the General Regulations Regarding Children and send such report to the South African Central Authority.<sup>35</sup> If an adoptable child is available, the South African Central Authority will prepare a report on the child as required by the Convention and the Regulations and transmit it to its counterpart in the Convention country.<sup>36</sup> If the two central authorities agree, the South African Central Authority will refer the application for adoption and all other relevant documents to the children’s court for consideration.<sup>37</sup> The court may issue an order granting the adoption if it is satisfied that certain universal requirements that also apply to local adoptions (such as the qualification of the adoptive parents and procurement of all relevant consent) are satisfied, in addition to the following conditions that are unique to intercountry adoption of this type:

- (a) the adoption is in the best interests of the child;
- (b) the child is in the Republic;
- (c) the child is not prevented from leaving the Republic-
  - i. under a law of the Republic; or
  - ii. because of an order of a court of the Republic;
- (d) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements;
- (e) the central authority of the convention country has agreed to the adoption of the child;
- (f) the Central Authority of the Republic has agreed to the adoption of the child; and
- (g) the name of the child has been in the [Register on Adoptable Children and Prospective Adoptive Parents] for at least 60 days and no fit and proper adoptive parent for the child is available in the Republic.<sup>38</sup>

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<sup>33</sup> Id. § 259.

<sup>34</sup> Id. § 261.

<sup>35</sup> Id; Children’s Act, Schedule I, art. 15; General Regulations Regarding Children § 111.

<sup>36</sup> Children’s Act § 261; Children’s Act, Schedule I, art. 15; General Regulations Regarding Children § 112.

<sup>37</sup> Children’s Act § 261.

<sup>38</sup> Id. § 261.

A waiting period of 140 days must lapse before an adoption order takes effect, during which time the South African Central Authority may withdraw its consent if doing so is in the best interest of the child.<sup>39</sup>

Adoption from South Africa in which the prospective adopters are from a non-Convention country follows a similar process with some small divergences.<sup>40</sup> As noted above, an adoption from a non-Convention country must comply with the standards of the Convention.

An adoption from South Africa to a placement outside the Republic (to either a Convention or non-Convention country) in which the prospective adopter is related to the adoptee is treated as a local adoption rather than an intercountry adoption.<sup>41</sup>

#### **D. Adoption to South Africa**

A habitual South African resident wishing to adopt a child from a Convention country must apply to the South African Central Authority.<sup>42</sup> If satisfied with the application, the Central Authority draws up a report on the applicant in accordance with the Convention and all other applicable rules and transmits it its counterpart in the adoption country.<sup>43</sup> If the two authorities agree, the central authority in the adoption country would submit the application for approval in accordance with the laws of the country.<sup>44</sup>

Adoption by a habitual resident of South Africa from a non-Convention country follows similar process with small variations.<sup>45</sup>

#### **E. Recognition of Intercountry Adoption**

Once the children's court approves an adoption in favor of a prospective adopter from a Convention country, the South African Central Authority may issue what is known as an adoption compliance certificate.<sup>46</sup> This document certifies that the adoption was procured in accordance with Convention standards and all other applicable South African laws.<sup>47</sup> The issuance of the certificate ensures the recognition of the adoption by the Convention country

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<sup>39</sup> Id.; General Regulations Regarding Children § 114.

<sup>40</sup> Children's Act §§ 261 & 262; General Regulations Regarding Children §§ 112 & 114.

<sup>41</sup> Children's Act §§ 261(8) & 262(8).

<sup>42</sup> Id. § 264.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id. § 265.

<sup>46</sup> Id. § 263.

<sup>47</sup> Louw, *supra* note 24, at 497.



where the child's adoptive parents reside.<sup>48</sup> The same is true for adoption of a child from a Convention country to South Africa.<sup>49</sup>

If the Convention country did not issue a compliance certificate for an adoption procured in the country, the South African Central Authority may issue a declaration recognizing the adoption.<sup>50</sup> The South African Central Authority may do the same with regard to an adoption procured from a non-Convention country if the adoption is valid in the country where it was procured and "the adoption in the country has the same effect it would have had if the order had been made in [South Africa]."<sup>51</sup>

However, the Act accords the South African Central Authority the right to reject an intercountry adoption, procured from a Convention country or non-Convention country, regardless of whether a certificate of compliance was issued, if it finds that the adoption is "manifestly contrary to public policy in the Republic, taking into account the best interests of the relevant child."<sup>52</sup> In such cases, an application for adoption may be made before the children's court and the general adoption provisions of the Act "with necessary changes which the context may require" would apply.<sup>53</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

As noted in the introductory part of this report, anyone adopted by a South African citizen in accordance with the provisions of the Children's Act and whose birth is registered in accordance with the applicable law "shall be a South African citizen by descent."<sup>54</sup> It is noteworthy that the Act does not make a distinction whether the adoption took place in South Africa or abroad. According to the Department of Home Affairs, "[t]he basic principle of the South African citizenship is that a child follows the citizenship or nationality of his or her parents. If one parent is a South African citizen, the child will be a citizen by birth. A foreign child adopted by South African citizens becomes a citizen by descent . . . ."<sup>55</sup>

One of the preconditions for citizenship is the registration of the adopted child's birth and adoption. Once an adoption order has been made by the children's court with regard to a child born outside of South Africa, the adoptive parent is required to apply to the Director General of

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<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Children's Act § 266.

<sup>51</sup> Id. § 268.

<sup>52</sup> Id. § 270.

<sup>53</sup> Id.

<sup>54</sup> Citizenship Act § 3.

<sup>55</sup> Media Statement on How Citizenship is Acquired and Children Registered in South Africa, Department of Home Affairs (Apr. 11, 2017), <https://perma.cc/88XC-S7AD>.

the Department of Home Affairs to register the birth of the child and to record the adoption in the birth register.<sup>56</sup> The application must include:

- (a) the relevant adoption order as registered by the adoption registrar;
- (b) the birth certificate of the adopted child or, if the birth certificate is not available-
  - (i) other documentary evidence relating to the date of birth of the child; or
  - (ii) a certificate signed by a presiding officer of a children's court specifying the age or estimated age of the child;
- (c) the prescribed birth registration form, completed as far as possible and signed by the adoptive parent; and
- (d) a fee prescribed in terms of any applicable law, if any.<sup>57</sup>

Upon receiving the application, the Director-General must record the adoption and any change of surname of the adopted child in the birth register in accordance with the adoption order.<sup>58</sup>

There does not appear to be age-based restriction to the right of citizenship based on adoption. Adoption under the Children's Act is limited to children (persons under the age of eighteen).<sup>59</sup> However, once adoption is procured, it does not seem that the age of the adoptee plays a role in the qualification for South African citizenship. However, age may be a factor in losing citizenship. If the responsible parent of an adoptive child loses his/her South African citizenship under certain circumstances before the child attains the age of majority, the child also loses his or her citizenship.<sup>60</sup> The child may apply for resumption South African citizenship after attaining the age of majority if he or she is permanently residing in South Africa or returns to South Africa for permanent residence.<sup>61</sup>

#### **IV. Mandatory Documentation and Procedures to Acquire Citizenship**

A person adopted by a South African citizen automatically qualifies for South African citizenship.<sup>62</sup> In his or her application for citizenship to the Department of Home Affairs, the person must submit the following documentation:

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<sup>56</sup> Children's Act § 246.

<sup>57</sup> *Id.*

<sup>58</sup> Births and Deaths Registration Act 51 of 1991, § 27 (Oct. 1, 1992), <https://perma.cc/6MSK-GBD4>; *Citizenship*, Department of Home Affairs, <https://perma.cc/8R89-8TNH>.

<sup>59</sup> Children's Act §§ 1 & 230.

<sup>60</sup> Citizenship Act § 10.

<sup>61</sup> *Id.* § 13.

<sup>62</sup> *Apply for SA Citizenship*, South African Government, <https://perma.cc/2MLQ-AHAK>.

## Citizenship Through International Adoption: South Africa

- Form DHA-24 (relating to registration of birth)
- Form DHA-529 (relating to the determination of the citizenship status of the child and the adoptive parents)
- the child's birth certificate
- the adoptive parents' marriage certificate (if applicable)
- Form DHA-9, an application form for an identity document, along with two ID photographs (applicable to persons who are age 15 or above)
- proof of the adoptive parents' foreign citizenship, if any
- proof of identity of the adoptive parents
- a copy of the adoption order<sup>63</sup>

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<sup>63</sup> *Consumer Law: Paralegal Manual 45* (2015), <https://perma.cc/Z774-Q63X>; *Immigration and Citizenship*, Western Cape Government, <https://perma.cc/W5HA-DL9M>.

## Sweden

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**SUMMARY** International adoptions are becoming less frequent in Sweden following the availability of in vitro fertilization treatments. Most adoptions are domestic adoptions where one spouse or domestic partner adopts the other spouse's or partner's child. Sweden does not recognize surrogacy, and a number of children born with the help of a surrogate are adopted by the genetic mother.

Sweden is a state-party to the Hague Adoption Convention, as well as the UN Convention on the Rights of the Child. Thus, all adoptions must be in the best interest of the child.

Only spouses, cohabiting partners, or single individuals who are at least 18 years old may adopt. Citizenship is conferred by both mothers and fathers, and an adoptive parent need not be married to confer citizenship. International adoptions require the prior approval of the local municipality's social affairs committee. Adoptions in accordance with the Hague Adoption Convention are automatically recognized.

If the adoption is valid in Sweden, the child will receive Swedish citizenship regardless of whether the citizen parent is a current resident of Sweden or not. Adopted children who have turned 12 years old must consent to obtaining Swedish citizenship by notifying the Tax Authority of said consent before becoming citizens.

Parents of an adopted child must register the child with the Swedish Tax Authority, which will provide the child with a national ID number, either a personal identification number called a *personnummer* if residing in Sweden or a *samordningsnummer* if residing abroad. Before returning to Sweden, parents of an internationally adopted child should apply for a passport for their child while in the country of adoption or residence.

Adopted children who reside abroad with their Swedish parents must apply to keep their Swedish citizenship after they are 22 years old. Children adopted by Swedish parents who have never lived in Sweden will automatically lose their Swedish citizenship if their parents lose their citizenship.

The documentation needed to prove citizenship includes documents that prove the identities of all parties, the adoption (relationship with the parent), the citizenship of the parent, and the residence of the parent, although residence in Sweden is not required. Adopted children above the age of 12 must apply to the Migration Agency to receive citizenship.

## I. Introduction

### A. Acquisition of Citizenship

The acquisition of Swedish citizenship is regulated by the Act on Swedish Citizenship (Lag om Svenskt Medborgarskap).<sup>1</sup> Swedish citizenship is acquired based on maternity or paternity, i.e., the citizenship of the parent (*jus sanguinis*).<sup>2</sup> A father need not be married to the mother to confer citizenship.<sup>3</sup> Swedish citizens residing abroad can confer Swedish citizenship to their children, both natural born and adopted.<sup>4</sup> Parents who are naturalizing as Swedish citizens may also confer Swedish citizenship to their child provided the child is a minor and unmarried.<sup>5</sup>

Sweden recognizes dual citizenship status both at birth and following acquisition of a new citizenship.<sup>6</sup> Thus, an adopted child is not required to give up a prior citizenship to become Swedish or remain Swedish upon reaching adulthood.<sup>7</sup> However, a person who is a dual citizen can lose Swedish citizenship automatically, if he or she was born abroad, has another citizenship, has never resided in Sweden, and, before turning 22, does not notify the Swedish Migration Agency that he or she desires to retain the Swedish citizenship.<sup>8</sup> Moreover, if a parent loses citizenship this way, then children who have received citizenship because of their relationship with the parent will automatically lose their citizenship as well.<sup>9</sup> Prior to 2001, Swedish citizens who acquired another citizenship lost their Swedish one.<sup>10</sup> Following the change, persons who had previously lost citizenship were allowed to petition to get their former Swedish citizenship restored, and confer the citizenship to a legal child.<sup>11</sup> Similarly, persons who acquired Swedish citizenship were no longer required to denounce previous citizenships.<sup>12</sup> Thus, a child born with one citizenship will not lose that citizenship upon attaining Swedish citizenship.

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<sup>1</sup> Lag om svenskt medborgarskap (SFS 2001:82), <https://perma.cc/7EPR-KDAH>. The rules governing adoptions are found in chapter 4 of the Parental Code (Föräldrabalken [FB] (SFS 1949:381), <https://perma.cc/L63S-SX7F>.

<sup>2</sup> 2 § Lag om svenskt medborgarskap. See also Prop. 1999/2000:147 at 17, <https://perma.cc/E6CX-WDE7>.

<sup>3</sup> 2 § Lag om svenskt medborgarskap.

<sup>4</sup> Id. 2, 4 §§.

<sup>5</sup> Id. 13 §.

<sup>6</sup> Prop. 1999/2000:147, at 17f, supra note 2. See also *Vad Innebär Svenskt Medborgarskap?*, Migrationsverket, <https://perma.cc/A7KL-NW2H>.

<sup>7</sup> See 4 § Lag om svenskt medborgarskap.

<sup>8</sup> Id. 14 §.

<sup>9</sup> Id.

<sup>10</sup> 6-7 §§ Lag (1950:382) om svenskt medborgarskap, <https://perma.cc/HQ6V-2CYW> (repealed July 1, 2001).

<sup>11</sup> Övergångsbestämmelser, Lag om svenskt medborgarskap.

<sup>12</sup> See 11, 13 §§ Lag om svenskt medborgarskap.

