



INTERCOUNTRY ADOPTION AD HOC REQUESTS – POLICY AND PROCEDURES

BACKGROUND

The Australian Government Attorney-General's Department is the Australian Central Authority (ACA) under the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*. The *Intercountry Adoption Strategic Plan 2009* outlines the way in which the ACA will ensure Australia has a nationally consistent and coordinated approach to the establishment and management of intercountry adoption programs. The Strategic Plan outlines key principles for establishing new intercountry adoption programs.

Australia does not automatically work with Hague Convention countries – the ACA will only establish and maintain programs with countries where it can be satisfied that the Hague Convention standards have been fully implemented. In addition, Australia will only establish intercountry adoption programs with countries that have appropriate procedural safeguards in place to protect against the abduction or sale of, or traffic in, children. Although not all countries with which Australia has intercountry adoption programs are parties to the Hague Convention, Australia requires that all intercountry adoption programs be ethical, viable and meet the standards set by the Hague Convention.

POLICY

Australia has intercountry adoption arrangements with a number of countries. An 'ad hoc request' for intercountry adoption is an individual request to adopt a child from a country with which Australia does not have an existing intercountry adoption program. Each ad hoc request will be considered on a case-by-case basis.

The relevant State or Territory Central Authority must have accepted an ad hoc request before prospective adoptive parents are entitled to make a formal application for adoption and be assessed to determine their suitability to adopt. The State or Territory Central Authority may seek advice from the ACA in making a decision to accept an ad hoc request. If their request is accepted, applicants will be subject to the normal intercountry adoption process (and waiting times) applicable in their relevant State or Territory.

As a general principle, accepting ad hoc requests will not be consistent with a coordinated, strategic and therefore effective approach to Australia's management of intercountry adoption programs. Managing ad hoc requests involves the commitment of significant resources from governments. This can divert effort from the maintenance or establishment of broader, more accessible programs that are likely to better provide for the best interests of children. However, in some cases, pursuing ad hoc requests can assist in exploring the likelihood and feasibility of establishing new intercountry adoption programs with particular countries.

There is an increased risk for children and prospective adoptive parents when engaging in adoption processes outside established programs. It cannot be assumed that Hague Convention standards are being applied consistently and appropriately by countries or agencies with which we do not have an existing relationship. Resourcing constraints may limit the ability of the ACA to thoroughly assess the merits and risks of engaging in intercountry adoption with each particular country or agency. To protect the interests of adoptive children and prospective adoptive parents, Australian Central Authorities will not accept such requests unless particular criteria are met including that exceptional circumstances are demonstrated. These criteria are outlined below.

CRITERIA FOR ACCEPTING AD HOC REQUESTS

An ad hoc request will only be accepted if:

1. the ACA and State or Territory Central Authority are able to devote sufficient time, staffing and financial resources from managing Australia's existing intercountry adoption programs and obligations
2. the State or Territory Central Authority (in consultation with the ACA if necessary) is satisfied that¹:
 - the adoption would satisfy the Hague Convention standards and requirements, international law and principles and the laws of the overseas country, and
 - an appropriate infrastructure and procedural safeguards are in place to protect against the abduction or sale of, or traffic in, children
3. the Government of the identified country, or another official source, has provided information which demonstrates that there are a sufficiently large number of children in need of families that would support an intercountry adoption program with Australia if one were established
4. an intercountry adoption application would assist in exploring the likelihood and feasibility of establishing a new broader and more accessible intercountry adoption program with the other country
5. an intercountry adoption application would comply with Australian law including immigration requirements, and
6. the applicants can demonstrate that **exceptional circumstances** apply.

Exceptional circumstances will apply where prospective adoptive parents have a genuine and profound understanding of, and connection with, the culture and circumstances of the overseas country. Without limiting the range of circumstances that might lead to such a connection, factors may include a combination of:

- shared ethnicity and/or citizenship
- having lived in the country for several years

¹ The Receiving Central Authority may be satisfied that this criterion has been met if the sending country has implemented the Hague Convention standards or, following consultation with the ACA, has been assessed as complying with Hague Convention standards and requirements.

