

OUTLINE: ISSUES WITH INTERCOUNTRY ADOPTION TO THE UNITED STATES

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Thousands of foreign-born children brought to the United States for adoption¹ have later discovered irregularities or issues with those adoptions, often affecting their immigration and citizenship status in the US. This can be attributed to several factors, including adoption mediators, in-country facilitators, and adoption agencies using illicit methods to secure placements with prospective US citizen parents. It could also involve adoptive parents who use unlawful shortcuts to bring foreign-born children to the United States, including carrying them across the southern border between the US and Mexico or using improper temporary visas to secure their entry into the country.

As a result of illicit practices and shortcuts, many intercountry adoptees today lack lawful status in the United State and may not have a viable path to secure lawful presence or U.S. citizenship, leaving these children---now adults---vulnerable to deportation. In fact, it is believed that more than 35 intercountry adoptees have been deported from the US in the last 30 years.

These issues intersect and have formed two intertwined legal issues that persist to this day; 1) the legal inability of adopted people to acquire US citizenship through their adoptive parents; and 2) adopted people who lack legal proof of US citizenship, either through a US passport or a Certificate of Citizenship.

The issues are also compounded by specific current US immigration law and policy, including:

- **Entry Without Inspection (EWI).** Children who enter the United States without being inspected at a port of entry are not considered lawfully present in the country. In the context of adoption, there are several cases where adoptive parents “adopted” a child in Mexico and transported that child into the US by car, with no record of entry. Without proper admission to the United States, it is very difficult to secure US citizenship.
- **Visa Overstays.** Adoptive parents, sometimes through unethical adoption facilitators, have at times used illegal shortcuts to bring children to the United States for adoption. This generally includes the use of non-immigrant visas, such as visitor visas (i.e., “tourist” visas) or humanitarian visas (used for medical treatment or other humanitarian reasons). The use of such temporary visas, however, prevents the child from later acquiring US citizenship, even if the child is adopted in state court. Moreover, once the child is 18 years of age, it is exceedingly difficult to secure lawful status. Efforts to do so may ultimately involve significant risk of deportation or adverse immigration actions.
- **IR-4/IH-4 Visas.** Adoptive parents whose prospective adoptive children immigrate to the United States on IR-4/IH-4 visas do not secure US citizenship

¹ Foreign-born intercountry adopted children typically enter the United States on one of two immigrant visas: IR-3 and IR-4. An IR-3 visa signifies that the child’s full and final adoption occurred in the sending country. An IR-4, however, signifies that the child is being admitted to the United States “for the purpose of adoption,” and that the adoption must still be finalized in state court. For sending countries that are signatories to the Hague Convention, the visa numbers are the same and signify the same purpose, though they are classified as IH-3 or IH4.

until the child's adoption is finalized in state court. If the adoption is not finalized, the child does not acquire US citizenship---and there are no state or federal legal requirements to compel parents to complete the adoption. In fact, the Central Authority has no authority to assure that the parents secure a final adoption. As such, thousands of intercountry adoptees who arrive on IR-4/IH-4 visas may "age out" of the protections of the Child Citizenship Act at age 18, without having secured US citizenship.

- **Gaps in the Child Citizenship Act of 2000.** The Child Citizenship Act of 2000 ("CCA") generally controls whether an intercountry adoptee brought to the United States acquires U.S. citizenship through the adoptive parents. The CCA, which went into effect in 2001, ensures automatic (or "acquired") US citizenship for intercountry adoptees who enter the country on an immigrant visa and complete full and final adoptions—but only if they were younger than 18 years of age at the time of the law's effective date. That is, an intercountry adoptee who was 18 years of age or older on the effective date of February 27, 2001, is excluded from the CCA and has no eligibility to acquire U.S. citizenship under current law. Thousands of intercountry adoptees today still lack U.S. citizenship.