## B. Regulation of Adoptions

Swedish law allows for adoptions that take place in Sweden and adoptions that take place abroad.<sup>13</sup> A domestic adoption requires a decision by the local district court where the potential adoptive parents reside.<sup>14</sup> For an international adoption to be automatically recognized in Sweden, it must take place in a Nordic country, or in accordance with the Hague Adoption Convention, or as otherwise recognized in the Act on Adoption in International Situations,<sup>15</sup> meaning an adoption with legal force in the country of the adopted child, or the country where the adoptive parents resided when they initiated the adoption proceedings.<sup>16</sup> Sweden was previously a state party to the 1967 European Council Convention on adoption, but rescinded its membership in 2003 when it amended its adoption legislation to allow same-sex couples to adopt, contrary to the convention.<sup>17</sup> Sweden is not a party to the European Council Convention on the Adoption of Children of 2008.<sup>18</sup> In 2018, the rules on international adoption were changed to make the status of adopted children more equal to those of naturally born children, including conferring automatic citizenship at time of adoption.<sup>19</sup>

Because Sweden does not recognize domestic or international surrogacy, genetic mothers must adopt children born by a surrogate.<sup>20</sup> Specifically, chapter 1 section 7 of the Parental Code provides that: “[if] a woman gives birth to a child that has been conceived by way of an egg from another woman, following fertilization outside of the body, being implanted in her body she shall be considered the mother of the child.” Thus, the genetic mother must adopt children born by a surrogate mother, as Swedish law only recognizes the surrogate as the legal mother.<sup>21</sup> If the child

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<sup>13</sup> Sweden allows for international adoptions as specified in the following acts: Lag om adoption i internationella situationer (SFS 2018:1289), <https://perma.cc/ULC6-Y64T> (providing for provisions on adoption in international situations), Lag med anledning av Sveriges tillträde till Haag-konventionen om skydd av barn och samarbete vid internationella adoptioner (SFS 1997:191), <https://perma.cc/F8HG-6KU4> (with provisions especially for Hague Convention adoptions), and Lag (1997:192) om internationell adoptionsförmedling, <https://perma.cc/2QRW-3UU4> (on international adoption organizations).

<sup>14</sup> 4 kap. 11 § FB. See also *Adoption inom Sverige*, Sveriges Domstolar, <https://perma.cc/48M3-8HUQ>.

<sup>15</sup> 4 § Lag om svenskt medborgarskap; 11, 22 §§ Förordning om vissa internationella rättsförhållanden rörande äktenskap, adoption och förmynderskap (SFS 1931:29), <https://perma.cc/6HUB-GUAC>; 5 § Lag med anledning av Sveriges tillträde till Haag-konventionen om skydd av barn och samarbete vid internationella adoptioner; 4 § Lag om adoption i internationella situationer.

<sup>16</sup> 4 § Lag om adoption i internationella situationer.

<sup>17</sup> European Convention on the Adoption of Children 1967, European Treaty Series (E.T.S.) No. 58, <https://perma.cc/78L9-98Y4>; Chart of Signatures and Ratifications of Treaty 058, <https://perma.cc/A5MF-67K4>. See also Prop. 2017/18:121, <https://perma.cc/GU2Z-FQF6>, at 26.

<sup>18</sup> European Convention on the Adoption of Children 2008, E.T.S. 202, <https://perma.cc/9NR2-UK9L>, Chart of Signatures and Ratifications of Treaty 202, <https://perma.cc/S9NY-A5MZ>.

<sup>19</sup> Prop. 2017/18:121 Modernare adoptionsregler, <https://perma.cc/GU2Z-FQF6>.

<sup>20</sup> See Föräldrabalken e contrario.

<sup>21</sup> 1 kap. 7 § FB; Nytt Juridiskt Arkiv [NJA] [Supreme Court Reports] 2006 s. 505, <https://perma.cc/88UT-AKAJ>.

is genetically the child of the intended father, he will be legally recognized as the father automatically at birth.<sup>22</sup>

### C. Statistics on Adoptions

Most adoptions, as surveyed in 2017, were adoptions of stepchildren, amounting to two-thirds of the total number of adopted children.<sup>23</sup> Adoptions of domestically born children heavily outnumber international adoptions in Sweden, which have steadily declined since 2003, when more than 1,100 foreign-born children were adopted.<sup>24</sup> Between 1969 and 2010, about 49,000 children were adopted through international adoptions.<sup>25</sup> The peak of international adoptions took place in 1977, with more than 1,800 adoptions from outside of Sweden.<sup>26</sup>

Today, international adoption is being used less by childless couples as more parents appear to use fertility treatments to become parents. A total of 4,787 children (as a result of 4,710 pregnancies) were born from in vitro fertilization treatments in 2017.<sup>27</sup> In comparison, Sweden registered 1,148 adoptions, of which 436 were foreign-born adoptions, during the same period.<sup>28</sup> Most adoptions by Swedish parents registered in Sweden are of adult children, with the mean age of any adopted child being 24.0.<sup>29</sup> The mean age of adopted children born abroad at the time of adoption is 8.2 years.<sup>30</sup> The youngest children are found among children adopted from the United States and Georgia, with the mean age of the child being 0.8 years old at the time of adoption.<sup>31</sup> The United States and Georgia are countries known to facilitate surrogacy procedures,<sup>32</sup> which, as mentioned above, are not allowed or legally recognized in Sweden, requiring Swedish parents to go through adoption procedures for their surrogate children. Overall, adoptions of surrogacy children born abroad is believed to make up a majority of all international adoption cases.<sup>33</sup>

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<sup>22</sup> 1 kap. 3, 4, 8 §§ FB. See also Lag om internationella faderskapsfrågor (SFS 1985:367), <https://perma.cc/9VBZ-PEG5>.

<sup>23</sup> *Två av tre adoptioner 2017 var styobarnsadoptioner*, SCB (May 29, 2018), <https://perma.cc/J3VP-R2MX>.

<sup>24</sup> *Id.*

<sup>25</sup> Socialstyrelsen, *Internationella adoptioner Nya krav på blivande adoptivföräldrar* 8 (Dec. 19, 2010), <https://perma.cc/Q35W-MJLV>.

<sup>26</sup> MIA, *Survey of the Number of Foreign Adoptive Children Placed into Swedish Families Over the Years 1969-2009 by Countries of Origin* (2010), <https://perma.cc/GQ2F-RD36>.

<sup>27</sup> Q-IVF, *Fertilitetsbehandlingar i Sverige Årsrapport 2019 – Gäller behandlingar startade 2017* 9 (2019), <https://perma.cc/7EUM-UZCC>.

<sup>28</sup> SCB, *supra* note 23.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Lena ten Hoopen et. al, *Antalet barn som föds med surrogat ser ut att bli fler än internationella adoptioner*, SVT (Sept. 8, 2019), <https://perma.cc/9HLE-HWQW>.

<sup>33</sup> *Id.*

## II. International Adoption

### A. International Obligations

Sweden is a signatory to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention).<sup>34</sup> On January 1, 2020, the United Nations Convention on the Rights of the Child (Children's Rights Convention) became law in Sweden, solidifying the already recognized legal principle that the "best interest of the child" must always be considered in all matters that relate to the child, including adoption.<sup>35</sup> The obligations under the Hague Adoption Convention and Children's Rights Convention are implemented in the following acts:

- Act on Adoptions in International Situations (SFS 2018:1289),<sup>36</sup>
- Act on Sweden's Accession to the Hague Convention on Protection of Children and Cooperation in International Adoptions (SFS 1997:191),<sup>37</sup>
- Act on International Adoption Organizations (SFS 1997:192),<sup>38</sup> and
- the Parental Code (SFS 1949:381).<sup>39</sup>

### B. Legal Requirements for Adoption and Recognition

As mentioned above, domestic and international adoption is regulated in several legislative acts, including the Parental Code, the Law on Adoptions in International Situations, and the Law on Sweden's Accession to the Hague Adoption Conventions, which implements Sweden's obligations under that convention.<sup>40</sup>

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<sup>34</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), opened for signature May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995), <https://perma.cc/QC8P-X3ES>.

<sup>35</sup> UN Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), arts. 3, 21, <https://perma.cc/K42Y-P7AW>. Lag (2018:1197) om Förenta nationernas konvention om barnets rättigheter (SFS2018:1197), <https://perma.cc/89CL-DQKJ>. The best interest of the child in adoptions is regulated in 4 kap. 1 § FB.

<sup>36</sup> Lag om adoption i internationella situationer (SFS 2018:1289), <https://perma.cc/U6C6-Y64T>.

<sup>37</sup> Lag med anledning av Sveriges tillträde till Haag-konventionen om skydd av barn och samarbete vid internationella adoptioner ((1997:191), <https://perma.cc/F8HG-6KU4>.

<sup>38</sup> Lag om internationell adoptionsförmedling (SFS 1997:192), <https://perma.cc/2QRW-3UU4>.

<sup>39</sup> Föräldrabalken [FB] (SFS 1949:381), <https://perma.cc/L63S-SX7F>.

<sup>40</sup> Sweden allows for international adoptions as specified in the following acts: Lag om adoption i internationella situationer (SFS 2018:1289), <https://perma.cc/U6C6-Y64T> (providing for provisions on adoption in international situations); Lag med anledning av Sveriges tillträde till Haag-konventionen om skydd av barn och samarbete vid internationella adoptioner (1997:191), <https://perma.cc/F8HG-6KU4> (with provisions especially for Hague Adoption Convention adoptions); and Lag om internationell adoptionsförmedling (SFS 1997:192), <https://perma.cc/2QRW-3UU4> (on international adoption organizations).



In accordance with article 4 of the Hague Adoption Convention, adoption may only take place if:

the competent authorities of the State of origin –

a) have established that the child is adoptable;

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

c) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.<sup>41</sup>

The requirements for allowing prospective Swedish parents to adopt are detailed in the fourth chapter of the Parental Code,<sup>42</sup> which requires that, among other things, a potential parent must be at least 18 years old.<sup>43</sup> Persons who are married or cohabiting with a domestic partner may only adopt together with their spouse or domestic partner.<sup>44</sup> Only spouses and domestic partners

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<sup>41</sup> Hague Adoption Convention, art. 4.

<sup>42</sup> 4 kap. Föräldrabalken [FB] (SFS 1949:381), <https://perma.cc/L63S-SX7F>.

<sup>43</sup> Id. 4 kap. 5 §.

<sup>44</sup> Id. 4 kap. 6 §.

may adopt together.<sup>45</sup> The parent or parents who adopt a child are automatically the guardians of the child once the adoption has legal force.<sup>46</sup> In accordance with the Parental Code, adoptions may only take place if, after considering all the circumstances, it is deemed appropriate.<sup>47</sup> Children must, subject to their age and maturity, be afforded a chance to comment on their adoption.<sup>48</sup> In addition, the Parental Code stipulates that children who are adopted must be informed that they are adopted by their adoptive parents as soon as reasonably possible.<sup>49</sup>

For an international adoption not in accordance with the Hague Adoption Convention to be valid in Sweden, it must comply with the Act on Adoption in International Situations, which specifically prescribes in section 4 that

[a] foreign decision about adoption that has been issued of a court or any other agency applies in Sweden when it has legal force, if the decision has been issued or is otherwise in force in 1. the State where the person who has been adopted resided when the adoption proceedings were initiated, or 2. the State where the adoptive parent or any of the adoptive parents had their residence when the decision was issued.<sup>50</sup>

Thus, in these cases, the parents need not apply to the relevant authorities to have the adoption recognized in Sweden.<sup>51</sup> In exceptional cases, the relevant Swedish agency may also recognize an adoption in cases where the conditions mentioned above have not been met.<sup>52</sup> International adoptions that violate the foundations of the Swedish legal system are not recognized.<sup>53</sup>

International adoptions require a number of forms to be filed throughout the adoption process, including the following:

- specialist medical certificate
- statement from doctors with specialist competence in psychiatry/licensed psychologist
- adoption investigator's proposal for decision
- application for consent
- health declaration
- health certificate

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<sup>45</sup> Id.

<sup>46</sup> Id. 4 kap. 22 §.

<sup>47</sup> Id. 4 kap. 2 §.

<sup>48</sup> Id. 4 kap. 3 §.

<sup>49</sup> Id. 4 kap. 23 §.

<sup>50</sup> 4 § Lag om adoption i internationella situationer.

<sup>51</sup> Prop. 2017/18:121 Modernare adoptionsregler at 124.

<sup>52</sup> 5 § Lag om adoption i internationella situationer.

<sup>53</sup> Id. 8 §.

- inquiry to the National Board of Health and Welfare's legal counsel
- information from personal references
- information for child health care
- information for preschool/school
- certificate of the Social Welfare Board's decision
- certificate of consent
- notification to the Social Welfare Board
- Social Welfare Board's consent (Social Services Act)
- agreement (consent according to the Social Services Act)
- message to the pediatrician<sup>54</sup>

In addition, the following documents are needed for adoptions under the Hague Adoption Convention when the parents reside in Sweden:

- Social Welfare Board's consent (under The Hague Convention)
- agreement (consent under the Hague Adoption Convention)<sup>55</sup>

### C. Relevant Authorities

Several Swedish authorities are involved in the international adoption procedures. For example, the Family Law and Parental Support Authority (MFoF),<sup>56</sup> previously known as the Swedish Intercountry Adoptions Authority (MIA), is responsible for ensuring that Sweden is living up to its obligations under the Hague Adoption Convention with respect to international adoptions.<sup>57</sup> Following an application by the adoptive parents, MFoF recognizes international adoptions that have been conducted abroad, and decides cases where the legal relationship between the biological parent and the child has not been extinguished.<sup>58</sup>

Moreover, before an international adoption procedure is initiated, the prospective parents must receive prior permission from the local municipality's social affairs committee (*Socialnämnd*).<sup>59</sup> Specifically, section 12 of the Social Services Act states that

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<sup>54</sup> *Blanketter för internationell adoption*, MFoF, <https://perma.cc/WLF6-C8LK>.

