



Information Fact Sheet: Intercountry Adoption

Purpose

This Fact Sheet is intended to assist New Zealand citizens or permanent residents who are thinking about adopting a child from another country. It has been prepared by the New Zealand agencies involved in the intercountry adoption process and is intended to provide an integrated source of information.

1. Seek specialist advice

This information sheet is a summary and is not intended to replace independent advice. Adopting a child from overseas can be complicated. We strongly advise that **before** commencing the process you:

- seek independent legal advice from a lawyer experienced in overseas adoption; and
- contact the New Zealand government agencies referred to in this Fact Sheet (see contact details below).

2. New Zealand Residents adopting a child from a Hague Convention Country

Overview of the Convention

New Zealand is a signatory to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the 'Convention')¹. The Convention has been incorporated into New Zealand law through the Adoption (Intercountry) Act 1997.

Any adoption that involves:

- one or more adoptive parent(s) from a country that is signatory to the Convention (a 'Contracting State'); and
- a child who is living in another Contracting State (country)

must be undertaken in accordance with the process set out in the Convention. This requires the exchange of information between "Central Authorities", who must be satisfied that the adoption is in the best interests of the child.²

The responsibilities of Central Authorities are to:

- establish that the child is adoptable
- give due consideration to the child's adoption in its country of origin
- determine that intercountry adoption is in the child's best interest
- be satisfied that after counselling, the necessary consents to the adoption have been given freely, with no financial inducements
- give due consideration to the child's wishes and opinions, if age and maturity appropriate.

¹ https://en.wikipedia.org/wiki/Hague_Adoption_Convention

² As per the United Nations Convention on the Rights of the Child:
https://www.unicef.org.nz/_data/assets/pdf_file/0020/4556/CRCSummary_NZ_Bilingual.pdf

- The Central Authority of the receiving country must:
 - determine that the prospective adoptive parents are eligible and suited to adopt
 - provide pre-adoption training and counselling
 - determine that the child will be authorised to enter and reside permanently in that country.

The New Zealand Central Authority

The Chief Executive of the Ministry for Children, Oranga Tamariki (Oranga Tamariki) is the Central Authority for New Zealand. If you want to adopt a child from a country that is a Contracting State to the Convention and you are:

- a New Zealander living in New Zealand; or
- a New Zealand permanent resident habitually resident in New Zealand

you **must** apply to Oranga Tamariki and follow the Convention process.

NB: If you are a New Zealander habitually resident in another contracting state, and you wish to adopt a child resident in a third contracting state, you must contact the Central Authority of the State where you habitually reside. For example, if you are a New Zealander habitually resident in Germany and you wish to adopt a child from the Philippines and bring that child into Germany, then you must contact the German Central Authority.

Effect of a Convention adoption

If all the requirements of the Convention are met, a Certificate under Article 23 of the Convention will be issued. This confirms that the adoption has complied with the requirements of the Convention and has the same effect as an Adoption Order made by the New Zealand Family Court.

Failure to follow the Hague Convention process

Failure to follow the Convention process in circumstances when you should have will likely mean that the adoption is not granted, or is not able to be recognised in New Zealand or other Contracting States. This in turn will affect your ability to obtain New Zealand citizenship or a New Zealand visa for the child.

Contracting States with which New Zealand has an intercountry adoption programme

New Zealand has formalised intercountry adoption programmes with seven Hague Convention Contracting States: Chile, China, Hong Kong, India, Lithuania, the Philippines and Thailand. Please check with Oranga Tamariki prior to taking steps to progress an overseas adoption as these programmes are subject to change.

Prospective intercountry adoptive parents can make an application to adopt through these programmes. Adopting from outside these programmes will be complicated, time consuming and less likely to be successfully completed. Further information about the adoption processes for these programmes can be found at:

<http://www.cyf.govt.nz/adoption/adopting-a-child/adopting-a-child-from-overseas.html>.

3. New Zealanders adopting a child when the Convention does not apply

Not all adoptions involving a child from an overseas country will progress under the Convention process.

The Convention will not usually apply if you want to adopt a child and you are:

- a New Zealander wanting to adopt a child from a country that is not a Contracting State; or
- a New Zealander living overseas and you meet the test of being 'habitually resident' in that overseas country the Hague Convention may not apply. In some situations it may not be clear whether a person is "habitually resident" in a country and legal advice should be sought at the earliest instance.

Instead, you may either:

- apply for a domestic adoption through the New Zealand Family Court; or
- follow a foreign domestic adoption process in the country that you and/or the child are in.

Foreign domestic adoptions

Foreign domestic adoptions are adoptions that are undertaken in a foreign jurisdiction, where the Convention does not apply. Because foreign domestic adoptions are processed in accordance with the laws of the relevant foreign state, **the New Zealand government cannot assist in any way.**

If you have obtained a foreign domestic adoption order, the Department of Internal Affairs will determine whether it can be recognised in New Zealand for the purpose of granting the child New Zealand citizenship. Foreign domestic adoptions may be recognised in New Zealand provided that:

- the circumstances meant that the Convention did not apply; and
- the adoption meets the requirements of section 17 of the Adoption Act 1955, that is –
 - it is legally valid in the country where the adoption occurred
 - under the law of that country, the adoption gives the adoptive parents the right to provide day-to-day care of the child
 - under the law of that country, the adoption gives the adoptive parents an equal or greater right than the birth parents to inherit the child's property as next of kin.