Recent Policy Changes

A few US policy changes have emerged in recent years that provide limited assistance to adult intercountry adoptees. These include:

- Eliminating immigration fees for adult intercountry adopted people who apply for proof of US citizenship through a Certificate of Citizenship. The current fee for a certificate of citizenship is \$1,170 US, which is often beyond the financial means of adult adopted people. Effective April 1, 2024, the USCIS will exempt adult intercountry adoptees from having to pay the filing fee.
- The US immigration authority has developed online resources for intercountry adult adopted people to understand the process for US citizenship and to explain how to secure US citizenship if it is lacking.²

Additional recommended policy changes

- **Eliminate the practice of using humanitarian visas to bring children to the United States, ostensibly for adoption.** In recent years, particularly in response to crises in Ukraine and Haiti, the US Central Authority has been firm that humanitarian visas are not appropriate to secure an adoptive placement. Considerable pressure, however, continues to come from adoption agencies, adoption professionals, and prospective adoptive parents, who wish to loosen the rules around the use of humanitarian visas so that they can bring children to the United States.
- **Require courts to determine how the child will secure US citizenship upon finalization of a state-court adoption.** This would in part involve judicial education concerning US citizenship for intercountry adoptees; requiring prospective adoptive parents to disclose the specific current immigration status of the child to the court as part of the adoption process; and requiring prospective adoptive parents to post a bond or other security with the court to

² See, Adult Adoptees and U.S. Citizenship, United States Citizenship and Immigration Services, available at <https://www.uscis.gov/adoption/adult-adoptees-and-us-citizenship> (last accessed March 10, 2024)

assure that they take additional legal steps necessary to secure a Certificate of Citizenship for the child.

- **Eliminating the IR-4 and IH-4 immigrant visa categories.** These categories are historically rooted in the practice of “proxy adoptions” from Korea in the 1950s and 1960s, where no final adoption would occur in the sending country. Under criticism from child welfare professionals, the practice of proxy adoptions ceased, though the current IR-4/IH-4 visa categories reflect an effort to retain the core feature of proxy adoptions: the elimination of a requirement of a finalized adoption in the sending country. Today, problems continue with adoptive parents who bring their child to the US with an IR-4/IH-4 visa but never finalize the adoption in the United States.
- **Assure Identity and Nationality Protections for Dissolved or Disrupted Adoptions.** In cases where an intercountry adoption is dissolved or disrupted and the adopted child enters state-based foster care, require state child welfare agencies to determine the child’s immigration status and specifically address any outstanding US citizenship issues for the child as part of the state’s obligation and plan of care. This must occur prior to age 18 and must be provided without charge by the state authority. In addition, passage of federal legislation that would prohibit unregulated custody transfers should be enacted, as well as

Practices that the United States and its Central Authority could also implement:

- Require direct and timely assistance to adult intercountry adoptees who request critical documentation and information that may only be available through the Central Authority, including such basic information as the child’s name, date of birth, and the type of visa, if any, used to enter the country. While this information may be available through the US immigration service, it cannot always be located. Without an original name, for example, many intercountry adoptees are unable to obtain critical immigration and other adoption records, particularly records that may exist in immigration files or in a foreign adoption agency.
- Given the scope of illicit practices uncovered by other major receiving countries,³ authorize an independent and comprehensive review of consular offices and Central Authority documents and actions to examine intercountry adoption practices in select countries over a span of years. This would be similar to investigative reports commissioned and published in Sweden, Switzerland, Denmark, and the Netherlands.

About Gregory D. Luce

Gregory D. Luce is a US-based attorney who was born and adopted in the District of Columbia. He is the founder of Adoptee Rights Law Center and the executive director of Adoptees United Inc. He is considered a national expert in the United States on issues impacting adult adopted people, including intercountry adoptees with US citizenship and

³ See, e.g., Yves Denéchère, Fábio Macedo. Historical Study of Illicit Practices in International Adoption in France. Université d’Angers-TEMOS, 2023; Ramsauer, N., Bühler, R., & Girschik. Indications of illegal adoptions of children from ten countries of origin in Switzerland, 1970s to 1990s: Inventory of documents in the Swiss Federal Archives, Zürcher Hochschule für Angewandte Wissenschaften (ZHAW), 2023; Dutch Committee Investigating Intercountry Adoption. Consideration, Analysis, Conclusions, Recommendations and Summary, 2021.

immigration issues. As a lawyer, he represents adult adopted people who are impacted by discriminatory birth records laws, identity issues, and US immigration law. As the executive director of Adoptees United, he is responsible for national programming and education around issues impacting adopted people. He is a graduate of Boston University and the University of Minnesota Law School.