<sup>55</sup> *Id.*

<sup>56</sup> *Om MFoF*, Myndigheten för familjerätt och föräldraskapsstöd, <https://perma.cc/8PH7-QH96>.

<sup>57</sup> 2 § Lag med anledning av Sveriges tillträde till Haagkonventionen om skydd av barn och samarbete vid internationella adoptioner; 3 -4 §§ Förordning med instruktion för Myndigheten för familjerätt och föräldraskapsstöd, (SFS 2017:292), <https://perma.cc/72J9-CKL7>. See also *Family Law and Parental Support Authority*, MFoF, <https://perma.cc/3FCZ-49VM>.

<sup>58</sup> MFoF, *Ansökan om godkännande av adoption (2018)*, <https://perma.cc/EV57-QYW4>.

<sup>59</sup> *Socialtjänstlag (SFS 2001:453)*, <https://perma.cc/RE7F-TEUH>.

[a] child with residence abroad may not without the social affairs committee's [of the local municipality] approval be accepted by anyone with the purpose of being adopted. The approval must have been provided before the child leaves the country where he or she has its residence.

An approval may be given if the applicant is suitable to adopt. If the child is known, the applicant's suitability with respect to that particular child must be tested, and the adoption must otherwise be assumed to be in the best interest of the child.

The Social Affairs Committee shall conduct an overall assessment of the applicant's suitability. As part of the evaluation the following should be especially considered,

- the applicant's knowledge and insights about adoptive children and their needs and the adoptive child, and the consequences of the planned adoption,
- the applicant's personal traits and social network,
- the applicant's age and health condition, and
- the stability of the relationship, if approval is sought by spouses or domestic partners.

Before an approval is given, the applicant must participate in a parental course for adoptions by the assigned municipality. If the applicant has adopted children from abroad before, approval may be given even if he or she has not participated in the parental course.<sup>60</sup>

Once granted, permission from the local municipality social affairs committee automatically expires after three years.<sup>61</sup> If a child has not been placed with the applicant within two years of the permission, the social affairs committee must determine whether the conditions for adoption have changed.<sup>62</sup>

The National Board of Health and Welfare has issued handbooks on adoptions, both domestic and international, to be used by the relevant actors that are part of the adoption procedure, including the provider of the preparatory parental course mentioned above.<sup>63</sup>

As described below in part IV.A., the Swedish Tax Authority registers adopted children as resident citizens or as citizens residing abroad.

### **III. Acquisition of Citizenship for Foreign Adopted Children**

#### **A. Foreign Adopted Children Raised in the Country of the Adoptive Parent**

The acquisition of Swedish citizenship is regulated by the Act on Swedish Citizenship.<sup>64</sup> Adopted children who are younger than 12 years old acquire Swedish citizenship automatically

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<sup>60</sup> 6 kap. 12 § Socialtjänstlagen.

<sup>61</sup> Id. 6 kap. 12a §.

<sup>62</sup> Id. 6 kap. 13 §.

<sup>63</sup> Socialstyrelsen, Adoption (2014), <https://perma.cc/KQ4Y-MCN7>; Socialstyrelsen, Nationell Adoption (2020), <https://perma.cc/JV9N-MK3X>.

<sup>64</sup> Lag om svenskt medborgarskap (SFS 2001:82), <https://perma.cc/7EPR-KDAH>. The rules governing adoptions are found in chapter 4 of the Parental Code (Föräldrabalken [FB] (SFS 1949:381),

if adopted by a Swedish citizen in Sweden or another Nordic country (Denmark, Finland, Norway, or Iceland).<sup>65</sup> In addition, if children are adopted through an international decision that is enforceable in Sweden under the Hague Adoption Convention,<sup>66</sup> they also receive Swedish citizenship automatically.<sup>67</sup> Children above the age of 12, but who are not yet 18 years of age, may acquire Swedish citizenship through an application process, which requires the consent of the child.<sup>68</sup> According to the legislative history, the reason for making acquisition of Swedish citizenship by adoption automatic for children under the age of 12 was to make adopted children equal to birth children.<sup>69</sup>

Once a child is adopted, a parent must register the adoption with the Tax Authority and register the child in the National Population Registry (*folkbokföringen*).<sup>70</sup> To register an adopted child in the national registry, the Swedish citizen parent must send certified copies of documents that prove the adoption, including a birth certificate, and identification documents (such as the parents' Swedish passport and extracts from the population registry) to the Swedish Tax Authority.<sup>71</sup> (For more on documentation requirements, see part IV below.) Thus, adopted children born and adopted abroad are treated similarly to Swedish children born abroad. In these cases, parents must also notify the authorities of the birth of the child and obtain identification numbers before applying for a passport to return to Sweden.<sup>72</sup>

Because only married couples, persons cohabitating, or single individuals may adopt children under Swedish law,<sup>73</sup> the child will automatically be under the joint guardianship of the married or cohabitating parents, or sole guardianship by the single parent at the time of adoption. Thus, at the time of acquisition of citizenship (the time of adoption) the parent will be considered as

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<https://perma.cc/L63S-SX7F>. For a summary of citizenship through adoption in English, see *Automatic Citizenship Through Birth, Adoption or Parental Marriage*, Migrationsverket, <https://perma.cc/L9MY-JAFG>.

<sup>65</sup> 4 § Lag om Svenskt Medborgarskap.

<sup>66</sup> Lag (2018:1289) om adoption i internationella situationer determines when international adoptions are recognized in Sweden and specifically prescribes in section 4 that "A foreign decision about adoption that has been issued of a court or any other agency applies in Sweden when it has legal force, if the decision has been issued or is otherwise in force in 1. the State where the person who has been adopted resided when the adoption proceedings were initiated, or 2. the State where the adoptive parent or any of the adoptive parents had their residence when the decision was issued. There are special provisions in 5 and 6 §§ regarding special conditions for certain decisions to apply."

<sup>67</sup> 4 § Lag om svenskt medborgarskap, provided that the child has been adopted by a foreign decision that applies in Sweden in accordance with Lagen med anledning av Sveriges tillträde till Haagkonventionen om skydd av barn och samarbete vid internationella adoptioner (SFS 1997:191), <https://perma.cc/E5SJ-HTVW>, or Lagen om adoption i internationella situationer (SFS 2018:1289), <https://perma.cc/U6C6-Y64T>.

<sup>68</sup> Id. 7 §.

<sup>69</sup> Regeringens proposition [prop.] 1999/2000:147 Lag om svenskt medborgarskap, <https://perma.cc/CND8-MN7X>.

<sup>70</sup> 2a § Folkbokföringslag (SFS 1991:481), <https://perma.cc/3P2W-H429>.

<sup>71</sup> *Nybliven förälder*, Skatteverket, <https://perma.cc/CX2C-G6U8>.

<sup>72</sup> Id. See also *Registrera nyfödd utomlands*, Embassy of Sweden, <https://perma.cc/54KT-WG6B>.

<sup>73</sup> 4 kap. 6 § FB.

residing with the child. If the parent subsequently stops residing with the child or loses custody of the child, the citizenship status will not be affected, as Swedish citizenship cannot be revoked on these grounds.<sup>74</sup> Swedish law recognizes adoption from abroad where one adoptive parent does not live with the parent of the child if it is in the best interest of the child to do so. Once recognized, that child becomes a Swedish citizen.

## **B. Foreign Adopted Children Raised Abroad**

Adopted children of a Swedish citizen residing in a Hague Adoption Convention state abroad acquire Swedish citizenship in the same way as if the parent was residing in Sweden (see above, part III.A.).<sup>75</sup> Thus, the child will automatically become a Swedish citizen if under the age of 12, whereas consent from the adopted child is required if the child is older than 12.<sup>76</sup> Similarly, children in adoptions that are recognized in accordance with the Act on Adoption in International Situations automatically become Swedish citizens when the adoptions have legal force.<sup>77</sup>

However, the rules for losing Swedish citizenship are different for a person who has never resided in Sweden. Any persons not born in Sweden and who have never resided in Sweden will, at age 22, automatically lose their citizenship unless they apply to the Swedish Migration Agency to retain their Swedish citizenship and show that they have sufficient connection to Sweden to maintain their citizenship.<sup>78</sup> Children adopted by a Swedish citizen who has never lived in Sweden who subsequently loses Swedish citizenship will also lose their Swedish citizenship at the same time the parent does.<sup>79</sup>

Diplomats and Swedes working at Swedish institutions abroad are typically considered as permanently residing in Sweden for national population registry purposes, and their adopted children will be treated as children adopted by a parent residing in Sweden, receive a personal identification number and be registered as residents of Sweden.<sup>80</sup> Thus, these children are not subject to automatic loss of citizenship even if they have never lived in Sweden.<sup>81</sup>

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<sup>74</sup> See 14 § Lag om svenskt medborgarskap.

<sup>75</sup> Id. 4 §.

<sup>76</sup> Id. 7 §.

<sup>77</sup> Id.

<sup>78</sup> 14 § Lag om svenskt medborgarskap. See also Migrationsverket, *Ansökan om att få behålla svenskt medborgarskap*, <https://perma.cc/2QZA-3TS4>.

<sup>79</sup> 14 § Lag om svenskt medborgarskap.

<sup>80</sup> For the legal history of the treatment of diplomats for residency purposes, see Prop. 1973:158 s. 79, and specifically in an adoption context, see Socialstyrelsen, *supra* note 25.

<sup>81</sup> Compare 14 § Lag om svenskt medborgarskap.

### C. Historic Provisions

Prior to 2018, Swedish law distinguished between children adopted in the country of the parents' foreign residence and children adopted in a third country.<sup>82</sup> Children adopted in their parents' country of residence (when different from their country of citizenship) automatically received Swedish citizenship at the time of adoption.<sup>83</sup> In contrast, children adopted abroad and then brought back to the parents' resident country had to be readopted in the country of residence before attaining Swedish citizenship.<sup>84</sup> Once readopted in the foreign country of residence, the child became a citizen and could apply for a Swedish passport.<sup>85</sup> Prior to 2001, children adopted abroad had to apply for naturalization.<sup>86</sup>

## IV. Mandatory Documentation and Procedures to Acquire Citizenship

### A. Domestically Adopted Children

Domestic adoptions where both the parent and the child are residents of Sweden are finalized following an application process with the local district courts. Once approved, the adoption is registered in the Swedish national population registry, and, if younger than 12 years old, the child is automatically registered with the same nationality as the Swedish parent.<sup>87</sup> A child who has already reached 12 years of age must complete a form titled "citizenship through notification" (*Medborgarskap genom anmälan*),<sup>88</sup> whereby the child declares a desire to become a Swedish citizen.<sup>89</sup>

### B. Children Internationally Adopted by Parents Residing in Sweden

To register an adopted child in the national registry, the Swedish citizen parent must send certified copies of documents that prove the adoption, including a birth certificate and identification documents (such as the parents' Swedish passport) to the Swedish Tax Authority.<sup>90</sup> Once the Tax Authority has received the citizenship notification and issued a

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<sup>82</sup> Statens Offentliga Utredningar [SOU] 2009:61 [Government Report] at 80, 88, <https://perma.cc/B35M-4RS2>. See also 3 § 2st Lagen om internationella rättsförhållanden rörande adoption (SFS 1971:796), <https://perma.cc/YWH7-9SJS>, and 1 § 2 st Förordningen om prövning av utländskt beslut om adoption (SFS 1976:834), <https://perma.cc/VM9D-CPZ2>.

<sup>83</sup> SOU 2009:61, at 244-246, *supra* note 82.

<sup>84</sup> *Id.*

<sup>85</sup> 3 § Lag om svenskt medborgarskap, as in force prior to 2018.

<sup>86</sup> See Prop. 1999/2000:147, *supra* note 2, noting that an adoption recognized in Sweden as a result of Lagen (1971:796) om internationella rättsförhållanden rörande adoption requires that the child must apply for naturalization to become a Swedish citizen.

<sup>87</sup> 4 kap. 4 § FB.

<sup>88</sup> Migrationsverket, *318011Anmälan om svenskt medborgarskap för barn som bor i Sverige*, <https://perma.cc/46PS-BZXP>.

<sup>89</sup> *Id.*

<sup>90</sup> *Nybliven förälder*, Skatteverket, <https://perma.cc/CX2C-G6U8>.

personal identification number (*personnummer*), the applicant can apply for a Swedish passport for the child.

Sweden does not issue birth certificates. Instead, an extract from the population registry will provide this information and include information such as Swedish citizenship status that would otherwise be covered by separate certificates in other countries, such as birth certificates, marriage certificates, and divorce certificates.<sup>91</sup> Thus, an adoptee who needs to prove his or her status as a Swedish citizen needs to request an “Extract from the Population Registry” document that includes this information.<sup>92</sup> To receive this document, the child’s (foreign or domestic) address needs to be registered in the Population Registry, and the child needs to have obtained a personal identification number as described above.

