

# **Immigration Hurdles in Intercountry Adoption**

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Some of the most difficult legal issues facing U.S. residents who seek to expand their families through international adoption involve satisfying the requirements of U.S. immigration law. U.S. residents seeking lawful entry and nationalization for their transnationally adopted children encounter a legal regime of complex federal statutes and regulations created in the context of international treaty obligations, and at times augmented by additional state law requirements.

Private attorneys have a limited role to play in some aspects of the intercountry adoption process, because adoption agencies specifically accredited to facilitate intercountry adoptions assist their clients with the immigration paperwork and shepherd the majority of prospective adopters through the immigration maze in the typical case. Nevertheless, immigration lawyers play an important role both in advising clients who are considering intercountry adoption and representing clients when pitfalls arise. These materials provide an overview of the process and summarize some of the significant court and administrative decisions interpreting federal immigration law, with particular emphasis on the issues for which private attorneys are most likely to be called on to assist.

One reason that immigration law in this field is so complex is that Congress and the Departments of State and Homeland Security (who promulgate the relevant federal regulations) are trying to accomplish multiple goals. U.S. federal immigration law regulating intercountry adoption attempts to ensure that:

- prospective adopters are suitable to adopt;
- children who are adopted or about to be adopted by U.S. citizens are authorized to enter the country on preferential visas, so that family formation may be accomplished without years of waiting for visas that are subject to numerical limitation;<sup>1</sup>

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<sup>1</sup> Children coming to the United States to join adoptive families are classified for immigration purposes as immigrants (those seeking permanent residence) rather than non-immigrants (those seeking admission for a limited period of time). Two types of visas are available for immigrants—those that are subject to numerical limitation, which are obviously less desirable for prospective adopters because they require a significant wait, and those that are not.