4. Obtaining a visa for your adopted child

Immigration New Zealand is responsible for the issuing of visas to enter New Zealand for all people not travelling on a New Zealand passport.

Any child involved in an adoption overseas must be granted the appropriate visa by Immigration New Zealand before he or she can travel to New Zealand.

The fact that the child has been adopted does not, of itself, entitle the child to be granted a visa to travel to New Zealand. Immigration Officers must assess whether or not the child meets the requirements for a visa to be issued.

5. Citizenship

There is **no automatic right** to New Zealand citizenship for children adopted overseas by a New Zealand citizen. The role of the Department of Internal Affairs is to establish any claim(s) to New Zealand citizenship that a child adopted in a country outside New Zealand may have, following the finalisation of the adoption.

There are three ways of obtaining New Zealand citizenship in relation to an adoption:

1. **By Grant**: The Minister may grant citizenship if the requirements in section 8 (of the Citizenship Act 1977) are met. More information about these requirements is available on the DIA website <https://www.dia.govt.nz/>
2. **Descent**: An adopted child will be deemed to be the child of a New Zealand citizen if the child meets one of the criteria in section 3(2) of the Citizenship Act 1977 and one adoptive parent was a New Zealand citizen 'otherwise than by descent' (i.e. is a citizen by birth or grant) at the effective date of the final adoption order.

Broadly speaking, the criteria in section 3(2) is that the child has been adopted in New Zealand or, that the adoption is pursuant to the Convention, or that the adoption is not pursuant to the Convention but complies with section 17 of the Adoption Act 1977. In that case, the child is deemed to be born to that New Zealand citizen when and where the adoption order is made and will therefore be a New Zealand citizen by descent. Application can be made for citizenship to be registered in accordance with section 7(2) of the Citizenship Act.

Important points to note:

- **Adoptions proposed or undertaken under foreign jurisdictions or outside the Convention pose risks for all parties:**
 - there is no guarantee that a child adopted through a foreign domestic adoption will be able to enter New Zealand or obtain New Zealand citizenship.
 - a foreign country's law may appear to be compatible with New Zealand law, but an individual adoption may still fail to meet the legal requirements for recognition in New Zealand.
 - if the overseas country is a Contracting State to the Convention and the process set out in the Convention has not been followed, the child will not be able to enter New Zealand or obtain New Zealand citizenship.
- You must be living in New Zealand for the New Zealand Central Authority to undertake the due diligence required by the Convention. This includes undertaking an assessment of your circumstances in the event one is required. If you are living overseas, the New Zealand government will not be able to provide you with any supporting documentation.
- **Beware of opting for a foreign domestic adoption if the Convention applies.** Even if you do not intend for the child to live in New Zealand, opting for a foreign domestic adoption in place of a Convention process, can cause difficulty, such as:
 - an inability to provide local authorities with the documentation they require to support your adoption application (this may result in the adoption not proceeding)
 - an inability to obtain New Zealand citizenship for the child
 - an inability to obtain a visitor's visa for the child, should you wish to visit friends and family in New Zealand in the future.
- The process is usually lengthy and prospective parents should use caution throughout. We recommend that you seek and follow advice from the relevant authorities. In addition, we recommend that you obtain independent legal advice. We will work to expedite matters relating to adoptions with which we are involved. However, this does not extend to circumventing required process in order that things are 'sped up'.
- New Zealand government agencies cannot:
 - provide legal advice
 - certify, in the absence of a proper assessment, that you are of good character
 - provide a letter of "no objection" for overseas authorities
 - provide supporting documentation except as part of the Convention process
 - obtain exit permits for adopted children in order for them to leave their country of origin.

The New Zealand government will not participate in the irregular movement of children across borders

Disclaimer: The relevant New Zealand government Ministries endeavour to provide the most up to date accurate information in this Fact Sheet. However, adopting a child from overseas can be complicated. We strongly advise that **before** commencing the process you seek independent legal advice from a lawyer experienced in overseas adoption and contact the New Zealand government agencies referred to below.

Contact Details:

Ministry for Children, Oranga Tamariki - has responsibility for facilitating adoption processes involving New Zealand citizens and permanent residents.

Email: webadoption@mvcot.govt.nz or nzca_adoptions@mvcot.govt.nz

Phone: 0508 FAMILY (0508 326 459) from within New Zealand

Phone: +64 9 912 3820 from outside New Zealand

Immigration New Zealand - a service line of the Ministry of Business, Innovation and Employment - takes care of all New Zealand immigration issues.

To send a query use the following link: <http://dol.govt.nz/immigration/knowledgebase/contact>

Phone: 0508 558 855 within New Zealand but outside Auckland

Phone: 09 914 4100 Auckland

Phone: +64 9 924 4100 from outside New Zealand

Department of Internal Affairs - administers applications for New Zealand citizenship and issues New Zealand passports.

Email: staykiwi@dia.govt.nz

Freephone 0800 22 51 51 within New Zealand

Phone: +64 4 463 9361 outside New Zealand

Ministry of Foreign Affairs and Trade – provides consular support to New Zealanders when overseas

See: <https://www.safetravel.govt.nz>

Email: cons@mfat.govt.nz

Phone: 04 439 8000

Phone: +64 4 439 8000 from outside New Zealand

References

All legislation referred to in this Information Sheet can be found at this website: www.legislation.govt.nz