### C. Children Internationally Adopted by Swedish Parents Residing Abroad

Even if the child will be residing abroad, the adoption must be registered with the Swedish Tax Authority if the Swedish parent is, or has previously been registered, in the Swedish Population Registry.<sup>93</sup> The child’s name, personal identification number, and address will be registered. Persons not residing in Sweden are not included in the National Population Registry but instead are included in the passport registry. For citizen children not intending to live in Sweden, the personal identification number assigned (*samordningsnummer*) is slightly different than the *personnummer* of a resident citizen.<sup>94</sup> The *samordningsnummer* on its face indicates that the person bearing it is not a resident of Sweden, and as such, is not entitled to certain public benefits. If a person who has a *samordningsnummer* later moves to Sweden, that person will be assigned a *personnummer*.<sup>95</sup>

As stated in part IV.A.2., Sweden does not issue birth certificates. Instead, an extract from the population registry will provide this information and include information that would otherwise be covered by separate certificates in other countries, such as birth certificates, marriage certificates, divorce certificates, and citizenship status.<sup>96</sup> Thus, an adoptee who needs to prove his or her status as a Swedish citizen needs to request an “Extract from the Population Registry” document that includes this information.<sup>97</sup> To receive this document, the child’s (foreign or domestic) address needs to be registered in the Population Registry, and the child needs to have obtained a personal identification number as described above.

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<sup>91</sup> Skatteverket, *Common Requests from Foreign Authorities*, <https://perma.cc/WK6R-LLT9>. See also Skatteverket, *Information to Foreign Authorities*, <https://perma.cc/V934-ZTZ8>.

<sup>92</sup> For a list of population registry extracts that may be ordered by a Swedish citizen, see Skatteverket, *All Population Registration Certificates*, <https://perma.cc/8NVG-PDAG>.

<sup>93</sup> *Nybliven förälder*, Skatteverket, *supra* note 90.

<sup>94</sup> *Personnummer och samordningsnummer*, Skatteverket, <https://perma.cc/C79C-NR5Z>.

<sup>95</sup> *Id.*

<sup>96</sup> Skatteverket, *Common Requests from Foreign Authorities*, *supra* note 91.

<sup>97</sup> Skatteverket, *All Population Registration Certificates*, *supra* note 92.



In order to return to Sweden, in international adoptions where the child becomes a Swedish citizen, the parents should apply for a Swedish passport for the child at the local embassy or consulate in the country where the adoption takes place.<sup>98</sup> Prior to applying for a passport, a biological child born abroad or an adopted child must apply for a *samordningsnummer*.<sup>99</sup> An application for a *samordningsnummer* at a Swedish embassy or consulate requires

- the child to accompany the parent to the embassy or consulate,
- presentation of the original birth certificate (plus other documentation proving the relationship with the adoptive parent if the birth certificate does not include that information),
- presentation of the parents' marriage certificate, if they were married when the birth or adoption took place,
- presentation of a parent's passport or other government-issued photo identification document, in the original, and
- a completed application for a *Samordningsnummer*.<sup>100</sup>

After obtaining a *samordningsnummer*, an adopted child residing abroad may apply for a Swedish passport.<sup>101</sup> All applications for a Swedish passport require that the applicant complete a form titled "Verification of Swedish Citizenship."<sup>102</sup> Such an application requires that the person submit documents proving identity, date of birth, place of residence, relationship to parents, parent's personal identification number and citizenship, and parent's current residence.<sup>103</sup> In addition, other documents may be requested.<sup>104</sup>

In addition to the documentation requirements described above in Part IV., adopted children who are residing with Swedish parents abroad and have never resided in Sweden must fill out a form acknowledging their Swedish citizenship before they turn 22 years old to maintain their status as Swedish citizens.<sup>105</sup>

#### D. Children Who Become Swedish Following an Application

Children who do not become citizens automatically, i.e., adopted children of noncitizen residents of Sweden, or adoptees who are older than 12 years old, must apply for citizenship

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<sup>98</sup> *Upphållstillstånd och svenskt medborgarskap*, MFoF, <https://perma.cc/9JL8-NPLW>.

<sup>99</sup> Skatteverket, *Folkbokföring – samordningsnummer*, <https://perma.cc/U6HK-RWFC>.

<sup>100</sup> *Registrera nyfödd utomlands*, Embassy of Sweden, <https://perma.cc/54KT-WG6B>.

<sup>101</sup> Id.

<sup>102</sup> Regeringskansliet, *Information for Verification of Swedish Citizenship*, <https://perma.cc/5QQV-3SCH>.

<sup>103</sup> See Polisen, *Underlag for utredning om svenskt medborgarskap*, <https://perma.cc/K6QQ-4B7P>.

<sup>104</sup> See *Ansökan om pass för barn under 18 år i Kina*, Embassy of Sweden, <https://perma.cc/2RFL-H6QZ>.

<sup>105</sup> 14 § Lag om medborgarskap; see also Migrationsverket, *Ansökan om att få behålla svenskt medborgarskap*, supra note 78.

with the Swedish Migration Authority.<sup>106</sup> The following documents and information must accompany the application:

- the receipt for application fee (SEK1500 about US\$180),
- the name of the child,
- the birth date of the child,
- the residence and telephone number for the child,
- the names of both adoptive parents,
- the birthdates of both adoptive parents,
- the nationality/nationalities of both adoptive parents,
- the residence address of both adoptive parents,
- the telephone number for both adoptive parents,
- the email addresses of both adoptive parents,
- whether the parents are married and, if so, the date of the marriage,
- the child's travel outside of Sweden during the last six months, and
- the signature of the child<sup>107</sup>

The application will be approved provided that the child

- has at least one legal guardian who is a Swedish citizen,
- can prove his or her identity,
- has a permanent residence in Sweden,
- if older than 15, has resided in Sweden for the three most recent years, and
- if older than 15, does not have a criminal history.<sup>108</sup>

As stated in part IV.A.2., Sweden does not issue birth certificates. Instead, an extract from the population registry will provide this information and include information that would otherwise be covered by separate certificates in other countries, such as birth certificates, marriage certificates, divorce certificates, and citizenship status.<sup>109</sup> Thus, adoptees who need to prove their status as Swedish citizens need to request an "Extract from the Population Registry" document that includes this information.<sup>110</sup> To receive this document, a child's (foreign or domestic) address

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<sup>106</sup> 11 § Lag om svenskt medborgarskap; Migratonsverket, *Ansökan om Svenskt Medborgarskap för Barn Under 18 År*, <https://perma.cc/UMU4-Y353>.

<sup>107</sup> Migratonsverket, *Ansökan om Svenskt Medborgarskap för Barn Under 18 År*, supra note 106.

<sup>108</sup> Id.; 7 § Lag om svenskt medborgarskap.

<sup>109</sup> Skatteverket, *Common Requests from Foreign Authorities*, supra note 91.

<sup>110</sup> Skatteverket, *All Population Registration Certificates*, supra note 92.

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needs to be registered in the Population Registry, and the child needs to have obtained a *samordningsnummer* as described above.

# Turkey

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**SUMMARY** Under Turkish nationality law, foreign minor adoptees who were adopted by a Turkish citizen and who do not pose a threat to national security or public order may be granted citizenship upon an application made on their behalf. The foreign minor must be a minor at the date of application. The adoptee will acquire citizenship on the date the Ministry of Internal Affairs renders its decision granting citizenship. The minor status of the adoptee will be determined in accordance with the law of the adoptee's country. An adoptee who has acquired Turkish citizenship will not lose it if the adoption relationship is abolished for any reason. There are no restrictions on eligibility based on the location of rearing, residence, or domicile of the adoptee, or the age of the adoptee other than the requirement of minor status. Adoptees who are legal adults may apply for citizenship based on other generally applicable paths to citizenship such as ordinary naturalization.

## I. Introduction

### A. Legal Framework Regulating Acquisition of Citizenship

The law governing the acquisition of Turkish citizenship is codified in the Law on Turkish Citizenship of 2009 (LTC).<sup>1</sup> The LTC is supplemented by its implementing regulation, the Regulation on the Implementation of the Law on Turkish Citizenship (RILTC), which includes provisions detailing the requirements and conditions for the acquisition and loss of citizenship and describing the relevant procedure.<sup>2</sup>

The current legal framework regulates the acquisition of Turkish citizenship under two main categories: (1) acquisition by birth; and (2) post-birth acquisition by way of adoption, the use of the right to choose nationality, or by decision of a competent authority (naturalization).<sup>3</sup>

A child born to a Turkish father or mother acquires citizenship by birth.<sup>4</sup> A foreign person adopted by Turkish citizens may acquire Turkish citizenship upon application if the adoptee was a minor according to the law of the adoptee's country (*lex patriae*) on the date of the finalization of the adoption and does not present a threat to national security and public order.<sup>5</sup>

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<sup>1</sup> Türk Vatandaşlığı Kanunu, Law No. 5901 (LTC), Official Gazette [O.G.] No. 2725, June 12, 2009, <https://perma.cc/E98D-8HQC> (unofficial English translation).

<sup>2</sup> Türk Vatandaşlığı Kanununun Uygulanmasına İlişkin Yönetmelik, Cabinet Decision No. 2010/139 (RILTC), O.G. No. 27544, Apr. 6, 2010, <https://perma.cc/M7BJ-SMUC>.

<sup>3</sup> LTC arts. 6 and 9, respectively.

<sup>4</sup> Id. art. 7.

<sup>5</sup> LTC art. 17.

## B. Legal Framework Governing Adoption

The Turkish Civil Code (TCC) establishes the right to adopt and provides the eligibility criteria for being an adoptive parent and being an adoptee.<sup>6</sup> To be able to adopt under the TCC, a person must be at least 30 years old or be in a continuing marriage for at least five years.<sup>7</sup> Married couples may adopt if they have been married for at least five years or if both spouses are at least 30 years of age.<sup>8</sup> Persons who are married must adopt together, not individually.<sup>9</sup> A spouse may adopt the children of the other spouse if the adopting spouse is at least 30 years old or if the spouses have been married for at least two years.<sup>10</sup> The TCC allows the adoption of adults under certain limited circumstances.<sup>11</sup>

The TCC requires a minor child to spend a year in the care of the prospective adoptive parent(s) before the child can be adopted.<sup>12</sup> Moreover, the adoption must be in the best interest of the adoptee minor and must not inequitably harm the interests of other children of the adoptive parent(s).<sup>13</sup>

The adoption relationship between the adoptive parent(s) and the adoptee is established by the decision of the civil court of the place of residence of the adoptive parent or one of the adoptive parents if a married couple have adopted.<sup>14</sup> The adoption relationship may also be established by the recognition of a foreign adoption decision by a Turkish court in accordance with the Law on Private International Law and Procedure (LPILP), which codifies Turkish conflict of laws rules.<sup>15</sup>

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<sup>6</sup> Türk Medeni Kanunu, Law No. 4721 (TCC), O.G. No. 24607, Dec. 8, 2001, arts. 305-20, <https://perma.cc/EPP7-GYC7>.

<sup>7</sup> Id. art. 307 and 306, respectively.

<sup>8</sup> Id. art. 306.

<sup>9</sup> Id.

<sup>10</sup> Id. art. 307(2).

<sup>11</sup> Adults may be adopted by the consent of the adoptee's descendants and spouse if (1) the adoptee requires constant care because of a physical or mental disability and the prospective adoptive parent(s) have been providing such care for the last five years, (2) the adoptee was cared for and raised by the prospective adoptive parent(s) for five years while he or she was a minor, or (3) the adoptee has been living with the prospective adoptive parent(s) for the last five years because of an otherwise legitimate reason. TCC art. 313.

<sup>12</sup> Id. art. 305(1).

<sup>13</sup> Id. art. 305(2).

<sup>14</sup> TCC art. 315. Note that that the law grants jurisdiction to the court of the place of residence, instead of the court where the adoptive parents are *domiciled*, which is the court authorized to adjudicate matters related to filiation under the TCC. The TCC defines domicile as the place where a person resides with an intent to remain indefinitely, thus "place of residence" in this context appears to cover short-term and transient presence as well. Melis Avşar, *Evlât Edinme Davalarında Türk Mahkemelerinin Milletlerarası Yetkisi*, 40(2) Pub. & Priv. Int'l L. Bull. 1151, 1158 (2020), <https://perma.cc/USE3-ZQB7>. According to Avşar, this provision favors foreign persons who are not habitually resident in Turkey (such as foreigners who own summer houses in Turkey – author's interpretation) who adopt in the country.

<sup>15</sup> Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun, Law No. 5718, O.G. No. 26728, Dec. 12, 2007, <https://perma.cc/2US8-LS9Q>.

There is some ambiguity as to which law the Turkish court will apply to determine a foreigner's legal ability to be adopted.<sup>16</sup> According to the LPILP, the eligibility for adoption of a foreigner in an intercountry adoption scenario appears to be governed by the *lex patriae* of the prospective adoptee, provided that the foreign law does not clearly violate public order in Turkey, although there is some inconsistency on this point in court practice.<sup>17</sup>

The adoption relationship is established under Turkish law by decision of a civil court.<sup>18</sup> While the TCC framework allows for adoption based both on private engagement and through a facilitating institution, Turkish citizens and foreigners with valid resident permits who are domiciled in Turkey must apply to the Turkish central authority designated in accordance with the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention),<sup>19</sup> which Turkey has ratified, to adopt a minor child located abroad.<sup>20</sup> The procedure for intercountry adoption is governed by the Regulation on the Administration of Intermediation in the Adoption of Minors (RAIAM).<sup>21</sup>

## II. Intercountry Adoption

### A. Legal Framework

RAIAM implements the Convention's international cooperation framework and establishes the procedure that has to be followed in intercountry adoptions of minors when Turkey is the origin or receiving country. RAIAM designates the Directorate General of Child Services (DGCS) of the Ministry of Family, Labor, and Social Services as the Central Authority responsible for facilitating

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<sup>16</sup> See on this point, Zeynep Derya Tarman & Işık Öney, *Milletlerarası Evlât Edinme Hukukunda Kamu Düzeni Engeli*, 60 Ankara U. Fac. L.J. 331, 336 (2011), <https://perma.cc/6WYZ-N4F4>.