- currently having close family members residing in the country, and
- possessing fluency with the language.

PROCEDURES

1. Applicants who wish to make an ad hoc request should contact their State or Territory Central Authority. Prospective adoptive parents who contact the ACA directly will be referred back to their State or Territory Central Authority.
2. The State or Territory Central Authority will discuss the potential request with the applicants and provide general information about intercountry adoption and ad hoc requests.
 - Where clear conditions or barriers exist that would make it inappropriate for an intercountry adoption application to be sent to a particular country (eg significant civil unrest, conflict in the country and/or the Department of Foreign Affairs and Trade has issued a travel advisory warning against travelling to the country), the State or Territory Central Authority may advise the applicants that they would not accept an ad hoc request, and outline the reasons why.
3. The State or Territory Central Authority will provide the applicants with an **Ad Hoc Request Form** (attached).
4. Applicants submit the completed request form. When completing the form, applicants should provide as much detail as possible about their circumstances and attach any supporting documentation to enable an assessment to be made.
5. The State or Territory Central Authority will assess the ad hoc request. There are three aspects to this assessment.
 - a. The State or Territory Central Authority will determine whether the applicants meet the relevant State or Territory eligibility requirements for intercountry adoption.
 - b. The State or Territory Central Authority will consider the request against the criteria for accepting ad hoc requests including, with reference to the applicant's Ad Hoc Request Form, any exceptional circumstances claimed. If required, the State or Territory Central Authority may consult the ACA in making this assessment².
 - c. The State or Territory Central Authority may consider whether there are any further specific reasons why the request should be refused.
6. The State or Territory Central Authority will either:
 - a. if it considers the request should be accepted, forward the request and its recommendation to the ACA, (the State or Territory Central Authority will forward the applicant's Ad Hoc Request Form and attachments to the ACA, and a recommendation in writing that the request be accepted. The recommendation will address the exceptional circumstances claimed by the applicants, attach any supporting documentation and provide an

² In assessing whether an adoption would satisfy Hague Convention standards and requirements, the ACA will use the checklist at Attachment A to the Strategic Plan, which outlines criteria used by the ACA to consider whether a country is Hague Convention compliant.

- acknowledgement that the State or Territory Central Authority is willing to commit any resources that may be required); or
- b. if it considers the request should not be accepted, advise the applicants (and the ACA) that their ad hoc request has been unsuccessful and outline the reasons for that decision.
7. If the ACA receives notification under 6a above and considers further assessment is required, the ACA will further assess the ad hoc request against the criteria for accepting ad hoc requests³.
 - a. The ACA will advise the State or Territory Central Authority in writing whether it supports acceptance of the ad hoc request and why.
 - b. In making a final decision about accepting an ad hoc request, the State or Territory Central Authority will take into account advice from the ACA.
 8. The State or Territory Central Authority will then either:
 - a. advise the applicants (and the ACA) that they have accepted their ad hoc request and the applicants may now make a formal intercountry adoption application; and provide usual information on the application process. If their application is approved, applicants will be subject to the normal intercountry adoption process (and waiting times) applicable in their relevant State or Territory; or
 - b. advise the applicants that they have not accepted their ad hoc request and outline the reasons for that decision.
 9. Applicants whose ad hoc requests are not accepted may reapply to their State or Territory Central Authority at a later stage. However, the decision of the State or Territory Central Authority is final and it is unlikely that a future request would be accepted unless there has been a significant change of circumstances (for example, a country becomes a party to the Hague Convention).

Intercountry Adoption Branch
Attorney-General's Department

August 2009

³ In assessing whether an adoption would satisfy Hague Convention standards and requirements, the ACA will use the checklist at Attachment A to the Strategic Plan, which outlines criteria used by the ACA to consider whether a country is Hague Convention compliant.