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CHEATSHEET FOR INTERNATIONAL ADOPTION

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WARNING – the term “international adoption” applies to more adoptions than some think.

You should consider an adoption an “international adoption” if:

- Prospective adoptive parents of one country are trying to adopt a child of another country.
- Or, more simply, it is an international adoption if the child is not a citizen of the United States.

Examples:

- A child born in Mexico is brought to the United States at age 4 and has lived in Wisconsin since that age. She is now 14. She is abandoned by her parents. Her adult sister, who is a U.S. citizen and resident, takes her in. The adult sister wants to adopt the child. This is an international adoption. **More than just Wisconsin law must be complied with. This could be a Hague adoption.**
- A child born in Vietnam enters the United States on a student visa at age 10. She attends one year of school in the United States and then visits some relatives in Wisconsin for the summer. Those relatives decide they want to adopt the child. They are U.S. citizens and residents. Can they adopt in Wisconsin? Maybe, maybe not. **This is a Hague adoption. Vietnam law must be complied with.**

If an adoption is an international adoption, you must consider the following:

- Does the Hague Convention on Intercountry Adoption apply?
 - The Hague Convention applies to an adoption if a child habitually resident in one Hague country is being adopted by adoptive parents habitually resident in another Hague country.

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- **The concept of “habitual residency” is key.**
- Federal governmental agencies called “Central Authorities” make these determinations, not social workers, attorneys, or state court judges.
- Summary of habitual residency rules in the U.S.
 - U.S. citizen adoptive parent – country of residence, 8 CFR § 204.303(a)
 - Legal Permanent Resident adoptive parent – country of residence
 - Child – presumed to be country of citizenship, unless country of actual residence, 8 CFR § 204.303(b)
- If the treaty applies, the adoption must comply with the treaty and federal law. Read: contact an attorney experienced in Hague adoptions and children’s immigration.
- If the treaty applies, but the child has not resided in the country of origin for a year or more, consider the exceptions set forth in USCIS Policy Memo 602-0095 (dated December 23, 2013), which can be very helpful.
- If the Hague Convention does not apply, does the Universal Accreditation Act (“UAA”) of 2012 apply?
 - The Hague Convention, and its implementing legislation, the Intercountry Adoption Act of 2000, requires adoption service providers involved in Hague adoptions to be accredited by the U.S. government (*i.e.*, a special type of licensing).
 - The UAA extends this accreditation requirement to all adoption service providers to almost all international adoptions.
 - The UAA went into effect on July 14, 2014.
 - There is an exception under the Hague Convention or the UAA for public adoption service providers. 8 CFR § 96.16.
- If neither the Hague Convention nor the UAA applies, then what?
 - The adoption must still comply with federal immigration law and in some cases, the law of the child’s country of origin. Read: contact an attorney with experience in international adoption and children’s immigration.
- Consequences of non-compliance with federal and international law
 - No immigration benefit for child through adoption!
 - You may have just made the child ineligible for any immigration relief!
 - Potentially invalid adoption!
 - In some cases, criminal liability for immigration fraud and/or civil liability for malpractice.