<sup>17</sup> LPILP arts. 5 (*ordre public* exception) and 18. LPILP article 18(1) provides "Eligibility and criteria for adoption are subject to the law of nationality of the *individual parties*" (emphasis added). The relevant literature reports relatively dated Court of Cassation judgments that interpreted the LPILP article 18 provision to apply to both the adoptive parents' and the adoptee's *lex patriae* simultaneously to determine eligibility criteria of the *adoptee*, to the effect that the adoptee must fulfill all eligibility criteria provided in both her or his *lex patriae* and the *lex patriae* of the adoptive parent(s). In the practical context of intercountry adoption of minors, it appears that two of the TCC's requirements for adoption might be particularly complicated under this interpretation, namely, the requirement that a minor adoptee be at least 18 years younger than the adoptive parent(s), and the requirement that the child spend a year in the care of the prospective adoptive parents before the adoption is finalized. This interpretation of LPILP article 18 may require a Turkish court to not recognize the adoption of a minor foreigner adoptee in a scenario where the age difference is not 18 years, even where the foreign law does not require a specific age difference or requires a lesser age difference, or in a scenario where the child has not spent the necessary probationary year in the care of the parents. Tarman & Öney, *supra* note 16, at 337-41.

<sup>18</sup> TCC art. 315(1).

<sup>19</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/C5BW-4GUP>, ratified by Cabinet Decision No. 2004/7087 (O.G. No. 25438, Apr. 19, 2004).

<sup>20</sup> Küçüklerin Evlat Edinilmesinde Aracılık Faaliyetlerinin Yürütülmesine İlişkin Tüzük, Cabinet Decision No. 2009/14729 (RAIAM), O.G. No. 27170, Mar. 15, 2009, <https://perma.cc/KYJ7-FSGC>.

<sup>21</sup> *Id.*

intercountry adoptions and undertaking the cooperation and reporting duties as provided in the Hague Adoption Convention.<sup>22</sup>

## **B. Application Procedure for Intercountry Adoptions with Turkey as the Receiving Country**

In intercountry adoptions where Turkey is the receiving state, Turkish citizens and foreign citizens who have obtained a Turkish resident permit valid for at least one year who want to adopt a minor located abroad may submit a written application to the provincial directorate of the DGCS located in the province where they are domiciled.<sup>23</sup> Married persons must apply jointly.<sup>24</sup> Applicants will be invited by the provincial directorate for a preliminary "application interview," where the interviewer will make a preliminary assessment of the applicants' legal eligibility to adopt.<sup>25</sup> Applicants who pass the preliminary screening will be informed in detail of the social and legal consequences of adoption, the relevant procedure, and criteria for eligibility.<sup>26</sup> Applicants who want to continue with their applications must submit supporting documentation within two months of the interview.<sup>27</sup> The following documentation must be submitted:

- a. Official civil registry records of applicants,
- b. Police records of applicants and all members of their household, including expunged and sealed convictions,
- c. Records showing personal assets, finances, and social security accounts,
- d. Certificates of residency,
- e. Certificates proving educational accomplishments,
- f. Health commission report finding that the applicants have no disqualifying physical, mental, or psychological disability, do not have a debilitating or contagious illness or other health condition that requires the applicant(s) to receive constant assistance.<sup>28</sup>

Following the submission of the documents, the adoption services unit of the provincial directorate will initiate the "social observation" process.<sup>29</sup> Employees of the directorate will conduct announced or unannounced visits to the home, workplace, and social environment of the applicants, and assess the applicants' suitability to adopt.<sup>30</sup> The evaluation of the DGCS will

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<sup>22</sup> RAIAM art. 2(i).

<sup>23</sup> Id. art. 5.

<sup>24</sup> Id. art. 19(1).

<sup>25</sup> Ministry of Family, Labor, and Social Services, *Sıkça sorulan sorular: Evlat Edinme Hizmeti* [FAQ: Adoption Services], question 7, <https://perma.cc/PT5A-MKSZ>.

<sup>26</sup> Id.

<sup>27</sup> Id. question 9.

<sup>28</sup> Id. question 8.

<sup>29</sup> Id. question 10.

<sup>30</sup> Id.

then be submitted to the origin country's Central Authority in accordance with the procedure set out in the Hague Adoption Convention.<sup>31</sup>

### III. Acquisition of Citizenship by Foreign Adopted Children

Under the LTC, minors adopted by a Turkish citizen and who do not pose a threat to national security or public order may acquire Turkish citizenship by way of adoption.<sup>32</sup> The acquisition of citizenship is not automatic (*ex lege*); an application must be made on behalf of the minor adoptee in accordance with the process provided in article 33 of the RILTC. In determining the eligibility of the adoptee for citizenship, the Ministry of Internal Affairs will request an archival background check of the adoptee from the Undersecretary of the National Intelligence Organization and the Directorate General of Security to determine whether the adoptee poses a threat to national security or public order.<sup>33</sup> The adoptee will acquire citizenship effective on the date the Ministry of Internal Affairs renders its decision granting citizenship.<sup>34</sup>

Under Turkish nationality law, acquisition of citizenship through the article 33 RILTC process is more advantageous than the general process of naturalization in that there are no residency or language proficiency requirements for acquisition.<sup>35</sup> There is no time limit as to when the application for citizenship may be made after the adoption is finalized, other than the requirement that the adoptee be a minor. The adoptee must be a minor on the *date of application* to benefit from the special rule. The minor status of the adoptee will be determined in accordance with the *lex patriae* of the foreigner adoptee.<sup>36</sup> An adoptee who is a legal adult according to his or her *lex patriae* may be naturalized in accordance with the general naturalization process under the RILTC or the other paths to citizenship generally available under the LTC, as applicable.

An adoptee who has acquired Turkish citizenship does not lose it if the adoption relationship is abolished for any reason.<sup>37</sup>

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<sup>31</sup> RAIAM arts. 15(1), 19(2); Hague Adoption Convention arts. 14-22.

<sup>32</sup> LTC art. 17.

<sup>33</sup> RILTC art. 35(2).

<sup>34</sup> LTC art. 17; see also Musa Aygül, *Evlât Edinme Yolu ile Vatandaşlığın Kaybedilmesi ve Kazanılması*, 99 Turkish B. Ass'n 45, 72 (Mar./Apr. 2012).

<sup>35</sup> The general process for acquiring Turkish citizenship by decision of a competent authority (naturalization) requires five years of continuous residency in Turkey for eligibility. The five-year period of continuous residency is counted backwards from the date of application. Foreigners must be legal adults according to their *lex patriae*, or according to Turkish law if foreigners are stateless. Foreigners must have an intention to settle in Turkey identifiable from their actions, be free of diseases that might pose a danger for public health, have good moral character, have sufficient Turkish language skills, have an income or profession that is sufficient for to provide for themselves and their dependents, and not pose a threat to national security or public order. LTC art. 11.

<sup>36</sup> LPILP art. 4; Necla Öztürk & Güven Yazar, *Türk Vatandaşlığının Evlat Edinilme Yoluyla Kazanılması*, 7(1) Eurasian J. Soc. & Econ. Res. 18, 22 (2020), <https://perma.cc/UR4X-YA25>; Aygül, supra note 34, at 69.

<sup>37</sup> RILTC art. 32(2). Under the TCC, the adoption relationship can be abolished by a court decision if (1) consent was not obtained from parties whose consent is required for the adoption (the biological parents of the adoptee, if they have custody, are capable, and are upholding their duties to the child, and the adoptee, if



To the extent that it is related to the acquisition of citizenship by adoptee minors, the legal framework concerning the acquisition of Turkish citizenship does not distinguish the status and right to acquire citizenship of the child on the basis of the location where the adoption was made or on the basis of the location where the child was raised. Once the adoption of the minor is finalized under Turkish law, either by the decision of a Turkish court or a foreign decision recognized by Turkish authorities, and duly registered in the Civil Registry, the foreigner minor adoptee will be eligible for citizenship under the article 33 RILTC process regardless of the domicile or place of rearing.<sup>38</sup>

#### IV. Mandatory Documentation and Procedures to Acquire Citizenship

The application for citizenship must be made on behalf of the minor adoptee by an adoptive parent who has legal custody of the child. The application file must be submitted to the provincial governorship of the place where the adoptee is domiciled, or to the Turkish foreign mission responsible for the relevant geographical area if the child is domiciled outside of Turkey. The application file must include the following documents:

- a. Pro forma application petition indicating the request of the adoptive parent(s),
- b. Birth certificate of the adoptee,
- c. Birth record based on the birth certificate [prepared by the Turkish civil registry service upon entry of birth event in the registry system],
- d. Passport or similar document proving the nationality of the child, or relevant documentation showing stateless status,
- e. Civil registry record of the adoptive parent(s),
- f. Receipt of application fee paid.<sup>39</sup>

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capable of discernment and not under legal guardianship, TCC arts. 308-309), and one of these parties requests abolition, or (2) upon request of any interested party or the public prosecutor if any of the other requirements or criteria for adoption are not fulfilled and the abolition of the relationship will not substantially harm the interests of the adoptee. TCC arts. 317 and 318, respectively. Otherwise, once established, the adoption relationship cannot be terminated by the parties without cause under the TCC. See Gözde Çağlayan Aygün, *Türk Medeni Kanunu'na Göre Evlatlık İlişkinin Kaldırılması*, 5(2) *Anatolian U. L. Sch.* 407 (2019), <https://perma.cc/F5YG-B94W>.

<sup>38</sup> See Aygün, *supra* note 34, at 64-65, nn. 74-76 on the discussions that took place over the prior drafts of the LTC that proposed a regime that would have granted *ex lege* citizenship to adoptees younger than seven years of age on the basis that the beginning of schooling had an impact on the child's adoption of Turkish culture. The proposed provision was rejected on the ground that it was inconsistent with domestic and international definitions of childhood.

<sup>39</sup> RILTC art. 33.

# United Kingdom

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**SUMMARY** The United Kingdom is a signatory to the Hague Convention on Intercountry Adoption and it has implemented its provisions into the national law.

The process for international adoption varies according to whether the child's country of origin is a member of the Hague Convention or is on a designated list of countries whose adoption orders are recognized in the UK, and whether the adoption is a final or interim adoption in the country of origin or the child instead is entrusted to the prospective adoptive parents while the adoption is completed in the UK. The UK has restricted adoptions from six countries over concerns that adoptions from these locations contravene public policy.

British citizenship may be granted to foreign children adopted by British citizens who are habitually resident in the UK. Children whose adoptions are completed in Hague Convention countries automatically acquire British citizenship. All other adoptions require the adoptive parents to register the child as a British citizen with the Home Office. There are restrictions on the foreign adopted children of British citizens residing overseas from obtaining British citizenship, although the Home Secretary at his or her discretion may register the child as a citizen.

## I. Introduction

The United Kingdom of Great Britain and Northern Ireland (UK) is the collective name of four countries: England, Wales, Scotland, and Northern Ireland. The four separate countries were united under a single Parliament in London, known as the Parliament at Westminster, through a series of Acts of Union. The UK recently has undergone a period of devolution with the creation of a Scottish Parliament, a Welsh Parliament, and a Northern Ireland Assembly that can legislate in certain areas, such as family law.<sup>1</sup> Citizenship and nationality are not devolved areas, and thus remain the responsibility of the Parliament at Westminster. The Secretary of State for the Home Department (a member of the British executive branch) and their department, commonly referred to as the Home Office, is responsible for immigration and nationality issues.

Legislation regarding citizenship in the UK is highly complex and is contained primarily in the British Nationality Act 1981, as amended.<sup>2</sup> "Nationality" refers to the status of those individuals who are British citizens, British subjects with the right of abode in the UK and thus outside the scope of the UK's immigration control, and citizens of British Overseas Territories. These terms are commonly interchanged. Nationality has been defined as a person's international identity

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<sup>1</sup> *Home*, Scottish Parliament, <https://perma.cc/9BAZ-S2AB>; *Home*, Welsh Parliament, <https://perma.cc/HXM7-7Q9Y>; *Home*, Northern Ireland Assembly, <https://perma.cc/4M79-YAB7>.

<sup>2</sup> British Nationality Act 1981, c. 61, <https://perma.cc/KB5M-W7NU>.

that demonstrates they belong to a state, as evidenced by a passport. Citizenship has been considered to be more “a matter of law determined by the facts of a person’s date and place of birth, those of their parents and the application of the provisions of the relevant legislation,”<sup>3</sup> and concerns the rights, duties, and opportunities that a person has within a state, such as voting rights, military service, and access to healthcare.<sup>4</sup>

Citizenship is not automatically granted to all persons born in the UK. British citizenship is only granted to babies at birth if their birth father or mother is a British citizen, settled in the UK, or the baby was found abandoned. A person whose parents are not British citizens may register as a British citizen as a minor if either parent becomes a British citizen. British citizenship may also be given to children who were born in the UK, resided there for ten years, and did not leave the country for more than 90 days in any one year period for those ten years.<sup>5</sup> Individuals born outside the UK are considered to be British citizens if, at the time of birth, either their mother or father is a British citizen other than by descent.<sup>6</sup> Foreign children who are adopted by British citizens that are habitually resident in the UK under the terms of the Hague Convention or from a country designated as one whose adoption orders are recognized in the UK may acquire British citizenship automatically, or are eligible to be registered as a British citizen while they are a minor, depending upon the type of adoption.<sup>7</sup>

Individuals born in the UK, or in a former colony of the UK, on or after January 1, 1983, and whose parents are either British citizens or settled in the UK, are entitled to British citizenship. Individuals can also obtain British citizenship, in certain circumstances, through adoption by British citizens habitually resident<sup>8</sup> in the UK, descent, or naturalization and registration.<sup>9</sup>

The United Kingdom has a number of statutes and regulations that govern international adoption and citizenship. These include the

- British Nationality Act 1981
- Adoption and Children Act 2002<sup>10</sup>
- Adoption and Children (Scotland) Act 2007<sup>11</sup>

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<sup>3</sup> Laurie Fransman, *Fransman’s British Nationality Law* 12 (2d ed., 1998).

<sup>4</sup> Id.

<sup>5</sup> Id. c. 61, § 1(4).

<sup>6</sup> Id. § 2.

<sup>7</sup> Department for Education, *Statutory Guidance on Adoption Annex C ¶ 14* (July 2013), <https://perma.cc/U88S-2B7N>.

<sup>8</sup> Habitual residence is a legal concept that depends upon the facts and circumstances of each individual case. For a brief overview of habitual residence, see Home Office, *Nationality Policy: Adoption 6* (July 14, 2017), <https://perma.cc/72HC-L8KX>.

<sup>9</sup> British Nationality Act 1981, c. 61, §§ 3–5.

<sup>10</sup> Adoption and Children Act 2002, c. 38, <https://perma.cc/RV3V-9MSK>.

<sup>11</sup> Adoption and Children (Scotland) Act 2007 (asp 4), <https://perma.cc/SDX8-54NJ>.

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- Adoption (Intercountry Aspects) Act 1999<sup>12</sup>
- Adoption (Recognition of Overseas Adoptions) Order 2013<sup>13</sup>
- Adoption (Recognition of Overseas Adoptions) (Scotland) Regulations 2013<sup>14</sup>
- Adoption (Recognition of Overseas Adoptions) (Scotland) Amendment Regulations 2013<sup>15</sup>
- Adoption (Designation of Overseas Adoptions) Order 1973<sup>16</sup>
- Adoption (Designation of Overseas Adoptions) (Variation) Order 1993<sup>17</sup>
- British Overseas Territories Act 2002<sup>18</sup>
- Adoption Agencies Regulations 2005<sup>19</sup>
- Adoption of Children from Overseas Regulations 2001<sup>20</sup>
- Adoptions with a Foreign Element Regulations 2005<sup>21</sup>
- Adoption of Children from Overseas (Scotland) Regulations 2001<sup>22</sup>
- Adoptions with a Foreign Element (Scotland) Regulations 2009<sup>23</sup>
- Adoption of Children from Overseas (Wales) Regulations 2001<sup>24</sup>
- Adoption of Children from Overseas Regulations (Northern Ireland) 2002<sup>25</sup>

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<sup>12</sup> Adoption (Intercountry Aspects) Act 1999, c. 18, <https://perma.cc/2JKC-EMWZ>.

<sup>13</sup> Adoption (Recognition of Overseas Adoptions) Order 2013, SI 2013/1801, <https://perma.cc/HXW2-DAMY>.

<sup>14</sup> Adoption (Recognition of Overseas Adoptions) (Scotland) Regulations 2013, SSI 2013/310, <https://perma.cc/XL47-YD67>.

<sup>15</sup> Adoption (Recognition of Overseas Adoptions) (Scotland) Amendment Regulations 2013, SSI, 2013/335, <https://perma.cc/T9S2-QGAE>.

<sup>16</sup> Adoption (Designation of Overseas Adoptions) Order 1973 (repealed), SI 1973/19, <https://perma.cc/J64A-2EGN>.

<sup>17</sup> Adoption (Designation of Overseas Adoptions) (Variation) Order 1993, SI 1993/690, <https://perma.cc/WS5N-WNCR>.

<sup>18</sup> British Overseas Territories Act 2002, c. 8, <https://perma.cc/UKM4-NLZE>.

<sup>19</sup> Adoption Agencies Regulations 2005, SI 2005/381, <https://perma.cc/W8EZ-LXVQ>.

<sup>20</sup> Adoption of Children from Overseas Regulations 2001, SI 2001/1251, <https://perma.cc/7P9D-PMGF>.

<sup>21</sup> Adoptions with a Foreign Element Regulations 2005, SI 2005/392, <https://perma.cc/VNT5-NVPQ>.

<sup>22</sup> Adoption of Children from Overseas (Scotland) Regulations 2001, SSI 2001/236, <https://perma.cc/XH3J-HRH7>.

<sup>23</sup> Adoptions with a Foreign Element (Scotland) Regulations 2009, SSI 2009/182, <https://perma.cc/ET8G-W9WB>.

<sup>24</sup> Adoption of Children from Overseas (Wales) Regulations 2001, WSI 2001/1272 (W. 71), <https://perma.cc/5DCN-U97V>.

<sup>25</sup> Adoption of Children from Overseas Regulations (Northern Ireland) 2002, NISR 2002/144, <https://perma.cc/6FXQ-7HGZ>.

- Adoption of Children from Overseas and Intercountry Adoption (Hague Convention) (Amendment) Regulations (Northern Ireland) 2006<sup>26</sup>

## II. International Adoption

The UK signed the Hague Convention on Intercountry Adoption on December 1, 1994.<sup>27</sup> The Convention entered into force in the UK on January 6, 2003, and was implemented on June 1, 2003.<sup>28</sup> The Adoption (Intercountry Aspects) Act 1999 incorporated the framework set out in the Convention into the domestic law of the UK, and additional safeguards and penalties were added by the Adoption and Children Act 2002.

The UK is typically a receiving state and has restrictions on the removal of children who are commonwealth citizens and habitually resident in the UK.<sup>29</sup>

### A. Legal Requirements for International Adoption

The UK provides for two types of intercountry adoptions: those made under the terms of the Hague Convention, and those not made under the Convention. The UK only recognizes full adoptions, meaning that the legal relationship between the child and adopters is exclusive and all ties with the birth parents are severed.<sup>30</sup> In cases where a simple adoption is in place, meaning the legal ties to the birth parents have not been completely severed, the consent of the birth parents must be sought to secure a full adoption in order for it to be recognized in the UK.<sup>31</sup> According to one author,

English law on adoption uses the “transplant” model of adoption. This means that once the adoption order is made the adoptive parents take over the place of the birth parents. Then the birth parents will cease to be the parents of the child and will lose parental responsibility. The adoptive parents will become the legal parents for all purposes. . . . Once an adoption order is made, only in the most exceptional of circumstances will [it] be revoked.<sup>32</sup>

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<sup>26</sup> Adoption of Children from Overseas and Intercountry Adoption (Hague Convention) (Amendment) Regulations (Northern Ireland) 2006, NISR 2006/336, <https://perma.cc/4NMW-HHLY>.

<sup>27</sup> Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167, <https://perma.cc/C5BW-4GUP>.

<sup>28</sup> HM Passport Office, *Guidance on Registering a Convention or Overseas Adoption in the Adopted Children Register* (Oct. 2017), <https://perma.cc/6DER-WKTM>.

<sup>29</sup> Adoption and Children Act 2002, § 85; Adoption and Children (Scotland) Act 2007, § 60. See also Alexander Laing & Bianca Jackson, *Public Children Law: Contemporary Issues* ¶ 3.48 (2018).

<sup>30</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention* 3 (2016), <https://perma.cc/4NNG-ECH4>.

<sup>31</sup> *Id.*

<sup>32</sup> Jonathan Herring, *Beginning Family Law* (2015) at 155; Adoption and Children (Scotland) Act 2007, § 40.

A full adoption made under the terms of the Convention, or in a designated country and certified by the relevant central authority, is recognized under the laws of the UK.<sup>33</sup> Adoptions made on or after January 3, 2014, from a country on the list of designated countries contained in the Adoption (Recognition of Overseas Adoptions) Order 2013<sup>34</sup> will be automatically recognized in England and Wales. Adoptions effected prior to this date in a country named on the designated list contained in the Adoption (Designation of Overseas Adoptions) Order 1973, which was revoked on January 3, 2014, will also be recognized under the laws of the UK.<sup>35</sup>

Prospective parents can be married couples, civil partners, cohabiting partners (regardless of whether opposite or same sex), single persons, or a couple “living in an enduring family relationship.” Adopters must be over the age of 21. The reason for such a broad list of individuals who can adopt is to increase the chance a good match between a child and adopting parents.<sup>36</sup>

At all stages of the process the adoption agency must ensure that the child’s welfare is the paramount consideration. Section 1(4) & (5) of the Children Act 1989 states the following factors should be taken into consideration when determining the welfare of the child:

- (a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding),
- (b) the child’s particular needs,
- (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
- (d) the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant,
- (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,
- (f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—
  - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
  - (ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,
  - (iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.

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<sup>33</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 2.

<sup>34</sup> Adoption (Recognition of Overseas Adoptions) Order 2013 Adoption (Recognition of Overseas Adoptions) Order 2013, SI 2013/1801, <https://perma.cc/HXW2-DAMY>. For Scotland, see Adoption (Recognition of Overseas Adoptions) (Scotland) Regulations 2013, SSI 2013/310, <https://perma.cc/XL47-YD67>; Adoption (Recognition of Overseas Adoptions) (Scotland) Amendment Regulations 2013, SSI, 2013/335, <https://perma.cc/T9S2-QGAE>.

<sup>35</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 2.

<sup>36</sup> Adoption and Children Act 2002, §§ 50-51 & § 144(4); Adoption and Children (Scotland) Act 2007, § 29. See also Herring, supra note 32, at 146.

(5) In placing a child for adoption, an adoption agency in Wales must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.<sup>37</sup>

## B. Procedure for Adoptions under the Hague Convention

The process that prospective parents seeking to adopt a child from abroad must follow<sup>38</sup> varies according to the country in the UK (Scotland, Northern Ireland, or England and Wales) the individual(s) reside,<sup>39</sup> although the laws are generally fairly similar.<sup>40</sup> This section provides a broad overview of the requirements, focusing on England and Wales.

In order to adopt a child from another country that is a signatory to the Hague Convention, prospective adopters must contact the social services department within their local authority,<sup>41</sup> or a voluntary adoption agency that has been approved to undertake intercountry adoptions.<sup>42</sup>

The prospective adopters must be over the age of 21 and habitually resident in the UK for at least a year. They must apply in writing to the social services department in their local authority, or a voluntary adoption agency approved for intercountry adoption, for an assessment.<sup>43</sup> After they complete the paperwork, the relevant agency will conduct checks about the prospective adopters and their home to determine if they are suitable to adopt.<sup>44</sup> The agency must also provide the prospective adopters with information about adoption from their chosen country.<sup>45</sup>

If the prospective adopters are deemed suitable to adopt a child from the country they have selected, the agency submits their report and the application to the relevant UK Central authority, which is the Intercountry Adoption Team in the Department for Education and Skills

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<sup>37</sup> Adoption and Children Act 2002, § 1(4-5).

<sup>38</sup> Adoption and Children Act 2002, §§ 50-51 & § 144(4); Adoption and Children (Scotland) Act 2007, § 29. See also HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 5.

<sup>39</sup> In England this procedure is regulated by the Adoption of Children from Overseas Regulations 2001, SI 2001/1251, <https://perma.cc/7P9D-PMGF>, and the Adoptions with a Foreign Element Regulations 2005, SI 2005/392, <https://perma.cc/VNT5-NVPQ>; in Scotland, the Adoption of Children from Overseas (Scotland) Regulations 2001, SSI 2001/236, <https://perma.cc/XH3J-HRH7>, and the Adoptions with a Foreign Element (Scotland) Regulations 2009, SSI 2009/182, <https://perma.cc/ET8G-W9WB>; in Wales, Adoption of Children from Overseas (Wales) Regulations 2001, WSI 2001/1272 (W. 71), <https://perma.cc/5DCN-U97V>; in Northern Ireland, the Adoption of Children from Overseas Regulations (Northern Ireland) 2002, NISR 2002/144, <https://perma.cc/6FXQ-7HGZ>, and the Adoption of Children from Overseas and Intercountry Adoption (Hague Convention) (Amendment) Regulations (Northern Ireland) 2006, NISR 2006/336, <https://perma.cc/4NMW-HHLY>.

<sup>40</sup> Barbara A Moe, *Adoption: A Reference Handbook* 93 (2007).

<sup>41</sup> *United Kingdom - Other Public Authority (Art. 13)*, HCCH.net, <https://perma.cc/5A2T-263U>.

<sup>42</sup> *United Kingdom - Accredited Bodies (Art. 13)*, HCCH.net, <https://perma.cc/NEK4-QRD8>.

<sup>43</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 3.

<sup>44</sup> Suitability of Adopters Regulations 2005, 2005/1712, <https://perma.cc/KX95-ZRVZ>. See also Restriction on the Preparation of Adoption Reports Regulations 2005, SI 2005/1711, <https://perma.cc/Z39P-YB7B>.

<sup>45</sup> Adoptions with a Foreign Element Regulations 2005, Part 3.

for those residing in England, the Children's Health and Social Care Directorate for those residing in Wales, the Scottish Government for those residing in Scotland, and the Department of Health, Family and Children's Policy Directorate for those residing in Northern Ireland.<sup>46</sup>

The central authority must check to ensure the application is complete and all necessary legal requirements have been complied with. If it is satisfied the application is complete, it must issue a certificate that confirms the prospective parents have been approved and that the child will be authorized to reside permanently in the UK if he or she is granted entry clearance and an adoption order is made.<sup>47</sup> The central authority must notify the parents this certificate was issued. The certificate is sent to the central authority in the country from which the adopter wishes to adopt a child, which then considers whether to accept the application and match the prospective adopters with a child.

If the prospective adopters are matched with a child, information about the match must be sent to the UK central authority, which then passes this along to the agency the prospective adopters are working with. The agency must then consider the match, send the information to the adopters, and meet with them to discuss it. In cases where the prospective adopters receive information about a potential match, they must inform the agency of this.<sup>48</sup> At least one of the prospective adopters must meet the child in the state of origin. Adoptions cannot proceed without this step occurring.<sup>49</sup> Where the prospective adopters wish to proceed, they must confirm in writing this intention and the agency must notify the UK central authority in writing of their intent, which in turn notifies the central authority of the country in which the child resides.<sup>50</sup>

If the central authority in the child's country approves the application, it must notify the central authority in the UK, which must obtain confirmation from the Home Office that the child will be permitted to enter the UK if a Convention adoption is made.<sup>51</sup> Upon receiving confirmation, the agency must then process the paperwork and advise the adoptive parents of whether the adoption will be finalized overseas, or in the UK.<sup>52</sup> The adopters must notify the agency when they propose to bring the child to the UK and, unless the agency and the overseas central authority agree, the adopter, or both adopters in the case of couples, must accompany the child to the UK.<sup>53</sup> If the adopters wish to continue the adoption, the agency has an obligation to notify the prospective adopter's local authority, general practitioner, area National Health Service

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<sup>46</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 2. See also Fergus Smith et al., *Adoption Now: Law, Regulations, Guidance and Standards* (2d ed., 2012).

<sup>47</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, at 9.

<sup>48</sup> Adoption of Children Act 2002, § 83; Adoptions with a Foreign Element Regulations 2005, Part 3.

<sup>49</sup> Id. See also Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 11.

<sup>50</sup> Adoption of Children Act 2002, § 83; Adoptions with a Foreign Element Regulations 2005, ¶ 19.

<sup>51</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 31.

<sup>52</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 2.

<sup>53</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 21.



coordinator, and if the child is school age the local education authority, that the child is entering their area.<sup>54</sup>

The next steps at this point vary depending on whether a Convention adoption is made in the state of origin; an interim adoption is granted with the intention it be finalized in the state of origin; or the child is entrusted to the prospective adopter with the understanding the child will be adopted in the UK.<sup>55</sup>

### 1. *State of Origin Convention Adoptions*

In cases where the adoption is made in the state of origin, the state of origin must issue a certificate confirming the order is a Convention adoption.<sup>56</sup> In these cases, the child automatically becomes a British citizen and the adopters may apply for a passport for the child at the closest diplomatic post to the child. The adoptive parents must accompany the child to the UK<sup>57</sup> and, upon their arrival, may apply to register the adoption with the Registrar General.<sup>58</sup>

### 2. *State of Origin Interim Adoptions*

Where an interim adoption is made and the adopters apply for a full Convention adoption in the state of origin, the adopters must apply for entry clearance into the UK for the child. If this is approved, the child may be brought into the UK where he or she will be “treated as a privately fostered child until [a] full Convention adoption [is] made.”<sup>59</sup> When the state of origin certifies the adoption as meeting the requirements of a Convention adoption,<sup>60</sup> the adopters may apply to register the adoption with the Registrar General.<sup>61</sup>

### 3. *Convention Adoptions in the UK*

In cases where a Convention adoption of a foreign child occurs in the UK, the prospective adopters must meet the domicile and habitual residence requirements contained in section 49 of the Adoption and Children Act 2002 and apply for entry clearance for the child. If approved, the

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<sup>54</sup> Id. ¶ 22.

<sup>55</sup> Adoptions with a Foreign Element Regulations 2005; Adoptions with a Foreign Element (Scotland) Regulations 2009. A flow chart of these procedures is available at Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 20-24; Welsh Assembly Government, *Intercountry Adoption Guidance and Information on Processes*, at 78-81, <https://perma.cc/VH6D-MM3E>.

<sup>56</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 32.

<sup>57</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C, ¶ 44.

<sup>58</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 16; Welsh Assembly Government, *Intercountry Adoption Guidance and Information on Processes*, supra note 55, at 78.

<sup>59</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 16; Welsh Assembly Government, *Intercountry Adoption Guidance and Information on Processes*, supra note 55, at 78.

<sup>60</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 16; Welsh Assembly Government, *Intercountry Adoption Guidance and Information on Processes*, supra note 55, at 78.

<sup>61</sup> HM Passport Office, *Guidance on Registering a Convention or Overseas Adoption in the Adopted Children Register*, supra note 27.

prospective parents must accompany the child to the UK and give notice within 14 days of arriving to their local authority that they intend to apply for a Convention adoption order.<sup>62</sup> The local authority must visit the family within one week of arriving in the UK to monitor the placement.<sup>63</sup> After a period of at least six months, the adopters must apply for an adoption order at the closest court to them that handles adoption matters. Upon receipt of the application, the Local Authority must prepare a report for the court in accordance with the requirements of section 44(5) of the Adoption of Children Act.

Once the adoption application has been submitted to the court, the court will appoint a Children's Guardian, who "must make a report to the court advising on the interests of the child and give any other advice the court asks for."<sup>64</sup> The court will also request a report containing details about the child, his or her family of origin, and the prospective adopters, along with any other additional information that would help the court from the adoption agency or local authority. A hearing, known as a First Directions Hearing, will be held approximately four weeks after the application has been received, during which the judge will consider and address

- whether there are any errors or omissions in your application or supporting documents that need to be corrected;
- whether the requirements of the 2002 Act and the Adoptions with a Foreign Element Regulations 2005 have been complied with;
- if not all relevant documents are in English, the timetable for translating any outstanding documents;
- the timetable for filing any reports from an adoption agency, local authority or CAFCASS/CAFCASS CYMRU, and any other evidence;
- the disclosure of information to the applicants and the parents or guardians of the child;
- whether a further directions hearing is necessary; and
- if possible, the date and place of the final hearing. It is at the final hearing that the adoption order is made, if that is what the court decides.<sup>65</sup>

In order to adopt a child from a Convention country, the adopters must meet the following criteria:

- be at least 21 years of age at the time the adoption order is made,
- have had a permanent home in the British Islands for one year prior to making the application,<sup>66</sup>

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<sup>62</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 24.

<sup>63</sup> Id. ¶ 5.

<sup>64</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 2.

<sup>65</sup> Id. at 8.

<sup>66</sup> Adoptions with a Foreign Element Regulations 2005, ¶ 13.

- the child's home must have been with the adopters for at least ten weeks immediately prior to the application being made<sup>67</sup> and,
- in cases where the child will permanently reside in the UK and where "the applicant, or one of the applicants, is not a British Citizen, the Home Office [must] confirm[] that the child is authorised to enter and reside permanently in the UK."<sup>68</sup>

If all the requirements are met, the adoption order will be made and automatically registered with the Registrar General.<sup>69</sup>

### C. Adoption Procedures for Non-Convention Adoptions

In cases of non-Convention adoptions, the prospective adopters must submit an application to an adoption agency for an assessment of their suitability to adopt a child in accordance with the requirement contained in the Adoptions with a Foreign Element Regulations 2005.<sup>70</sup> If the agency considers the prospective adopters suitable to adopt, it must submit their papers to the relevant government department. That department will review the paperwork to ensure the procedures were correctly followed. It will then submit the paperwork to the relevant department that determines whether to issue a certificate of eligibility. That certificate confirms that all documentation is complete and statutory procedures were complied with, and establishes that the child may enter and reside in the UK, provided he or she meets any entry clearance and immigration requirements.<sup>71</sup>

If issued, the certificate must be notarized, translated if necessary, and sent to the country from which the adopters wish to adopt a child. The country of origin then reviews the application. If the country accepts the application and the prospective adopters are matched with a child, it must send a report on the child to the prospective adopters, who must share this report with their adoption agency and meet to discuss it. If the prospective adopters decide to proceed, they must travel to meet with the child and determine whether they wish to continue with the adoption. In cases where the prospective adopters proceed, the relevant UK department must notify the state of origin, which must confirm the adoption can continue.<sup>72</sup>

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<sup>67</sup> Adoption and Children Act 2002, § 84(4). In *Re G (Adoption Placement Outside Jurisdiction)* [2008] EWCA Civ 105, ¶ 23, <https://perma.cc/74PT-M6D5>, the court held that the physical presence of each adopter during the ten week period is "not necessary to satisfy the proposition that [the child's] home was [with the adopters]."

<sup>68</sup> HM Courts & Tribunals Service, *Intercountry Adoption and the 1993 Hague Convention*, supra note 30, at 5; Adoption and Children Act 2002, § 84.

<sup>69</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 22; Welsh Assembly Government, *Intercountry Adoption Guidance and Information on Processes*, supra note 55, at 78.

<sup>70</sup> Adoption and Children Act 2002, § 83; Adoptions with a Foreign Element Regulations 2005, part 3.

<sup>71</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C at 23.

<sup>72</sup> *Id.* at 22-23.

1. *Adoptions in Designated List Countries*

Where the state of origin is on the designated list of countries, adoption orders made in these states are recognized in the UK. The prospective adopter can thus obtain a full adoption in that state, and apply for entry clearance for the child at the closest diplomatic post. They may later apply to register the adoption with the Registrar General.<sup>73</sup>

2. *Interim Adoptions in Designated List Countries*

In cases where an interim adoption in the state of origin has been issued, the adoptive parents must later apply for a full adoption in the country of origin. If this occurs, the adoptive parents must apply for entry clearance at the nearest diplomatic post and will be treated as privately fostering the child until the full adoption is made. Once the full adoption is confirmed, the adopters may register the adoption with the Registrar General.<sup>74</sup>

3. *Adoptions from Designated List Countries in the UK*

Where a child from a designated list country is entrusted with prospective adopters to be adopted in the UK, the prospective adopters must meet the domicile and habitual residence requirements contained in section 49 of the Adoption and Children Act 2002, apply for entry clearance for the child, and give notice to the local authority within 14 days of arriving in the UK of their intention to adopt. The local authority must visit the child within a month of arrival in the UK and monitor the placement until the final adoption order is made. The prospective adopters must apply for an adoption after a minimum of six months, and the local authority must prepare a report and follow the procedures described above in part II.B.3, *Convention Adoptions in the UK*. Once the adoption order is made, it will be automatically registered with the Registrar General.<sup>75</sup>

**D. Domestic Authorities and Agencies Involved**

The central authority in the UK varies according to the country in which the application is being made. The following table lists the appropriate authority for each country in the UK.

Country	Authority
England	Intercountry Adoption Casework Team, Department for Education and Skills <sup>76</sup>
Wales	Children’s Health and Social Care Directorate
Scotland	Scottish Government, Looked After Children Unit
Northern Ireland	Department of Health Family and Children’s Policy Directorate

Table created from information in *Authority*, HCCH.net, <https://perma.cc/6PU6-4UAN>.

<sup>73</sup> Id.

<sup>74</sup> Id. at 24.

<sup>75</sup> Id. at 25.

<sup>76</sup> *Child Adoption*, gov.uk, <https://perma.cc/YD6A-DVDV>.

The competent authority “responsible for certifying that a Convention adoption order has been made in accordance with the Convention”<sup>77</sup> in their respective countries under article 23 are provided in the following table.

Country	Authority
England	Intercountry Adoption Casework Team, Department for Education and Skills
Wales	Welsh Government, Improving Outcomes Branch
Scotland	Scottish Executive, Young People and Looked After Children, Education Department
Northern Ireland	Department of Health, Family and Children’s Policy Directorate

Table created from information in *Authority*, HCCH.net, <https://perma.cc/RCG7-XDW4>.

#### E. Restricted Countries

The Children and Adoption Act 2006 provides the Secretary of State with the power to restrict adoptions from abroad from countries in which adoption practices are inconsistent with the UK’s public policy.<sup>78</sup>

Restrictions may be applied even if the country has signed the Hague Convention.<sup>79</sup> The Secretary of State is required to keep the list of restricted countries under review.<sup>80</sup> The impact of the restrictions means that the appropriate authority in the UK may not take any steps to further an intercountry adoption from these countries. However, adoptions may proceed if the adopters can satisfy the appropriate authorities that exceptional circumstances<sup>81</sup> exist.<sup>82</sup> The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations list the following criteria that the relevant authority will consider when determining whether such exceptional circumstances exist:

- (a) the circumstances leading to the child becoming available for adoption, including whether any competent authority in the State of origin has made a decision in relation to the adoption or availability for adoption of the child,
- (b) the relationship that the child has with the prospective adopters, including how and when that relationship was formed,

<sup>77</sup> *Authority*, HCCH.net, <https://perma.cc/6PU6-4UAN>.

<sup>78</sup> Children and Adoption Act 2006, c. 20, § 9, <https://perma.cc/7BZ3-VJAB>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* § 10.

<sup>81</sup> Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008, SI 2008/1807, ¶ 6, <https://perma.cc/3F85-9ND4>.

<sup>82</sup> Children and Adoption Act 2006, § 11.

- (c) the child's particular needs and the capacity of the prospective adopters to meet those needs, and
- (d) the reasons why the State of origin was placed on the restricted list.<sup>83</sup>

In cases where no exceptional circumstances exist, the relevant authority must simply consider the reason the country was placed on the restricted list and the adoption will not be permitted.<sup>84</sup>

Six countries have been subject to such restrictions since enactment of the Children and Adoption Act 2006: Cambodia,<sup>85</sup> Ethiopia,<sup>86</sup> Guatemala,<sup>87</sup> Haiti,<sup>88</sup> Nepal<sup>89</sup> and Nigeria.<sup>90</sup> Restrictions have been imposed for reasons including concerns over the trafficking of children, corruption, the lack of legal safeguards to ensure parental consent was appropriately obtained, and financial gain made by individuals involved in the adoption process.<sup>91</sup>

In Scotland, the process to add countries to the restricted list is conducted by Scottish Ministers,<sup>92</sup> who must make a declaration that a country is restricted and list the reasons for making the declaration.<sup>93</sup> Scotland currently restricts adoptions from Haiti, Nepal, Cambodia, Guatemala, and Ethiopia.<sup>94</sup>

### III. Acquisition of Citizenship for Foreign Adopted Children

The acquisition of citizenship for children adopted overseas is dependent upon the country of adoption, the date of adoption, and whether the adoption was under the Hague Convention.

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<sup>83</sup> Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008, ¶ 6.

<sup>84</sup> *Id.*

<sup>85</sup> Special Restrictions on Adoptions from Abroad (Cambodia) Order 2008, SI 2008/1808, <https://perma.cc/6GZM-3EKH>.

<sup>86</sup> Special Restrictions on Adoptions from Abroad (Ethiopia) Order 2018, SI 2018/517, <https://perma.cc/M7QX-TCLA>.

<sup>87</sup> Special Restrictions on Adoptions from Abroad (Guatemala) Order 2008, SI 2008/1809, <https://perma.cc/R9SG-VPBR>.

<sup>88</sup> Special Restrictions on Adoptions from Abroad (Haiti) Order 2010, SI 2010/2265, <https://perma.cc/9KUZ-PER5>.

<sup>89</sup> Special Restrictions on Adoptions from Abroad (Nepal) Order 2010, SI 2010/951, <https://perma.cc/F5TB-LBHN>.

<sup>90</sup> Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021, SI 2021/64, <https://perma.cc/RWA2-9WHU>.

<sup>91</sup> Department for Education, *Adoptions: Restricted List 3* (May 2018), <https://perma.cc/9WGM-TADN>.

<sup>92</sup> Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008, SSI 2008/303, <https://perma.cc/B923-AEXA>.

<sup>93</sup> Adoption and Children (Scotland) Act 2007, § 62.

<sup>94</sup> *Restricted List: Countries with Special Restrictions on Adoption*, Scottish Government (Nov. 16, 2018), <https://perma.cc/9KQX-N6AB>.

Section 1(5) of the British Nationality Act provides that a child automatically becomes a British citizen when adopted by at least one adopter who is a British citizen pursuant to a UK court order on or after January 1, 1983,<sup>95</sup> or a court order in any British overseas territory on or after May 21, 2003.<sup>96</sup>

## A. Foreign Adopted Children Raised in the Country of Adoptive Parent

### 1. *Children Adopted Under the Hague Convention*

Children born outside the UK and whose final adoption orders are certified in accordance with the Hague Convention on or after June 1, 2003,<sup>97</sup> automatically acquire British citizenship from the date of the adoption if at least one adoptive parent is a British citizen and is, or in the case of joint adopters both are, habitually resident in the UK.<sup>98</sup> Children who acquire citizenship in this manner possess the same status as those born in the UK to a parent who is a British citizen.

Convention interim orders, which permit a child to be brought into the UK, do not automatically grant the child British citizenship.<sup>99</sup> In cases following such interim orders, if an adoption order by a court in the UK is issued, the child automatically receives British citizenship.<sup>100</sup>

### 2. *Children Adopted from Designated or Recognized Countries*

Adoptions not conducted in accordance with the terms of the Hague Convention do not automatically confer British citizenship on the child, even if the adoptive parent or parents meet the criteria above.<sup>101</sup> In cases where a child is adopted from a country listed as a designated country by the Adoption (Designation of Overseas Adoptions) Order 1973<sup>102</sup> or the Adoption (Designation of Overseas Adoptions) (Variation) Order 1993,<sup>103</sup> prior to January 3, 2014, or listed in the Adoption (Recognition of Overseas Adoptions) Order 2013 after this date, citizenship can be acquired through registration in accordance with the requirements set out in section 3(1) of the British Nationality Act 1981.

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<sup>95</sup> British Nationality Act 1981, § 1(5).

<sup>96</sup> British Overseas Territories Act 2002, c. 8, <https://perma.cc/UKM4-NLZE>.

<sup>97</sup> Home Office, *British Citizenship: Automatic Acquisition* (Dec. 18, 2020, v. 4.0) at 9, <https://perma.cc/SV69-JNWJ>.

<sup>98</sup> British Nationality Act 1981, § 1(5). See also Home Office, *Registration as a British Citizen: Children 19* (April 16, 2020), <https://perma.cc/C82L-NU8Y>.

<sup>99</sup> *Guidance Intercountry Adoption and British Citizenship*, UK Visas and Immigration (Mar. 12, 2014), <https://perma.cc/N6HV-5F5X>.

<sup>100</sup> Department for Education, *Statutory Guidance on Adoption*, *supra* note 7, Annex C at 6.

<sup>101</sup> *Id.*

<sup>102</sup> Adoption (Designation of Overseas Adoptions) Order 1973, SI 1973/19, <https://perma.cc/J64A-2EGN>.

<sup>103</sup> Adoption (Designation of Overseas Adoptions) (Variation) Order 1993, SI 1993/690, <https://perma.cc/WS5N-WNCR>.

Guidance on this section from the government notes that applications involving adoptions prior to January 3, 2014, that occurred in a designated country, or after January 3, 2014, in a recognized country<sup>104</sup> will typically be approved under this section, provided the adoption is not informal or temporary<sup>105</sup> and if

1. at least one of the adoptive parents is a British citizen otherwise than by descent (i.e., by virtue of his or her birth, adoption, registration or naturalization in the United Kingdom);<sup>106</sup>
2. the adoptive parents have consented to the registration;
3. there is no reason to refuse registration on grounds of the child's character;<sup>107</sup>
4. the Home Secretary is satisfied that all relevant adoption laws have been complied with, including the laws of the country in which the adoption has taken place, the country of origin of the child, and the country in which the adoptive parents are habitually resident; and
5. the Home Secretary is satisfied that the adoption is not one of convenience arranged to facilitate the child's admission to the United Kingdom.<sup>108</sup>

Registration is at the discretion of the Home Secretary. Applications for citizenship in these circumstances must be made while the child is under the age of 18.<sup>109</sup> British citizenship granted by this section provides the child with the same status given to children born in the UK.

### 3. *Children Adopted from Other Countries*

Any adoptions made prior to January 3, 2014, in and under the laws of countries not designated in either the Adoption (Designation of Overseas Adoptions) Order 1973, or the Adoption (Designation of Overseas Adoptions) (Variation) Order 1993, or after that date in a country not recognized as a designated country under UK law and not conducted in accordance with the Hague Convention, will not be recognized under the law of the UK. As a result, applications for registration for British citizenship will typically be refused, although guidance notes that "all applications will be considered on their merits and the child may be registered as a British citizen if it is demonstrably in the child's best interest. In such cases we would expect confirmation that nothing adverse is known about the child or the parents."<sup>110</sup>

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<sup>104</sup> Adoption (Recognition of Overseas Adoptions) Order 2013. In Scotland, recognized countries are contained in the Adoption (Recognition of Overseas Adoptions) (Scotland) Regulations 2013 and the Adoption (Recognition of Overseas Adoptions) (Scotland) Amendment Regulations 2013.

<sup>105</sup> Home Office, *Registration as a British Citizen: Children*, supra note 98, at 19.

<sup>106</sup> British Nationality Act 1981, § 1(5A).

<sup>107</sup> Id. § 41A.

<sup>108</sup> Home Office, *MN1 Registration as a British Citizen - A Guide About the Registration of Children Under 18*, at 14 (July 2019), <https://perma.cc/3YCK-FZS4>.

<sup>109</sup> British Nationality Act 1981, § 50.

<sup>110</sup> Home Office, *MN1 Registration as a British Citizen - A Guide About the Registration of Children Under 18*, supra note 108, at 15.



The guidance further states that in some circumstances where children have undergone an adoption overseas that is not recognized in the UK, the child may be granted limited leave to enter the UK pending the completion of UK adoption proceedings. In these cases, the child will be unable to be registered as a UK citizen until the formal adoption process is completed.<sup>111</sup>

## **B. Foreign Children Adopted and Raised Outside the UK**

Adoption of foreign children by British citizens residing outside the UK is typically done in accordance with the laws of the country in which they reside. There may be instances in which the adoption can be done using the UK assessment procedures, although the procedures provided for intercountry adoption, such as home studies, make it difficult for individuals residing overseas to complete the applications required by the UK adoption process.<sup>112</sup> In cases where such adopters wish to return to the UK, they must apply to the British Embassy for entry clearance for their adopted child, for which clearance there are a number of permissible grounds.<sup>113</sup>

In the case of an adoption of a child by a British citizen who is not habitually resident in the UK, an application for British citizenship for the adopted child while residing overseas will typically be refused.<sup>114</sup> However, as the Home Secretary has discretion when granting British citizenship, guidance notes that there may be “exceptional, compelling or compassionate circumstances” that exist to justify granting British citizenship to an adopted child, including in cases where the parents intend to reside outside the UK.<sup>115</sup> The guidance further notes that “all applications will be considered on their merits and the child may be registered as a British citizen if it is demonstrably in the child’s best interest. In such cases we would expect confirmation that nothing adverse is known about the child or the parents.”<sup>116</sup>

While there are provisions in the British Nationality Act that provide British citizenship for the children of military personnel born to these individuals while serving abroad,<sup>117</sup> there are no specific provisions that provide British citizenship to the children adopted by them. An application can be made to the Home Secretary for citizenship, who may use his or her discretion to grant citizenship in such circumstances.

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<sup>111</sup> Home Office, *Registration as a British Citizen: Children*, supra note 98, at 19.

<sup>112</sup> Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C ¶¶ 56 and 60.

<sup>113</sup> Id. Annex C ¶ 59.

<sup>114</sup> Home Office, *Registration as a British Citizen: Children*, supra note 98, at 20.

<sup>115</sup> Id.

<sup>116</sup> Id. See also Department for Education, *Statutory Guidance on Adoption*, supra note 7, Annex C ¶ 55.

<sup>117</sup> See, e.g., British Nationality Act 1981, § 4D.

## IV. Mandatory Documentation and Procedures to Acquire Citizenship

### A. Documentation

In order to demonstrate an adoptive child meets the criteria to be registered as a UK citizen have been met, the adoptive parents must provide all the following documentation to the Home Office:

- The child's birth certificate, or where the child has been abandoned, a certificate of abandonment from the authorities previously responsible for the child
- Evidence of the relevant adoptive parent's claim to British citizenship otherwise than by descent\*
- The consent of the adoptive parent(s) to the registration
- The Adoption Order
- A contemporary report from the overseas equivalent of the Social Services Department which details:
  - the child's parentage and history, and
  - the degree of contact with the original parent(s), and
  - the reasons for adoption, and
  - the date, reasons and arrangements for the child's entry into an institution or foster placement, and
  - when, how and why the child came to be offered to the adoptive parent(s)
- Evidence of the parents' country of habitual residence and either:
  - Where the parents are habitually resident in the UK, confirmation from the Department for Education (DfE) (for those in England and Wales), from the Scottish Executive (for those parents in Scotland) or from the Department of Health Social Security and Public Safety - Northern Ireland (for those resident in Northern Ireland) that they have been assessed and approved as eligible to become an adoptive parent.
  - Where the parents are not habitually resident in the UK, confirmation from the equivalent of the Social Services Department in their country of residence that all relevant adoption laws have been complied with.<sup>118</sup>

### B. Background Checks

Background checks, including criminal record checks, are made on children 10 years of age and older to ensure they are of good character<sup>119</sup> and "show respect for the rights and freedoms of the United Kingdom, observe its laws and fulfil their rights and duties as a resident of the United Kingdom."<sup>120</sup> Any offenses recorded on the child's criminal record within three years of the application are grounds for refusal. Guidance advises parents of children charged with a criminal offense and awaiting trial or sentencing to wait to make an application for citizenship until after the case is decided.<sup>121</sup>

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<sup>118</sup> Home Office, *MN1 Registration as a British Citizen - A Guide About the Registration of Children Under 18*, supra note 108, at 23-24.

<sup>119</sup> Home Office, *Nationality: Good Character Requirement* (Sept. 30, 2020), <https://perma.cc/KL9L-HJAR>.

<sup>120</sup> Home Office, *MN1 Registration as a British Citizen - A Guide About the Registration of Children Under 18*, supra note 108, at 15.

<sup>121</sup> *Id.* at 17.

### C. Discretion of the Home Secretary

In cases where the adoptee applicant meets the criteria for registration as a UK citizen, the Home Secretary retains discretion to refuse the application if he or she has “serious doubts about an adoptive parent’s character or suitability to adopt a child, or irregularities in the adoption procedure.”<sup>122</sup> The Home Office’s guidance notes that,

where there are serious doubts about an adoptive parent’s character or suitability to adopt a child, or irregularities in the adoption procedure a [, registration of] child in these circumstances could circumvent measures intended to safeguard children.<sup>123</sup>

Conversely, if the applicant does not meet all the above criteria, the Home Secretary may still consider the application on its merits, and may register the child if “exceptional, compelling or compassionate circumstances justifying a grant of British citizenship”<sup>124</sup> and it “is demonstrably in the child’s best interest.”<sup>125</sup>

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<sup>122</sup> Id. at 15.

<sup>123</sup> Home Office, *Registration as a British Citizen: Children*, supra note 98, at 20.

<sup>124</sup> Id.

<sup>125</sup> Home Office, *MN1 Registration as a British Citizen - A Guide About the Registration of Children Under 18*, supra note 108, at 15.